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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.237 OF 2023

Pramod Raghunath Sawant and Ors. ... Petitioners
V/s.
Vilas Shantaram Gurav and Ors. ... Respondents

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Mr. K. P. Shetye, for Petitioners.

Mr. Suraj N Naik a/w Mr. Raju Suryawanshi, for
Respondent Nos.1, 3, 4 & 5.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 22, 2023

P.C.:

1. The petition arises out of order of grant of injunction against defendant No.1 in a suit for declaration and injunction restraining defendant No.2 from carrying out construction over the suit property. The Trial Court rejected the temporary injunction application. However, the Appellate Court restrained defendant No.2 from carrying out construction.

2. Learned Advocate for petitioner No.1 invited my attention to the letter of authority which according to him, confers right over the said property.

3. On perusal of the letter of authority, it appears that the said document creates new right, title and interest over the immovable

property. Therefore, in the absence of such document being registered under Section 17 in clause (b) of the Registration Act, 1908, it cannot be used for primary purpose of establishing ownership over the property.

4. Moreover, on perusal of gift deed executed in favor of defendant No.2, it is clear that out of 0.07.5 are of land only 0.03.05 are land was gifted to defendant No.2. Therefore, status of Survey No.1 Hissa No.2, prima facie, appears to be joint family. The plaintiff is co-sharer of the said property, is entitled to injunction against the person who at this stage has failed to prove his rights to construct over the property. The Appellate Court's order, therefore, cannot be faulted.

5. The writ petition is, therefore, dismissed.

(AMIT BORKAR, J.)