



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9813 OF 2024

Sanjay S/o. Baburao Mathpati,
Age : 63 years, Occu. Business,
R/o. Shivaji Nagar, Parbhani,
Taluka & Dist. Parbhani.

... PETITIONER
(original defendant)

VERSUS

Baburao Vishwanathrao Mathpati
Since deceased through his LR
Vijay S/o Baburao Mathpati
Age : 67 years, Occu. Business,
R/o. Rangnath Maharaj Nagar,
Parbhani.

... RESPONDENT
(original plaintiff)

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- Mr. Rathi Swapnil S., Advocate for the Petitioner
 - Mr. Kiran M. Nagarkar, Advocate for sole Respondent
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CORAM : ROHIT W. JOSHI, J.
DATE : JULY 08, 2025

ORAL JUDGMENT:

1. The present petitioner is defendant in R.C.S. No. 324/2023, which is a suit filed against him by his father for a decree of mandatory injunction for handing over possession of the suit property which comprises of three (03) rooms in a house. The present petitioner had filed a suit for partition and separate possession with respect to the entire house in which the suit property is located. This house comprises

of five (05) rooms in all. The contention in the said suit for partition and separate possession was that the entire house property was joint family property. The said suit was dismissed, and the decree of dismissal was maintained right up to this Court in Second Appeal. In the said suit the father of the petitioner had filed a counterclaim seeking possession of two (02) rooms in the said house property in possession of the present petitioner. The counterclaim was decreed, and as stated above, even this decree for possession passed in the counterclaim was maintained up to this Court. Thereafter, the father of the petitioner took possession of the said two (02) rooms from the petitioner by filing an execution petition. The possession was delivered on 10th May, 2023.

2. It is the case of the plaintiff (father) that the defendant, his son, forcibly took possession of the remaining three (03) rooms within a short span of execution of decree for possession with respect to the two (02) rooms, which were subject matter of earlier suit. In this backdrop, the father filed a suit seeking decree for mandatory injunction for restoration of possession of suit property, being R.C.S. No. 324/2023. The suit is filed by the father through another son namely '*Vijay*', as his constituted attorney. The father has expired since filing of the suit, and presently the suit is being prosecuted by his son '*Vijay*' alone as legal representative. It is the claim of *Vijay* that the suit property was transferred to him by his father by a registered Gift Deed executed during lifetime of the father.

3. In this suit the plaintiff-father filed an application for grant of interim mandatory injunction for restoration of possession of the suit property. The learned Trial Court has allowed the application vide order dated 15.07.2023. Aggrieved by the said order, the present petitioner filed appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, being Misc. Civil Appeal No. 58/2024. The said appeal was dismissed vide judgment and order dated 09.07.2024. The present petition is filed challenging the said concurrent orders.

4. The learned counsel for the petitioner contends that in a suit for mandatory injunction which is in the nature of suit for possession, the learned Courts ought not to have allowed the application for grant of temporary mandatory injunction for restoration of possession. He contends that *status quo* with respect to possession ought to have been directed to be maintained till final disposal of the suit. According to the learned advocate, the learned Courts have virtually decreed the suit before adjudication of the same on merits. He, therefore, contends that the orders impugned in the present petition warrant interference at the hands of this Court since the same demonstrate a clear error of jurisdiction on the part of both the learned Courts.

5. Per contra, the learned advocate for respondent contends that the petitioner had filed a suit for partition and separate possession with

respect to the entire house property in which it is conclusively established that the house property was owned by the father. The learned counsel further contends referring to findings recorded by this Court while dismissing the second appeal that possession of the defendant - petitioner was only over two (02) rooms, which form subject matter of the counterclaim filed earlier, and the remaining three (03) rooms, which form subject matter of the present petition, were not in possession of petitioner. He contends that the defendant has taken possession of the three (03) rooms forcibly taking law in his hands and therefore, the learned Courts have rightly dealt with the situation with strong hands. He contends that the orders impugned are perfectly in accordance with law and do not warrant any interference.

6. Having heard the rival submissions as aforesaid in the considered opinion of this Court the order of temporary mandatory injunction virtually amounts to granting a decree for possession in favour of the plaintiff. In view of findings with respect to ownership of the property, which is confirmed up to this Court, and having regard to prima facie findings that father was forcibly dispossessed by her son, normally this Court would not have interfered with the concurrent orders passed by the learned Courts.

7. However, there is a subsequent development in the matter after filing of the suit, namely demise of the father. Howsoever, strained the relations between the present petitioner and his father may be during their lifetime, the fact remains that he is also Class – I legal heir of the father. *Vijay*, who is prosecuting the suit as sole legal representative, is claiming on the basis of a gift. In the event, the gift is not proved, the present respondent will also be entitled to a share in the property. In that view of the matter, in the considered opinion of this Court, interference is warranted to meet the exigencies of the situation arising due to demise of the father. *Status quo* with respect to the possession needs to be maintained till final disposal of the suit in view of the aforesaid development.

8. However, at the same time, it will be necessary to balance the equities. The petitioner cannot be allowed to occupy the property unconditionally having regard to history as narrated above. In the considered opinion of this Court, it will be appropriate to direct the defendant to deposit a sum of Rs. 10,000/- per month with the learned Trial Court from 01.08.2023 till 31.07.2025 and further amount at the rate of Rs. 15,000/- per month from 01.08.2025 till final disposal of the suit. Monthly deposit of Rs. 15,000/- will be made before 10th day of every calendar month. The amount for period up to 31.07.2025 shall be

deposited before 31.10.2025. In the event of failure to deposit the amount of arrears up to 31.07.2025 before 31.10.2025, as also in the event of any single default in depositing the amount every succeeding month, the *interim* order granted by the present judgment shall stand vacated automatically without further reference to the Court.

9. The petition is **disposed of**. Subject to the condition as aforesaid, the impugned orders dated 15.07.2023 passed by learned Civil Judge Senior Division, Parbhani in R.C.S. No. 324/2023, and 09.07.2024 passed by learned Principal District Judge, Parbhani, in Misc. Civil Appeal No. 58/2023, are quashed and set aside.

10. Pending civil applications, if any, stand **disposed of**.

[ROHIT W. JOSHI, J.]