



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO.49 OF 2022
WITH
CIVIL APPLICATION NO.11449 OF 2022
AND
APPEAL FROM ORDER NO.11 OF 2023
WITH
CIVIL APPLICATION NO.2046 OF 2023
AND
APPEAL FROM ORDER NO.13 OF 2023
WITH
CIVIL APPLICATION NO.2052 OF 2023
AND
APPEAL FROM ORDER NO.12 OF 2023
WITH
CIVIL APPLICATION NO.2049 OF 2023**

1. Smt. Kalpana Suhas Suryavanshi,
Age 59 yrs., Occ. Household,
Sneh Sadan, Gr. Floor, Ram Maruti Road,
Cross Lane No.3, Naupada,
Thane-400602
2. Shri. Rajesh Anandprakash Chaudhari,
Age 58 yrs., Occ. Retired,
Permanent Address: Happy Colony,
Kothrud, Pune-411038
Present Address: Dispossessed since 12.04.2022
from Vitthal Niwas, Near Samartha
Wagdevta Mandir, Malegaon Road,
Dhule 424001
3. Smt. Sunanda Rajesh Chaudhari,
Age 57 yrs., Occ: VRS,
Permanent Address: Vitthal Niwas,
Near Samartha Wagdevta Mandir,
Malegaon Road, Dhule 424001
Dispossessed since 12.04.2022
from the above address
4. Smt. Suman Suryaji Salunkhe, (Died)
Expired on 24.01.2022 at Vitthal Niwas,
Near Samartha Wagdevta Mandir,
Malegaon Road, Dhule 424001

5. Smt. Kumudini Krishnadutta Iyengar,
Age 54 yrs., Occ: Household,
Permanent Address: 51 First Main,
Yadavgiri, Mysore - 570020,
Karnataka Dispossessed since 12.04.2022
from Regd. Address: C/o. Sunanda R. Chaudhari,
Vitthal Niwas, Near Samartha Wagdevta
Mandir, Malegaon Road, Dhule 424001
6. Smt. Vandana Kailas Shinde,
Age 52 yrs., Occ: Service,
R/a. Mhasoba Lane, Shinde Bldg.,
Near Hemlata Talkies, Nashik 422011

..Appellants
(Org. Plaintiffs)

Versus

1. Shri. Jayant Suryaji Salunkhe,
Age: 56 yrs, Occ: Garage,
R/a: Vitthal Niwas, Near Samartha
Wagdevta Mandir,
Malegaon Road, Dhule 424001
2. Shri. Ranjit Suryaji Salunkhe,
Age: 50 yrs, Occ: Service,
R/a: Vitthal Niwas, Near Samartha
Wagdevta Mandir,
Malegaon Road, Dhule 424001

..Respondents
(Org. Defendants)

...

Mr. C. S. Joshi a/2 Mr. S. N. Lavekar and Mrs. Sunanda Konkar,
Advocate for Appellants.

Mr. Mukul S. Kulkarni, Advocate for Respondent Nos.1 and 2.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON :- 27th JANUARY, 2025.

PRONOUNCED ON :- 19th MARCH, 2025.

JUDGMENT:-

1. The present Appeals from Orders filed by original plaintiffs
impugning common order dated 05.05.2022 passed by 4th Joint
Civil Judge, Senior Division, Dhule below Exhibits 5, 25, 82 and 99
in Special Civil Suit No.62/2021.

