



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

WRIT PETITION NO.12444 OF 2018

Ganesh s/o. Balu Pawar,
Age – 27 years, Occu. Agril.,
R/o. Shivur, Tq. Jamkhed,
District : Ahmednagar.

... Petitioner
(Org. Defendant)

Versus

1. Ramchandra s/o. Dashrath Bhosale,
Age: 83 years, Occ. Agril.,
2. Arjun s/o. Dashrath Bhosale,
Age : 81 years, Occu. Agril.,

Both R/o. Shivur, Tq. Jamkhed,
District : Ahmednagar.

3. Arun s/o Sarjerao Bhosale,
Since deceased through his
Legal Heirs and Representatives

3-A) Rekha Arun Bhosale,
Age : Major, Occu: Household,
R/o. Wetalmala,
Pune Road, Tq. Sangamner,
District : Ahmednagar.

3-B) Pranjal Yogesh Pahelwan,
Age : Major, Occu. Household,
R/o, Kopargaon, Tq. Kopargaon,
District : Ahmednagar.

3-C) Pravin S/o. Arun Bhosle,
Age : Major, Occu. Agril.,
R/o. Wetalmala,
Pune Road, Tq. Sangamner,
District : Ahmednagar.

3-D) Mayuri Niles Kharmare,
Age : Major, Occu. Household,
R/o, Kopargaon, Tq. Kopargaon,
District : Ahmednagar.

- 3-E) Sagar S/o. Arun Bhosle,
Age : Major, Occu. Agril.,
R/o. Wetalmala,
Pune Road, Tq. Sangamner,
District : Ahmednagar.
4. Suresh s/o Sarjerao Bhosale,
Age : 55 years, Occu. Agri.
5. Alka Ramdas Gavare,
Age : 57 years, Occu. Agri.,
6. Radhabai Sarjerao Bhosale,
Age : 80 years, Occu. Agri.,
7. Surekha Sharad Pansare,
Age : 52 years, Occu. Household,

Res. Nos. 3 to 7 all R/o. Wetalmala,
Pune Road, Tq. Sangamner,
District : Ahmednagar.

...Respondents
(Res. Nos.1 & 2 are org. pltfs. &
Res. Nos.3 to 7 are org. defts.)

.....
Mr. S.V. Dixit, Advocate for Petitioner
Mr. Bhargav B. Kulkarni, Advocate h/f Mr. Bhushan Kulkarni,
Advocate for Respondent Nos.1 and 2
.....

CORAM : MANJUSHA DESHPANDE, J.

DATE : 07th FEBRUARY, 2025

ORDER :

1. The petitioner is assailing order dated 03/01/2018, passed by the Civil Judge, Senior Division, Shrigonda, below Exhibit-5 and 30 in Special Civil Suit No.12/2016, which is confirmed by the judgment and order dated 16/08/2018, passed by the Ad-hoc District Judge-5, Ahmednagar, in Misc. Civil Appeal No.21/2018.
2. According to petitioner, respondent Nos.1 and 2 are the

original plaintiffs who have filed the suit seeking declaration of right of preemption and further direction to respondent Nos.3 to 7 as well as petitioner to execute sale deeds in respect of suit properties in favour of plaintiffs. Relief of permanent injunction restraining the present petitioner from obstructing possession of plaintiffs in any manner, is also claimed. In the suit, plaintiffs i.e. respondent Nos.1 and 2 herein have contended that suit lands to the extent of 78 R of Block No.344, 71 R of Block No.342 and 61 R of Block No.346, situated at village Shivur, Tq. Jamkhed, District Ahmednagar, are joint family properties owned by plaintiffs and father of defendant Nos.1 to 5. Plaintiffs and father of defendant Nos.1 to 5, Sarjerao were real brothers. The lands at Block Nos.342, 344 and 346 are the ancestral properties of plaintiffs and Sarjerao and those are yet to be partitioned by metes and bounds. Sarjerao has filed R.C.S. No.120/2012 in the Court at Jamkhed for partition and separate possession of the ancestral properties. Plaintiffs were cultivating the lands jointly. During pendency of said suit for partition, defendant Nos.1 to 5 sold the suit land to defendant No.6 / present petitioner vide sale deed dated 19/01/2016.

3. It is the case of plaintiffs that being joint owners plaintiffs had preferential right to purchase the suit lands. The defendant No.6 could not get possession of any defined portion from Block Nos.342, 344 and 346. He was not put in possession of

any of the portion of the suit lands. Therefore, plaintiffs filed application below Exhibit-5 for injunction, claiming that petitioner / defendant No.6 is causing disturbance to the joint cultivation of suit lands of the plaintiffs and they apprehend that he might transfer the suit lands.

