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

930 WRIT PETITION NO. 7912 OF 2016

**BANSI RAGHUNATH PARJANE AND ANOTHER
VERSUS
ASARAM RAGHUNATH PARJANE AND OTHERS**

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Mr Nilkanth P. Bangar, Advocate for petitioners
Mr Hrishikesh V. Tungar, A.G.P. for respondents

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 10th July, 2025

PER COURT:

1. Heard Advocate Mr Bangar, learned counsel for the petitioners and Advocate Mr Tungar, learned counsel for the respondents.

2. The petitioners take exception to the order dated 11/01/2016, passed by the Court of Civil Judge Junior Division, Shirur Kasar in Regular Civil Suit No.283/2015 and the order dated 14/06/2016, passed by the District Judge-5, Beed in Misc. Civil Appeal No.5/2016.

3. The controversy involved in the petition is with respect to challenge to the order passed by the Trial Court on application for grant of temporary injunction, filed by the respondents in Regular Civil Suit No.283/2015.

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4. The petitioners are the original defendants in Regular Civil Suit No.283/2015, which is filed by the respondents seeking permanent injunction. By the impugned order dated 11/01/2016, the Trial Court has granted temporary injunction to restrain the defendants (petitioners herein) from disturbing the possession of the plaintiffs (respondents herein) during the pendency of the said civil suit. This order was subject matter of challenge in Misc. Civil Appeal No.5/2016, which came to be dismissed by order dated 14/06/2016.

5. Advocate Mr Bangar, learned counsel for the petitioners submits that Regular Civil Suit filed by the defendants bearing Regular Civil Suit No.283/2015 is in fact a subsequent suit, since the petitioner No.1 had filed a suit in the year 2013 in the Court of Civil Judge Junior Division, Beed, which is Regular Civil Suit No.45/2013. He submits that the suit filed by petitioner No.1 is for claiming the relief of partition and separate possession with respect to several properties, whereas the subsequent suit filed by the respondents is for seeking permanent injunction with respect to the two properties bearing Gut Nos.149 and 34. He submits that, since both the suits are in between the same parties and with respect to same properties, the subsequent suit was liable to be stayed in view of Section 10 of the Code of Civil

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Procedure. He further submits that the subsequent suit filed by the respondents is not maintainable in view of suppression of facts, since the plaintiffs in that suit have not disclosed about pendency of earlier suit. He, therefore, submits that, since the suit itself was not maintainable, the Trial Court ought not to have entertained application for temporary injunction.

6. He further submits that the impugned order dated 11/01/2016, passed by the Trial Court is erroneous, since the Trial Court has referred to the mutation entries to infer about possession of the respondents and since the suit properties are also subject matter of partition in the earlier suit, inference of the Trial Court is erroneous.

7. Advocate Mr Tungar, learned counsel for the respondents vehemently submits that the instant petition is devoid of substance. He submits that the petitioners have not filed application invoking Section 10 of the Code of Civil Procedure and as such, the contention in this regard cannot be entertained. He submits that, for the purpose of protecting their own possession, the respondents were entitled to file a suit seeking permanent injunction and therefore, the subsequent suit is maintainable. He further submits that the learned Trial Court as well as the Appellate Court have rightly taken into consideration the crucial

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aspect about mutation entries, particularly, entry No.366, 1125 and 3293 showing the possession of the respondents. He invites the attention of this Court to mutation No.366 dated 15/12/1986, recording partition in between the members of the family. He further invites attention of this Court to the 7/12 extracts with respect to the suit properties showing names of the members recorded pursuant to the mutation entry Nos. 366 and 3293. He vehemently submits that, while considering the temporary injunction application, apart from three essential ingredients, the conduct of the parties is also very crucial. In this regard, he invites attention of this Court to the mutation entry No.3190 dated 21/06/2011 which records that petitioner No.1/Bansi Raghunath Parjane (defendants No.1 in Regular Civil Suit No.283/2015) has sold the portion of land which was in his possession. On the basis of this mutation entry, he submits that defendant No.1 was enjoying the possession of his share and the plaintiffs (respondents in this petition) also enjoying possession of their own share.

8. In view of this, he submits that the respondents (plaintiffs in Regular Civil Suit No.283/2015) are in possession of their portion of lands and they are entitled to seek injunction with respect to protection of their possession. He submits that, the Trial Court has

considered all these relevant aspects and rightly passed the impugned orders.

9. It has to be seen that, although the parties are litigating against each other in two different suits, one filed in the year 2013 and subsequent filed in the year 2015, however, the petitioners have not filed any application under Section 10 of the Code of Civil Procedure seeking stay to the subsequent suit. As such, the contentions raised by the learned counsel for the petitioners in this regard that the subsequent suit itself is not maintainable are rejected. The petitioners were entitled to invoke provisions of Section 10 of the Code of Civil Procedure at appropriate stage. In view of the mutation entries relied upon by the respondents, it appears that, although the parties are litigating with respect to partition and separate possession, they are having possession of their respective portions.

10. Having regard to the mutation entries and the fact of possession, the Trial Court has exercised its discretion to grant interim injunction to protect the possession of plaintiffs. Perusal of the impugned order shows that, on consideration of all the relevant factors, the Trial Court has granted temporary injunction to protect the possession of the plaintiffs (respondents) during the pendency of the

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civil suit. Further, while deciding the Misc. Civil Appeal, the Appellate Court has also given due consideration to the relevant factual aspect and observing that, since the defendants failed to establish joint possession of the suit lands, and by considering the 7/12 extract and 8-A extract filed on record, the Appellate Court dismissed the appeal maintaining the order of temporary injunction.

11. On perusal of the impugned orders passed by the Trial Court as well as the Appellate Court, it is clear that the orders are well reasoned. Both the Courts below have given due consideration to the three essential ingredients for grant of injunction namely, existence of prima facie case, balance of convenience and irreparable loss. Learned counsel for the respondents relied upon a judgment of the Hon'ble Supreme Court dated 30/04/2008 in the matter of **Mandati Ranganna Vs. T. Ramachandra**, reported in **AIR (SC) 2008 2291** and submitted that, apart from these three essential conditions, conduct of the parties is fourth factor which needs to be considered while considering the temporary injunction. He submits that, since petitioner No.1 has executed sale deed with respect to his share in favour of petitioner No.2, knowing fully well that he was entitled to sale his share, the stand taken by the petitioners in the civil suit demonstrates their

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mischievous conduct. Since this Court is entertaining his writ petition challenging the order on temporary injunction application, the issue about conduct of the parties is not gone into.

12. Having regard to the above mentioned factual and legal aspects, the impugned orders passed by the Trial Court as well as the Appellate Court needs no interference. As such, the writ petition is dismissed.

13. It is clarified here that the observations made in this order are based on prima facie consideration of the documents while considering the application for temporary injunction.

(PRAFULLA S. KHUBALKAR, J.)

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