2. Initially, common Appeal was filed. However, on objection by respondents, leave was granted under order dated 21.12.2022 to file independent Appeal against each of the order passed below respective Exhibits. With a view to understand challenge in individual Appeals, description of each of Exhibit decided under impugned order is given herewith in tabular form:

Sr. No.	Appeal From Order	Civil Application for	Against Application at	Relief Prayed
01.	A.O. NO.49 of 2022	C.A.No.11449 of 2022 1) to restrain from common enjoyment. 2) To restrain from entering Varandah. 3) To reopen closed access 4) Permission to sale share in property 5) Not to change the nature of property	Exhibit 25 Filed by Rajesh, Sunanda and Suman I.e Org. Defendant Nos.1 to 3 (Now Plaintiff Nos.2 to 4)	For mandatory injunction of possession.
02.	A.O. NO.11 of 2023	C.A.No.2046 of 2023 1) Not to obstruct common enjoyment of suit property. 2) To reopen access which is closed.	Exhibit 5 Filed by Kalpana Org. Plaintiff	Not to obstruct common possession of plaintiff and defendant nos.6 and 7.
03.	A.O. NO.12 of 2023	C.A.No.2049 of 2023 1) Not to change the nature of property. 2) Not to obstruct common enjoyment.	Exhibit 99 Filed by Rajesh-Org. Defendant No.1 (Now Plaintiff No.2.)	-Not to change nature of suit property. -In the backdrop of bamboo fencing.
04.	A.O. NO.13 of 2023	C.A.No.2052 of 2023 1) To sale their share in the suit property. 2) To alienate their share in the suit property.	Exhibit 82 Filed by Jayant & Rajit-Org. Defendant Nos.6 & 7 (Now Defendant Nos.1 & 2)	Not to alienate the suit property.

3. It is apparent from aforesaid chart that aforesaid applications are filed seeking relief of temporary or mandatory injunction by plaintiffs and defendants against each other. The

original plaintiffs are seeking relief of mandatory injunction and possession against defendants, whereas defendants are seeking relief of injunction that plaintiffs shall not alienate or create third party interest in suit property.

4. Principally, suit has been instituted seeking decree of partition, separate possession and perpetual injunction from interfering in joint possession of plaintiffs. The suit property is described as final Plot Nos.131 and 142 admeasuring 18.13R situated at Survey No.459/2, Malegaon Road, Dist. Dhule. It was originally owned by Yashwant Vithoba Salunkhe. He expired on 12.02.1974 leaving behind his wife-Chandrabhagabai, son-Suryaji and daughter-Saroj. Suryaji expired on 08.07.2019, whereas Saroj expired on 30.05.2019. The plaintiffs are legal heirs of Suryaji. According to plaintiffs, suit property is joint family property of plaintiffs and defendants. They were jointly possessing the same. Recently, dispute arose as regards to enjoyment of property. The wife of defendant no.7 is an Advocate by profession and she is insulting plaintiffs and raising day to day quarrels and giving threats to dispossess them. Some instances of unpleasant incident of using physical force against each other are given. The plaintiffs assert that they are being forced to abandon their possession and defendants are claiming exclusive right over suit property. Per contra, defendants assert that plaintiffs have no right in the suit

property. They plead that suit is bad for non-joinder of parties, so also barred by limitation.

5. The learned Trial Judge considered all aforesaid applications and passed impugned order granting temporary injunction restraining plaintiffs and defendants from alienating or changing nature of suit property until final adjudication of suit.

6. Mr. Joshi, learned Advocate appearing for appellants submits that this is a classic case where right of female member in joint family property is prejudiced by act of male members. By inviting attention of this Court to various documents and contentions in applications filed on record of Trial Court, it is submitted that plaintiffs were enjoying joint ownership and possession of suit property alongwith defendants. However, impugned order has been passed with predetermined mind. The prayer for mandatory injunction and restoration of right of access of plaintiffs has been prejudiced by impugned order. He would submit that share in joint family property can be alienated and there cannot be restriction to transfer, although it may be subject to rigors of Customary Hindu Law. According to him, plaintiffs were entitled for mandatory injunction and restoration of their possession in suit property. The Trial Court prolonged to pass order on Exhibit 5 and Exhibit 25 and erroneously opined that Section 6 of Specific Relief Act cannot be invoked to restore joint possession and enjoyment of property by

plaintiffs alongwith defendants. He submits that documents on record clearly shows that plaintiffs were in possession over suit property till 08.04.2022, which has been illegally disturbed by defendants. He submits that Courts have the power to teach a lesson to litigants, who are dishonest and use criminal force against co-sharers. According to him, documents at Exhibits 51 and 52 show that appellant no.3-Sunanda was continuously in possession and occupation of portion of suit property. The court cannot be a silent spectator, when her right for enjoyment and possession has been prejudiced. In support of his contentions he relies upon number of judgments passed by Supreme Court of India and various High Courts.