4. Petitioner / defendant No.6 also filed application at Exhibit-30 contending that defendant Nos.1 to 5 were in possession of the land situated towards eastern side of his land. He was the adjoining landholder of suit blocks. He is bonafide purchaser of the suit land for value. Before execution of sale deed, he was cultivating the suit land on crop sharing basis, hence, he has been put in possession of the suit land by defendant Nos.1 to 5. His name is also recorded in 7/12 extract of the suit land and he is in lawful possession of the suit lands.

5. Since rival claims were made by plaintiffs and defendant No.6, both the applications were heard together. While deciding the applications, Trial Court has observed that since the suit filed by Sarjerao for partition of the suit block Nos.342, 344 and 346 is still pending and defendant Nos.1 to 5 were brought on record after death of Sarjerao, it denotes that suit lands are ancestral properties and are not partitioned by metes and bounds. Neither plaintiffs nor defendant Nos.1 to 5 are in exclusive and defined possession of block Nos.342, 344 and 346, as it is in joint possession and

cultivation of the parties. Though sale deed has been executed by defendant Nos.1 to 5 in favour of defendant No.6 on 19/01/216, the four boundaries given in the sale deed are of block Nos.342, 344 and 346, the particulars of boundaries of suit lands to the extent of 78 R, 71 R and 61 R in the respective blocks are not given. Therefore, unless and until the defined portion from the blocks are mentioned in the sale deed, it cannot be held that the defendant No.6 has been put in possession of any defined and particular portion of suit blocks. Hence, possession of defendant No.6 is not proved on the suit land on the basis of sale deed.

6. It is settled legal position that possession of undivided share in joint family property cannot be handed over unless the property is partitioned. Considering that the suit for partition is still pending adjudication, the Civil Judge, Senior Division, Shrigonda, has rightly come to the conclusion that defendant No.6 was not put in possession of any defined or demarcated share from the lands which were sold by the sale deed, hence, he is not entitled for relief of temporary injunction until the lands are partitioned by metes and bounds.

7. The suit for preemption has been filed subsequent to the suit for partition and separate possession. Plaintiffs along with defendant Nos.1 to 5 who are coparcener and are in joint cultivation and possession of suit land cannot be disturbed by granting

injunction in favour of defendant No.6. Therefore, in order to avoid multiplicity of proceedings and creation of third party interest and in order to avoid further complications, which would defeat the very suit claim, application of plaintiffs at Exhibit-5 has been allowed and defendant Nos.1 to 6 were temporarily restrained from disturbing joint cultivation and occupation of plaintiffs over suit blocks Nos.344, 342 and 346. Similarly the defendant No.6 is also temporarily restrained from alienating / transferring / disposing the suit land and the application Exhibit-30 filed by defendant No.6 is rejected. The said order came to be passed on 03/01/2018, which was challenged by defendant No.6 in Misc. Civil Appeal No.21/2018, before the District Judge, Ahmednagar.

8. The Ad-hoc District Judge-5, Ahmednagar, by his judgment and order dated 16/08/2018, has been pleased to reject the Appeal filed by petitioner, which is subject matter of present writ petition. In Appeal, the Ad-hoc District Judge-5 has maintained the order passed by Civil Judge, Senior Division, Shrigonda. It is observed by the District Judge that from the pleadings and recitals of the sale deed it reveals that all the suit properties are joint on the day of execution of sale deed and the sale deed does not describe four boundaries or demarcation of the particular share of defendant Nos. 1 to 5. It appears that defendant No.6 does not have *prima facie* case. Though defendant No.6 has come with specific case that,

due to cordial relationship between him and defendant Nos.1 to 5 he was cultivating the suit property, which defendant Nos.1 to 5 had received after partition, there is no averment as to when partition has taken place and since when defendant No.6 is cultivating the suit land. It is further observed that from perusal of sale deed it appears that defendant No.6 was put in possession after execution of sale deed on 19/01/2016, therefore, his claim that he was in possession and cultivating the land of defendant Nos.1 to 5 is not supported by the record.

9. The Appellate Court has also observed that though the suit for partition filed by Sarjerao was still pending, defendant Nos.1 to 5 have executed sale deed of undivided share and defendant No.6 purchaser is a stranger. Therefore, if the application of plaintiffs at Exhibit-5 is rejected it will cause prejudice and irreparable loss to plaintiffs. As against this, defendant No.6 has remedy of filing suit for partition and separate possession of share of his vendor on the basis of sale deed. Therefore, no prejudice will be caused to him if his application is rejected. In view of dismissal of his Appeal, defendant No.6 has filed present petition.

