

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 WRIT PETITION NO. 4089 OF 2024

Ramkrushna Pandurang Patil
Age 52 years, Occu. Agri.,
R/o Melsangve, Taluka
Muktainagar, District jalgaon

...Petitioner

VERSUS

1. Nana Pandurang Patil
Age 66 years, Occu. Agril.,
R/o. Behind State Bank,
Ahilyabai Holkar nagar, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon
2. Suryakant s/o Pandurang Patil,
Age 68 years, Occu. Agri.
3. Vijay s/o Pandurang Patil,
Deceased, through L.Rs.
- 3-A) Harshad s/o Vijay Patil
Age 27 years, Occu. Education
- 3-B) Sagar s/o Vijay Patil
Age 25 years, Occu. Education
- Nos. 3-a & 3-B. R/o C/o
Ramdas Bhavdu Patil
Behind Rest House, Nepanagar,
Tq. Nepanagar, Dist. Barhanpur (M.P.)
- 4) Bharat s/o Pandurang Patil,
Age 54 years, Occu. Agri
- 5) Sunil s/o Pandurang Patil,
Age 52 years, Occu. Agri
- 6) Digambar s/o Pandurang Patil,
Age 56 years, Occu. Agri.
- 7) Ravindra s/o Pandurang Patil,
Age 51 yours, Occu Agri.

R/o Shivram Nagar, Ward No.6
Muktainagar. Tq. Muktainagar,
Dist. Jalgaon

- 8) Dilip so Pandurang Patil,
Age 50 years, Occu. Agri.
- 9) Shobha Suresh Patil,
Age 64 years, Occu Agri.,
R/o Thormar. Tq. Muktainagar, Dist. Jalgaon
- 10) Mangala Bhaskar Borse
Age: 55 years, Occu Agri.,
R/o Tanajinagar, Near Box Stand
Tq & Dist. Buldhana

Nos. 2, 4, 5, 6, 8 R/o Melsangve,
Tq. Muktainagar, Dist. Jalgaon ...Respondents

...

Mr. Siddharth B. Yawalkar, Advocate for the Petitioner
Mr. Vishnu M. Jaware, Advocate for Respondent Nos.4,6 & 8
Mr. Chandrakant P. Patil, Advocate for Respondent Nos.2, 3 (A & B)

...

CORAM : ROHIT W. JOSHI, J.
DATED : 3rd JULY 2025

ORAL JUDGMENT :-

1. The petitioner in the present petition is original complainant who has filed a suit for partition and separate possession being Regular Civil Suit No.52 of 2017 with respect to several properties claiming that the said properties are ancestral properties of the joint Hindu Family of the plaintiffs and the defendants. One of the properties which is referred in the plaint is land bearing Gat No.138/1 situated in Village Melsangave, Tah. Muktainagar Dist. Jalgaon (for

short “said property”).

2. As regards this property the contention of the petitioner is that the said property was given by father of the parties to the plaintiff and defendant no.6, since they had extended certain financial help to the father. Petitioner claims that the petitioner and respondent no.6 are in possession of the said property since the year 1983. The property is also mutated in their names to the exclusion of other family members since the year 1983. The 7/12 extract show that the said entry of mutation is a long standing entry in the names of petitioner and respondent no.6 for a period of around 40 years. The petitioner filed an application for grant of temporary injunction in the said Civil Suit Exhibit-90 contending that respondent nos.4,5 and 8 were trying to disturb his possession over the said property. It will be pertinent to mention here that according to the petitioner the eastern half of the said property is in his possession whereas the western half portion is in the possession of respondent no.6. The learned Trial Court allowed the application for grant of temporary injunction filed by the petitioner vide order dated 20.09.2023. However, Miscellaneous Civil Appeal filed by all the respondent i.e. original defendants came to be allowed vide judgment and order dated 26.02.2024 passed by the learned District Judge-3, Bhusawal in Miscellaneous Civil Appeal No.50 of 2023.

3. The learned appellate court has held that the petitioner and respondents are co-owners of the property and that one co-owner cannot seek injunction against another co-owner. Other than this, the learned Appellate Court has also held that there is no material on record to infer demarcation of the property between petitioner and respondent no.6 and therefore order of temporary injunction could not be sustained.

4. The learned counsel for the petitioner places reliance on judgment of the Hon'ble Supreme Court in the matter of ***Tanushree Basu Vs. Ishani*** reported in ***2008 AIR Supreme Court decree 2152*** to contend that in a suit for partition the arrangement *inter se* made between the co-owners can be taken into consideration to grant order of temporary injunction in favour of a co-owner. As regards the finding by the learned Appellate Court that there is no material to infer demarcation of the property between petitioner and respondent no.6, the learned Counsel states that the injunction is sought only against respondent nos.4,5 and 8 and not against respondent no.6 and therefore the said finding made by the learned Appellate Court was not relevant for deciding the appeal.

5. The learned counsel for respondents justifies the order contending that it is a settled legal position that possession of one of

the co-owners is possession of all and therefore injunction cannot be granted in favour of one of the co-owners and against other co-owners. He also contends that the property with respect to which relief of injunction is sought is not suit property. Referring to the plaint averments and particularly the prayer clause the learned counsel raises a contention that the property with respect to which injunction is sought is not a suit property since the suit is not for partition of the said property. The learned Advocate therefore contends that the petition should be dismissed.

6. As regards the contention that Gat No.138/1 is not a suit property and therefore injunction cannot be granted with respect to the said property, this Court is of the opinion that the contention of the learned Counsel for respondent is not correct. Although there is no prayer for partition of the said property, the plaint specifically refers to the said property. It is contended that this property was given by the father to the two brothers namely petitioner and respondent no.6 and that they were accordingly in possession of the same since the year 1983. On this ground the petitioner /original plaintiff has prayed that other properties should be partitioned excluding this property. The property is also referred in the prayer clause where it is specifically prayed that all other properties be partitioned except this property.

7. It is well settled that a suit for partial partition is not maintainable. In view of the above, the plaintiff has made a reference to the said property in the plaint and has raised a contention that the property cannot be subjected to partition between the family members. The said aspect will certainly fall for consideration and adjudication in the Civil Suit for partition. In that sense the property has to be regarded as a suit property although specific prayer for partition is not made with respect to the said property in the light of pleadings referred above.

8. As regards the injunction to be granted against co-owners, it is well settled that normally injunction cannot be granted in favour of one co-owner against other co-owners. It is also well settled that possession of a co-owner is possession for and on behalf of all. However, in the present case, as stated above, the petitioner has come up with a specific case that he and respondent no.6 were placed in possession of the property by the father in the year 1983. The revenue record suggests that petitioner and respondent no.6 are in possession of the property to the exclusion of other family members. There is a long standing revenue entry in favour of petitioner and respondent no.6 since the year 1983 and onwards. It goes without saying that long standing entries have presumption of correctness.

9. As regards the legal principal that injunction cannot be granted

against a co-owner, in my considered opinion, the learned counsel for the petitioner has rightly placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Tanushree Basu Vs. Ishani (supra)* wherein it is held that interim arrangement between family members must be respected and possession should be protected by granting appropriate order of temporary injunction. Hon'ble Supreme Court has categorically held that during pendency of a suit a co-sharer cannot take law in his own hands to dispossess the other co-sharer. The said legal principal is squarely applicable to the facts of the present case.

10. As regards the last contention that there is no material to show demarcation of property *inter se* between petitioner and respondent no.6, it needs to be mentioned that the petitioner is not seeking any injunction against respondent no.6. Injunction is sought only against respondent nos.4,5 and 8. The said aspect should not have weighed with the learned First Appellate Court while allowing the Appeal.

11. In view of the above, in the considered opinion of this Court, the learned Appellate Court has erred in law in reversing order of temporary injunction granted by the learned Trial Court. The order passed by the learned Trial Court is therefore required to be restored by quashing and setting aside the judgment and order passed by the

First Appellate Court. Further it also needs to be clarified that the order of temporary injunction will not operate against respondent no.6.

12. With this, the petition is allowed by quashing and setting aside the order dated 26.02.2024, passed by the learned District Judge-3 Bhusawal in Miscellaneous Civil Appeal No. 50 of 2023.

13. Parties to bear their own cost.

[ROHIT W. JOSHI, J.]