7. Per contra, Mr. Kulkarni, learned Advocate appearing for respondents/defendants takes this Court through pleadings and prayers employed in plaint and submits that there is no assertion in entire plaint, by which specific area in possession of plaintiffs in suit property can be ascertained. He would submits that there is no pleading of dispossession from joint possession. According to him, in absence of such pleadings, various reliefs as claimed under Exhibits cannot be granted. He would submit that plaintiffs are claiming injunction to not to disturb from joint possession. He would further point out that there is ample material to show that plaintiffs are intending to create third party right in suit property,

although they cannot have right to sell out or alienate undivided share in suit property.

8. Having considered submissions advanced and after going through record, particularly pleadings in suit, it is apparent that plaintiffs and defendants are claiming their individual right in ancestral property. The suit property was apparently owned by Yashwant Vithoba Salunkhe and thereafter, his son Suryaji and daughter Saroj. The plaintiffs and defendants are asserting their rights through Suryaji and Saroj. The amended plaint shows that relief of partition and separate possession of suit property sought with consequential reliefs of perpetual injunction against defendant nos.1 and 3 from obstructing or interfering in joint possession of plaintiffs over suit property. From reading of entire plaint, it is not discernible that plaintiffs were in possession of specific portion of property and immediately before filing suit, they were dispossessed. In absence of description of specific property on which plaintiffs' claimed their exclusive possession and then dispossession, there is no reason to consider grant of relief of mandatory injunction or restoration of possession. It is trite that, interim relief can be granted in aid of final relief claimed in suit. The grant of interim relief beyond pleadings and prayers in suit would not be germane.

9. Although Mr. Joshi, learned Advocate appearing for appellants endeavours to bring to notice of this Court possession of plaintiffs over specific portion of property on the basis of allied documents, in absence of pleadings in plaint such contentions cannot be considered. The legal position as canvassed by learned Advocate appearing for plaintiffs cannot be disputed. It is trite that, in case co-owner, who is expressly or impliedly put into exclusive enjoyment of joint property, his possession can be protected against co-owners and in case he is dispossessed, he can be restored into possession. In facts of the present case, in absence of specific pleadings as to exclusive possession of property and dispossession immediately before filing suit or during pendency of suit, interim relief of mandatory injunction cannot be granted.

10. Second contention raised on behalf of appellants that right to alienate share in joint family property cannot be taken away by granting prohibitory order. It is trite that, interest of coparcener in joint family property can be alienated and purchaser would be entitled to step into shoes of coparcener. However, joint owner or coparcener has no right to alienate specific share in property. In present case, it has been surfaced on record that plaintiffs were intending to sell out their interest to third party. Even from their pleadings it can be discerned that they are intending to create third party right in suit property. In case of such alienation,

particularly in respect of house belonging to undivided family, great prejudice may cause to other members. In that circumstances, keeping in mind interest of parties, certainly injunction can be granted restraining transfer of joint family property. Even in such case, right of preemption can be exercised by party in possession. Looking to the totality of circumstances, this Court is of the view that interference in impugned order would be unwarranted. However, looking to the nature of dispute, propriety requires that suit itself is taken up for expeditious hearing and final disposal for which parties shall co-operate.

11. In result, Appeal from Orders are dismissed. However, Trial Court shall endeavour for expeditious disposal of suit, in any case within period of one year from the date of this order. Parties shall not seek unnecessary adjournment and shall co-operate for early disposal.

12. In view of dismissal of Appeals from Order, pending Civil Applications also stand disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE