

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1788 OF 2023**

Bapu Atmaram Shinde and Ors. ... Petitioners
versus
Suresh Atmaram Shinde and Ors. ... Respondents

Mr. Nagesh Chavan, for Petitioners.
Mr. Kuldeep Nikam, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 6 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the parties.
2. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of the judgment and order dated 12 December 2022 passed by the learned District Judge, Sangli, in MCA No.224 of 2021, whereby the appeal preferred by the Respondents-Plaintiffs against the order dated 23 November 2021 passed by the trial Court rejecting the application for temporary injunction, came to be allowed and the Petitioners-Defendants were temporarily restrained from disturbing the possession of the Plaintiffs over Grampanchayat House Nos.13/1 to 13/4 more particularly described in plaint paragraph No.1(a) and from disposing, alienating or otherwise creating third party interest in the suit properties No. 1(a) and (b).
3. Atmaram was the father of the Plaintiffs and Defendant No.1.

Defendant Nos.2 and 3 are the sons of Defendant No.1. Atmaram had acquired the suit properties under the registered Sale Deed in the year 1962 in the name of Defendant No.1, while he was a minor and had no independent source of income. After the demise of Atmaram in the year 2015, there was a partition between the Plaintiffs and Defendant No.1. A memorandum of partition was drawn. The names of the Plaintiffs and Defendants were mutated to the assessment list of Grampanchayat House Nos.13/1 to 13/4.

4. Suit came to be instituted asserting that, taking undue advantage of the mutation of the property in the name of Defendant No.1 in the record of the city survey, Defendant No.1 executed a Gift Deed in favour of Defendant Nos.2 and 3. On the strength thereof, the Defendants threatened to further alienate the suit properties and dispossess the Plaintiffs.

5. The Plaintiffs preferred an application for temporary injunction. By an order dated 23 November 2021, the learned Civil Judge, Jr. Division, Tasgaon, rejected the application observing that the Plaintiffs failed to make out a prime facie case.

6. In the appeal, the learned District Judge, interfered with the order passed by the learned Civil Judge. The learned District Judge was of the view that the property was purchased by Atmaram in the name of Defendant No.1, while he was a minor. The claim of the Plaintiffs that in the year 2015,

there was a partition and the house properties were separately mutated in the assessment list, found support in the copies of the assessment list of Grampanchayat House Nos.13/1 to 13/4. Thus, prima facie, the Plaintiffs were in possession of the said Grampanchayat House Nos.13/1 to 13/4 as per the memorandum of partition and the suit land was the joint family property of the Plaintiffs and Defendants and, thus, the apprehension on the part of the Plaintiffs was justifiable.

7. Mr. Chavan, learned Counsel for the Petitioners, submitted that the reliance on the entries in the assessment list to draw an inference that the Plaintiffs were in possession of the portions of the house properties was not sustainable. It was urged that the assessment list prepared prior thereto, shows the name of Defendant No.1 exclusively. Thus, the recent entries in the assessment list cannot command precedence. At any rate, the entries in the assessment list do not make or unmake title.

8. In the case at hand, the trial Court had declined to grant injunction. The Appeal Court interfered with the said order. Whether the appeal Court was justified in interfering with the discretionary order ?

9. It is trite, the scope of interference with the discretionary order is limited. The Appeal Court cannot substitute its view for the view taken by the Trial Court. However, where the Trial Court has not exercised the discretion in a correct manner and unjustifiably excluded relevant material from

consideration, the Appeal Court would be justified in interfering with the order passed by the Trial Court. Granting a temporary injunction when there is no material, or refusing to grant a temporary injunction by ignoring the relevant material are instances of exercise of discretion in an arbitrary, capricious or perverse manner, warranting interference by the appeal court.

10. In the case at hand, the pivotal fact which bears upon the claim of exclusive ownership and possession of the Defendant No.1, is the acquisition of the property by Atmaram under the said Sale Deed dated 21 June 1962 while defendant No.1 was barely 15 year old.

11. Mr. Chavan fairly submitted that the said fact cannot be controverted. However the Plaintiffs were never in possession of the suit property, urged Mr. Chavan.

12. Once the character of the suit property is found to be joint family property, the principle of unity of possession and community of interest comes into play. In addition, there is material to show that the house properties were separately mutated in the names of the Plaintiffs and Defendants with the Grampanchayat and prior thereto, they were mutated in the name of Defendant No.1 as the said property was obtained in the name of Defendant No.1. The assessment list at page 53 indicates that in the year 2001-02 and 2004-05, the house property bearing Nos.13 was shown in the name of the Plaintiffs and Defendant No.1.

13. In this view of the matter, the learned District Judge was justified in interfering with the order passed by the trial Court and restraining the Defendants from causing obstruction to the possession of the Plaintiffs over the respective portions of the house properties and creating third party interest in the suit property as the Defendant No.1 had executed a gift deed in favour of Defendant Nos.2 and 3. Thus, at this stage, no interference is warranted in the impugned order in exercise of supervisory jurisdiction.

14. The Writ Petition, thus, stands dismissed.

15. It is clarified that the observations are confined to test the legality, propriety and correctness of the impugned order, and this Court may not be understood to have expressed any opinion on the merits of the matter and all questions are kept open to be determined by the Trial Court uninfluenced by the orders passed on the application for temporary injunction, including this order.

(N.J.JAMADAR, J.)