

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14075 OF 2024**

Mohan Baburao Vadak (Patil) & Anr	..Petitioners
Versus	
Vishwas Baburao Patil (Vadak)	...Respondent

Mr. Kalpesh V. Patil, for the Petitioner.

CORAM: N. J. JAMADAR, J.
DATED : 11th FEBRUARY 2025

P.C.:

1. Heard learned Counsel for the Petitioners.
2. The challenge in this Petition is to an order dated 16th December 2023 passed by the learned District Judge, Karad in Appeal No. MCA No. 10 of 2023 whereby the learned District Judge was persuaded to allow the Appeal preferred by the Respondent by setting aside an order dated 20th December 2022 passed by the learned Civil Judge rejecting Application of the Plaintiff-Respondent for temporary injunction.
3. The learned District Judge thereby restrained the Defendants-Petitioners herein, from causing obstruction to the enjoyment and possession of the Plaintiff over southern side half portion of Gat No. 488 as per the family arrangement dated 6th July 2000, till the decision of the suit.

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4. Mr. Patil, learned Counsel for the Petitioners, submitted that the learned District Judge committed an error in reversing a well-reasoned order passed by the trial court. The Plaintiff had not approached the Court with clean hands. The Plaintiff had taken materially inconsistent stands that there were prior partitions, yet, instituted the suit for partition. The Plaintiff could not have relied upon the family arrangement dated 6th July 2000 in support of his claim, when the Plaintiff himself disputed the prior partition and sought partition in the instant suit.

5. I have perused the impugned order. The learned District Judge has primarily proceeded on the premise that in the Written Statement filed on behalf of the Defendants, the fact that there was such a family arrangement dated 6th July 2000 and the Plaintiff was put in exclusive possession of the southern side portion of Gat No. 488 was admitted in clear and unequivocal terms. In paragraph 9 of the impugned order the learned District Judge has extracted the relevant portion of the Written Statement *in verbatim*.

6. Upon perusal of the said contentions in the Written Statement, it *prima facie* becomes evident that the Defendants have admitted, in no uncertain terms, that there was a family arrangement, as recorded in the Agreement dated 6th July 2000, during the lifetime of the father of the Defendants and the Plaintiff and the later was put in possession of

the southern side portion of Gat No. 488 and the Plaintiff continued to be in occupation and possession of the said portion.

7. At the stage of grant of temporary injunction, the Court was required to consider whether the Plaintiff was, *prima facie*, in exclusive possession of the southern side portion of Gat No. 488. The question as to whether the Plaintiff is entitled to seek partition would be a matter of adjudication at the trial. In view of the admissions in the pleadings, which stand on a higher pedestal and do not require further proof, the learned District Judge was justified in correcting the error the trial court had fallen into. The Plaintiff's possession over the southern side portion of Gat No. 488 is also *prima facie* made out by the documents on record.

8. In this view of the matter, the learned District Judge rightly restrained the Defendants from causing obstruction to the possession and cultivation of the Plaintiff over the southern side portion of Gat No. 488.

9. Thus, in exercise of supervisory jurisdiction, the Court does not find any justifiable reason to interfere with the orders passed by the appeal court.

10. Petition dismissed.

[N. J. JAMADAR, J.]