



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

WRIT PETITION NO. 13447 OF 2024

1. Milind s/o Mukund Babje,
Age: 50 years, Occ. Business.
2. Avinash s/o Mukund Babje,
Age: 49 years, Occ. Business.
3. Mukund s/o Kishanrao Babje,
Age: 75 years, Occ. Business.
4. Sumanbai w/o Mukund Babje,
Age: 70 years, Occ. Household.
All R/o Suman Niwas, Near Yogeshwari
Nagari, Waghala Road, Ambajogai,
Tq. Ambajogai, Dist. Beed
5. Vijay s/o Chandrakant Channe,
Age: 50 years, Occ. Service,
R/o Behind Yogeshwari Nagari,
Waghala Road, Ambajogai,
Tq. Ambajogai, Dist. Beed

.....PETITIONERS
(Orig. Defendants)

VERSUS

1. Abhijit s/o Manik Babje,
Age: 37 years, Occ. Business.
2. Mangesh s/o Manik Babje,
Age: 48 years, Occ. Business.
3. Nanda w/o Manik Babje,
Age: 68 years, Occ. Household,
All R/o Mukundraj Colony,
Nava Mondha, Ambajogai,
Tq. Ambajogai, Dist. Beed.

.....RESPONDENTS
(Orig. Plaintiffs)

Mr. G. J. Kore, Advocate for the Petitioners
Mr. Gajanan Kadam, Advocate for Respondent no.1

CORAM : ROHIT W. JOSHI, J.

DATED : 05TH AUGUST, 2025

ORAL JUDGMENT :-

. The petitioners and respondents are descendants of one Kishanrao Babje. Father of the petitioners (Mukund) and father of the respondents (Manik) are sons of said Kishanrao. On 08.04.2003, the fathers of the parties namely Mukund and Manik entered into a transaction of partition with respect to two properties bearing gut no.311 and 312. Both these properties were divided into two equal halves between the brothers with the father of petitioners (Mukund) retaining the western portion and father of respondents (Manik) retaining the eastern portion of the property. This transaction of partition is not in dispute. It is the case of the petitioners that on 30.06.2019, the petitioner nos.1, 2, 3 and father of the respondent (Manik) executed a document titled as 'exchange deed' under which, the father of the petitioners agreed to exchange three acres of land from his share in gut no.311 in

lieu of three acres of land which had fallen to the share of the petitioners in the said gut number. This exchange deed dated 30.06.2019 is unregistered document.

2. Respondents filed a suit being Regular Civil Suit No.90 of 2024, seeking decree for perpetual injunction against the petitioners, *inter alia* restraining them from obstructing their possession over the suit properties, which were allotted to their father in the partition of the year 2004.

3. Petitioners filed written statement in the said suit opposing the same on the basis of the exchange deed dated 30.06.2019.

4. In the said suit, the respondents had also filed an application for grant of temporary injunction for protection of their possession.

5. The learned Trial Court has allowed the application for grant of temporary injunction vide order dated 05.04.2024. The petitioners preferred appeal challenging the said order, which also came to be dismissed. The petitioners have filed the present petition challenging the said concurrent orders.

6. The learned Courts have observed that the foundation of the case of the defendants is an unregistered exchange deed

dated 30.06.2019. Both the Courts have held that in the absence of registration, the said document cannot be of any assistance to the petitioners. It is also held that the document does not appear to have been acted upon in as much as despite the suit being filed after a period of five years, the lands are not mutated in accordance with the said document which is alleged to be exchange deed.

7. In that view of the matter, both the Courts have concurrently held that the respondents/plaintiffs had made out a *prima facie* case for grant of temporary injunction. Since, the matter pertains to physical possession of immovable property, the Courts have answered the point of grave and irreparable loss and balance of convenience in favour of the respondents/plaintiffs.

8. Having perused the orders passed by the learned Courts alongwith other documents on record with the able assistance of the learned Advocate for the petitioners, I find that both the Courts have applied mind to the material on record and have arrived at *prima facie* findings of fact. The appreciation of material cannot be said to be perverse. The underlying principles governing temporary injunction are also rightly

applied by the learned Courts.

9. In that view of the matter, no case for interference is made out. Writ Petition stands dismissed. Needless to mention that the suit shall be decided without being influenced by any observations made in the present judgment.

10. Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)