10. It is the contention of petitioner that in pursuance to the registered sale deed dated 19/01/2016, he was put in possession of the suit property and since then he is in continuous possession of the suit property. The suit property has come to the share of his

predecessor in title after effecting partition. Petitioner has also filed counter-claim in Special Civil Suit No.12/2016, wherein he has claimed permanent injunction against respondent Nos.1 to 7 in present petition, restraining them from obstructing his peaceful possession. It is his contention that respondent Nos.1 and 2 have obstructed him and threatened that they will not permit petitioner to harvest Sunflower and Black Gram, and have threatened to forcibly remove petitioner from suit property. Therefore, he has filed application Exhibit-30 under Order 8 Rule 16 Code of Civil Procedure claiming permanent injunction. According to him, both the Courts below have erred in rejecting his application Exhibit-30 and allowing application of plaintiffs at Exhibit-5.

11. It is contended that both the Courts below have observed that entries of crop cultivation and mutation record cannot be the basis for claiming possession over the suit property. However, both the Courts below did not consider that petitioner has been put in possession in pursuance of registered sale deed and has been cultivating the suit property since then personally. The crop cultivation and mutation record substantiates that he is in cultivation and possession of the suit land.

12. Learned advocate for petitioner Mr. S. V. Dixit submits that though respondent Nos.1 and 2 have sought declaration of right of preemption after execution of registered sale deed dated

19/01/2016, they have not made any prayer for cancellation of registered sale deed executed in favour of petitioner. Therefore, unless such prayer is made, the suit filed by respondent Nos.1 and 2 for preemption is not maintainable and deserves to be dismissed on that ground alone. According to him, right of preemption cannot be exercised after execution of sale deed. Sale deed has been executed on 19/01/2016 and the suit has been filed by respondent Nos.1 and 2 on 24/01/2016. Lawful possession of his predecessor in title was transferred in favour of petitioner by registered sale deed, therefore, in pursuance of such sale deed the possession was also required to be considered in favour of petitioner. The Court below have failed to consider that balance of convenience was in his favour as petitioner is in actual possession and cultivation of the suit property since execution of sale deed.

13. Learned advocate for petitioner further points out that he has filed his say to the injunction application wherein he has taken objection to the tenability of the suit for right of preemption, on the ground that Court should frame preliminary issue as provided under Order 7 Rule 11 and thereafter proceed with the injunction application. However, without taking into consideration the objection raised by him and his request for framing of preliminary issue about maintainability of the suit for preemption, both the Courts have committed error in allowing the application Exhibit-5

and granting relief of temporary injunction in favour of plaintiffs. Hence, the application at Exhibit-30 filed by him should be allowed by quashing and setting aside the order passed below Exhibit-5 by the Civil Judge, Senior Division, Shrigonda, as well as the Ad-hoc District Judge – 5, Ahmednagar.

14. Per contra, learned advocate for respondent Nos.1 and 2 Mr. Bhargav Kulkarni, has contended that respondent No.6 is a stranger to the suit property which is a joint family property. The properties in block Nos.342, 344, 346, 330 are joint family properties of five brothers and defendant Nos.1 to 5 had undivided share in the said properties. Sarjerao had filed suit for partition and separate possession of the joint family properties along with other brothers which is pending before the Civil Judge, Junior Division, Jamkhed, Ahmednagar, bearing R.C.S. No.120/2012. During pendency of said suit Sarjerao expired and defendant Nos.1 to 5 are his legal heirs.

15. It is the contention of respondent Nos.1 and 2 that during the pendency of suit filed by Sarjerao they came to know that defendant Nos.1 to 5 are likely to alienate property in favour of defendant No.6. Therefore, they approached defendant Nos.1 to 5 and expressed their willingness to purchase the share which they were likely to sell in favour of defendant No.6. Since they did not receive any response, they sent a registered notice through their

Advocate on 02/02/2016. In spite of issuance of notice they did not receive any response. Therefore, they were constrained to file suit for preemption as provided under section 22 of Hindu Succession Act, 1956. In view of Section 22, they had the first right to purchase the land which was owned by the coparceners. Since they did not receive any response and defendant No.6 has caused obstruction to their agricultural operations on 15/03/2016, they filed the suit for preemption.

16. It is the contention of respondent Nos.1 and 2 that though the sale deed has been executed, however, the possession has not been handed over to defendant No.6. If injunction is not granted and defendant No.6 is handed over the possession it will unnecessarily create complications in the matter. R.C.S. No.120/2012 is still pending for adjudication, hence the share of each coparcener in the property owned by them is yet to be decided. Unless the shares are defined in the said suit, sale deed executed in favour of defendant No.6 is of no consequence. Even in the sale deed exact portion of land being sold in favour of defendant No.6 along with description of boundaries has not been mentioned. Therefore, it is necessary to grant prayer of injunction in favour of plaintiffs in R.C.S. No.12/2016. If injunction is not granted plaintiffs are likely to be dispossessed. Therefore, irreparable loss is likely to be caused to plaintiffs if they are dispossessed from the suit land.

According to plaintiffs, since their shares have not been defined by partition, their possession of the suit land is subject to the decree in partition suit. If Exhibit-5 is not allowed the settled possession of the joint family will be disturbed. Therefore, till the decree is passed in R.C.S. No.120/2012 and shares of each of the coparcener defined, the sale deed executed in favour of defendant No.6 cannot be given effect. Considering the above circumstances, the balance of convenience lies in favour of plaintiffs and if application Exhibit-5 is not allowed the possession of the plaintiffs prevailing as on date will be disturbed.

17. I have heard respective parties. It is not in dispute that father of defendant Nos.1 to 5 had filed suit for partition and separate possession bearing R.C.S. No.120/2012 and after his death defendant Nos.1 to 5 have filed application for bringing them on record as legal heirs of Sarjerao and now they are the plaintiffs in the said suit. In spite of the fact that they had filed suit for partition and separate possession, there is no partition and shares of each of the joint family member is not carved out, the defendant Nos.1 to 5 have executed sale deed in favour of defendant No.6. Even from the contents of sale deed it is not clear as to which portion of the gut number has been sold by defendant Nos.1 to 5 to defendant No.6. There is no clarity as regards the boundaries and defined shares which are allotted to defendant Nos.1 to 5 and sold by them to

defendant No.6. Since there is no clarity in the sale deed itself, the possession on the basis of such sale deed which is devoid of any details cannot be granted, particularly when the suit for partition and separate possession is itself pending. Unless and until share of each of the coparcener is decided in the suit for partition, the exact share of defendant Nos.1 to 5 cannot be ascertained and only after ascertaining the share of defendant Nos.1 to 5 they can handover the possession of the property which would be allotted to their share.

18. In the present case, it is clear that defendant No.6 is a stranger to the property, who has purchased undivided share of the coparcener. Therefore, till the suit is decided, a stranger cannot be allowed to be handed over the possession of undivided shares of coparcener's property. As regards the prayer of petitioner, in his written statement filed in the suit for preemption, for framing of preliminary issue about maintainability of suit is concerned, the Court can certainly frame issue regarding maintainability of preliminary issue before proceeding with the suit. So far as application for injunction is concerned, defendant No.6 being stranger to the property belonging to the joint family cannot be allowed either to take over the possession or alienate or transfer the suit property by creating third party interest. It is, therefore, necessary to pass order of injunction. Plaintiffs have demonstrated

that defendant No.6 is likely to dispossess plaintiffs and thereby cause irreparable loss to the rights of plaintiffs in relation to the disputed property. Therefore, in order to safeguard the interest of parties in respect of disputed properties, it is necessary to maintain possession of plaintiffs over the suit properties.

19. The plaintiffs have already made out *prima facie* case that the suit property is joint family property and shares of each of the member of joint family are yet to be decided in the partition suit. Therefore, the joint family property cannot be allowed to be handed over to defendant No.6 unless the shares of it's members are defined.

20. Learned advocate for petitioner has placed reliance on the judgment of Supreme Court in ***Asma Lateef and Another Vs. Shabbir Ahmad and Others***, reported in **(2024) 4 SCC 696**, wherein it has been observed that, the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law be preceded by formation and recording of at least a *prima facie* satisfaction that the suit is maintainable or that it is not barred by law. So far as the observations of Supreme Court are concerned, it is not at all disputed that satisfaction about *prima facie* case being made out

has to be recorded before passing of order of injunction.

21. The Civil Judge, Senior Division, Shrigonda, has observed that though the suit for partition is pending, there is no restriction on alienation / sale / transfer of undivided share in suit blocks. Therefore, when the right of preemption is pending it is appropriate to avoid further multiplicity of proceedings and creation of third party interest and in order to avoid third party interest, which would create complication and defeat the very suit claim, defendant Nos.1 to 5 have been restrained from disturbing joint cultivation and occupation of plaintiffs over the suit blocks, until disposal of the suit.

22. Therefore, after taking into consideration the consequence, the trial Court has rightly granted relief of temporary injunction, which is further confirmed in Appeal. Hence, I do not find that petitioner has made out case for interference with the impugned orders. In view of the above observations, the writ petition is dismissed.

(MANJUSHA DESHPANDE, J.)