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

WRIT PETITION NO. 5219 OF 2024

Ankush Genu Dhankude and Ors.

.. Petitioners

Versus

Lilabai Dattoba Dhankude and Ors.

.. Respondents

WITH

WRIT PETITION NO. 8628 OF 2024

Ankush Genu Dhankude and Ors.

.. Petitioners

Versus

Lilabai Dattoba Dhankude and Ors.

.. Respondents

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- Mr. Anil Sakhare, Senior Advocate i/by Mr. Kalpesh Patil for the Petitioners.
 - Ms. Ketki Gadkari a/w. Mr. Aditya A. Joshi, Advocate for Respondent Nos.1 to 8 in WP No.8628 of 2024.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 26, 2024.

P.C.:

1. I have heard Mr. Sakhare, learned Senior Advocate for Petitioners and Ms. Gadkari, learned Advocate for Respondent Nos.1 to 8 in Writ Petition No.8628 of 2024 for some time.

2. The Suit between the parties is filed in the year 2018. Exhibit “5” Application stood rejected by the learned Trial Court. However Misc. Civil Appeal (MCA) stands allowed. The parties are before me because the Defendants are in possession of the Suit property and have given the said property for development and plans have also been

sanctioned and the excavation work was going on the Suit property, when the Suit was filed.

3. In the year 2018 the Suit proceedings have been filed by the Plaintiffs. Submissions advanced by Mr. Sakhare are that Defendants are in possession of the Suit property since long on the basis of a precursor partition deed dated 09.06.1988 under which the Suit property came to their share and they received its possession. The said stand adopted by Defendants is refuted by Plaintiffs and hence the Plaintiffs being one of the brother in the family branch filed the Suit to challenge the partition deed dated 09.06.1988.

4. Ms. Gadkari, learned Advocate for Respondent Nos.1 to 8 would submit that the said document of 1988 is an Agreement and not a partition deed. Needless to state that the case of either parties will have to be tried out as a triable issue before the Trial Court since one party is asserting and the other is denying. The question before Court is that in the meanwhile whether to permit Defendants to carry on construction and under what condition.

5. After hearing the learned Advocates for parties, it is suggested by Ms. Gadkari that Plaintiffs may give a without prejudice counter proposal to Defendants so that if any reconciliation is possible, both parties can explore that possibility also. Submission made by Ms. Gadkari, *prima facie*, appears to be fair.

6. That apart, since Defendants have already taken steps to develop the Suit property and have excavated the ground of the Suit property, they will also take some time to develop the said property. Hence some embargo can be directed by the Court so that Defendants are not prejudiced. Since any stay on the development of the Suit property will be to the detriment of Defendants since they must have invested a substantial amount for development.

7. In the meanwhile, parties are requested by this Court to consider approaching each other, which shall be without prejudice to their rights and contentions and see if it is possible to have reconciliation between them. If parties require assistance of a Court appointed Mediator, the Court be informed accordingly so that on the next date this Court shall pass appropriate orders for appointment of Mediator.

8. Place both the Writ Petitions on Board on **2nd September 2024**. To be placed under the caption “**For Directions**”.

[MILIND N. JADHAV, J.]

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