

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

WRIT PETITION NO.12527 OF 2023

1. Gopinath s/o. Ganpati Mundhe,
Age : 80 years, Occu : Agri,
R/o. Kanherwadi, Tq. Parli Vaijnath
Dist. Beed

1/A] Saraswatibai w/o Gopinath Mundhe
Age: 67 years, Occu. Household
R/o. As above.

...Petitioners
(Orig. plaintiffs)

Versus

1] Vaijnath s/o Gopinath Mundhe
Age: 47 years, Occu. Agriculture,
R/o. Kanherwadi, Tq. Parli Vaijnath
District: Beed.

1/A] Chhayabai w/o. Vaijnath Mundhe
Age: 42 years, Occu. Household
R/o. Kanherwadi, Tq. Parli Vaijnath
District: Beed.

2] Haridas s/o Gopinath Mundhe,
Age: 43 years, Occu. Agri.,
R/o. Kanherwadi, Tq. Parli Vaijnath
District: Beed.

3] Govind s/o Gopinath Mundhe
Age: 42 years, Occu. Agri.,
R/o. Kanherwadi, Tq. Parli Vaijnath
District: Beed.

4] Laxman s/o Gopinath Mundhe,
Age: 41 years, Occu. Agri.,
R/o. Kanherwadi, Tq. Parli Vaijnath
District: Beed.

5] Keshav s/o Gopinath Mundhe
Age: 39 years, Occu. Agri.,
R/o. As above.

..Respondents
(Orig. Defendants)

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Ms. M. A. Kulkarni, Advocate for the Petitioners
Shri. A. A. Phad, Advocate for the Respondent No.1
Shri. S. V. Suryawanshi, Advocate for Respondent Nos.2 to 5

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CORAM : NEERAJ P. DHOTE, J.
Reserved on : NOVEMBER 17, 2025
Pronounced on : DECEMBER 03, 2025

FINAL ORDER :-

. This Writ Petition under Article 227 of the Constitution of India is directed against the Order dated 12.02.2020 passed by the learned Jt. Civil Judge Junior Division at Parli Vaijnath below Exh. 5 in Regular Civil Suit (for short, 'RCS') No.318/2019 rejecting the Application for Temporary Injunction filed by the Petitioners AND against the Order dated 03.04.2023 passed by the learned District Judge-3, Ambajogai, in Misc. Civil Appeal (hereinafter referred to as the 'MCA') No.13/2020 maintaining the said order of rejection of the Application below Exh.5 and dismissing the MCA filed by the Petitioners.

2. The Petitioners are the Original Plaintiffs. They filed the above referred RCS for partition and separate possession of the landed property. The Respondents are the Orig. Defendants. The Respondent No.1 is the eldest son of the Petitioners and the Respondent No.1/A is the Wife of the Respondent No.1. The Respondent Nos.2 to 5 are the sons of the Petitioners. According to the Petitioners, the suit property situated at mouje Devhada and Kanherwadi were the ancestral property

and the property in the name of Respondent No.1 was purchased from the joint family fund. The division in the property was the family arrangement for the purpose of government schemes which are applicable to the agriculturists. The Petitioners being 80 and 67 years old respectively, require funds for medical expenses and therefore, prayed for partition.

3. The suit is contested by the Respondent Nos.1 and 1/A. According to them, the Respondent No.1 purchased the properties which are in his and his Wife's name from his own income. According to them, the partition had taken place by way of Partition Deed and the mutation entry was carried out pursuant to that. Only to harass the Respondent Nos.1 and 1/A, the suit was filed.

4. The Respondent Nos.2 to 5 supported the Petitioners claim before the learned Trial Court.

5. Heard the learned Advocate for the Petitioners, the learned Advocate for the Respondent Nos.1 and 1/A - who are the contesting Respondents, and the learned Advocate for the Respondent Nos.2 to 5. Perused the papers on record.

6. There is no dispute in respect of relations between the parties.

The subject matter of the civil suit are the landed properties. The copy of the Application below Exh.5 enclosed to the Petition shows the extent of property in the names of the parties with gat numbers. The details thereof show that, the landed property is in the names of all the Respondents and the Petitioner No.1. The Respondent No.1 and 1/A based their claim for dismissal of the suit on the Partition Deed and Consent Deed dated 22.10.2010, it is contended that the partition had already taken place between the family members and accordingly, the mutation has been effected in the respective names as per the partition. According to them, the said documents were executed in the presence of their father - Petitioner No.1. As per the Petitioner No.1, his thumb impression was taken on Partition Deed without informing him about the said documents. Both these documents are considered by the learned Trial Court and the learned First Appellate Court. Further, there is observation in the impugned orders in respect of the sale-deeds in the name of the Respondent No.1 in respect of the properties standing in his name.

7. There cannot be any dispute that, *prima facie* case, balance of convenience and irreparable loss are the factors will be considered at the time of deciding the Application for Temporary Injunction. From the above referred documents on record though disputed by the Petitioners, both the Courts observed that, the Petitioners failed to show *prima facie*

case. Further, the aspects of balance of convenience and irreparable loss are considered by both the Courts. Considering that, the Respondent No.1 was the owner of the properties standing in his name and his Wife's name by virtue of the sale-deeds, granting of Temporary Injunction would result in more irreparable loss to them as compared to the Petitioners. The Appellate Court noted that, if the Respondent Nos.1 and 1/A alienate some of the property during the pendency of the suit, the principles of *lis pendens* would be applicable and no irreparable loss would cause to the Petitioners. There are consistent observations and findings by the learned Trial Court and the First Appellate Court that, the Petitioners failed to show the aforesaid three essentials for granting Temporary Injunction in their favour. The said observations are drawn from the material on record, therefore, cannot be said to be perverse.

8. The Order dated 17.07.2025 in Writ Petition No.13416 of 2024 tendered by the learned Advocate for the Petitioners and the Judgment dated 08.08.2011 passed by the Madras High Court in Second Appeal No.212 of 2011 tendered by the learned Advocate for the Respondent Nos.2 to 5 are of no assistance in the present circumstances. By the said order of this Court, the Petition was disposed off with directions to mutate entries in accordance with the adjudication of the civil suit and the Judgment of the Madras High Court was in the Second Appeal.

9. In the light of the above discussion, no interference is called for in both the impugned orders, in exercise of the powers under Article 227 of the Constitution of India. Hence, the following order is passed.

ORDER

(i) The Petition is dismissed.

(NEERAJ P DHOTE, J.)

GGP