



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

943 WRIT PETITION NO. 8593 OF 2024

1. Padmakar Digambar Shitole
Age : 42 years, Occu. Agriculture,
R/o. Tat-Borgaon, Taluka Ambajogai,
District : Beed
2. Nityanand S/o Digambar Shitole,
Age : 40 years, Occu. Agriculture,
R/o : Tal-Borgaon, Taluka Ambajogai,
District : Beed

...Petitioners

VERSUS

1. Navnath S/o Rajabahu Shitole,
Age : 57 years, Occu. Agriculture,
R/o : Tat-Borgaon,
Taluka Ambajogai, Dist. Beed
2. Vishnu S/o Rajabhau Shitole,
Age: 53 years, Occu. Agriculture,
R/o: Tat-Borgaon,
Taluka Ambajogai, Dist. Beed.
3. Bapu S/o Tukaram Shitole,
Age: 59 years, Occu. Agriculture,
R/o: Tat-Borgaon,
Taluka Ambajogai, Dist. Beed.
4. Prakash S/o Bapu Shitole,
Age: 33 years, Occu. Agriculture,
R/o : Tat-Borgaon,
Taluka Ambajogai, Dist. Beed.
5. Shivaji S/o Pandhari Shitole,
Age: 63 years, Occu. Agriculture,
R/o: Tat-Borgaon,
Taluka Ambajogai, Dist. Beed.

6. Ramesh S/o Pandhari Shitole,
Age: 57 years, Occu. Agriculture,
R/o : Tat-Borgaon,
Taluka Ambajogai, Dist. Beed ...Respondents

...
Mr. Ambad Shrinivas Abhimanyu, Advocate for the Petitioner
Mr. Shrikishan S. Shinde, Advocate for Respondent No.1

...
CORAM : ROHIT W. JOSHI, J.

DATED : 22th JULY 2025

ORAL JUDGMENT :-

1. The petitioner is the original plaintiff in Regular Civil Suit No.63 of 2014 pending on the file of the learned 2nd Joint Civil Judge, Junior Divison, Ambajogai.

2. The petitioners claimed that they are owners of 1.64 HR land being a part of Survey No.41/A/1. The petitioners had filed application for grant of temporary injunction in the said suit which was initially allowed by the learned Trial Court vide order dated 20.11.2017. Respondent nos.1 and 2 preferred appeal challenging the said order of temporary injunction being Miscellaneous Civil Appel No.51 of 2017. The said appeal is allowed by learned Appellate Court. The learned Appellate Court has quashed and set aside order of temporary injunction dated 20.11.2017 passed by the learned Trial Court on the basis of a measurement report prepared by the Court

Commissioner wherein it is found that the petitioners-plaintiffs are in possession of 1.29 HR land as against 1.64 HR land which they claimed.

3. Since the judgment and order passed by the learned First Appellate Court is based on a Commissioner's Report, in the considered opinion of this Court the petitioner has failed to make out a case warranting interference in order to seek injunction for the entire 1.64 HR land. However in view of the Commissioner's Report which is *prima facie* accepted by the learned Appellate Court, order of temporary injunction ought to have been maintained with respect to 1.29 HR land. It will be appropriate in the interest of justice that order of temporary injunction passed by the learned Trial Court is maintained with respect to 1.29 HR portion of the property which is in possession of the petitioner-plaintiff as per the map prepared by the Court Commissioner.

4. In view of the aforesaid, the Writ Petition is disposed of in the following terms:-

(i) Order dated 26.04.2024 passed by the learned District Judge-2, Ambajogai, Dist. Beed in Miscellaneous Civil Appeal No.51 of 2017 is quashed and set aside.

(ii) Order dated 20.11.2017 passed by the learned 2nd Joint Civil Judge, Junior Division, Ambajogai on application at Exhibit-64 in Regular Civil Suit No.63 of 2014 is modified to the extent that the injunction granted by the learned Trial Court shall be applicable only with respect to 1.29 HR land as is reflected in the measurement report and map prepared by the Court Commissioner.

[ROHIT W. JOSHI, J.]