

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4247 OF 2025**

Siddharth Subhash Deshpande & Anr

..Petitioners

Versus

Santosh Ramchandra Babar & Ors

...Respondents

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RAMCHANDRA
SANKPAL

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Mr. Anil Anturkar, Senior Advocate, with Nivedia S. Deshpande, for
the Petitioner.

Mr. Vishwanath Talkute, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 27th MARCH 2025

P.C.:

1. Heard the learned Counsel for the parties.
2. This Petition under Article 227 of the Constitution of India takes exception to a judgment and order passed by the learned District Judge, Pandharpur dated 13th March 2025 in MCA No. 79 of 2024 whereby the Appeal preferred by the petitioners was dismissed affirming an order dated 21st October 2024 passed by the learned Civil Judge on an Application for temporary injunction (Exhibit "5") in RCS No. 79 of 2022, thereby rejecting the Application preferred by the petitioners for temporary injunction.
3. Sulochanabai Bapat was the original holder of the house properties bearing CTS Nos. 4075/3A and 4075/3B. Sulochanabai

bequeathed the house properties to late Nanasaheb Gopalrao Deshpande and late Sudhatai Nanasaheb Deshpande. Plaintiff, and defendant nos. 5 and 7 are the sons of Nanasaheb and Sudhatai.

4. On 4th December 1986 late Nanasaheb and Sudhatai sold the house property bearing CTS No. 4075/3A to defendant no. 5 and defendant no. 6, who is the wife of defendant no.5. Subsequently, the house property, CTS No. 4075/3B, was bequeathed to plaintiffs and defendant no. 7 under a Will.

5. Defendant nos. 5 and 6, sold CTS No. 4075/3A to defendant nos. 1 to 4, by a registered Sale Deed dated 27th January 2022. However, in the said Sale Deed, the fact that the courtyard in CTS No. 4075/3A was kept in common enjoyment and the owners of CTS No. 4075/3B had a right of easement to use the staircase and WC units in CTS No. 4075/3A was not mentioned. On the strength of the said Sale Deed, defendant nos. 1 to 6 started to cause obstruction to the common enjoyment of the plaintiffs and defendant no.7. Hence the Suit for declaration that the Sale Deed dated 27th January 2022 executed by defendant nos. 5 and 6 in favour of defendant nos. 1 to 4 was not binding on the plaintiff, the plaintiff has one fourth share in the common courtyard admeasuring 100 sq mtrs, more particularly described in paragraph 1B of the Plaint and easementary right to use the staircase and three WC units in CTS No. 4075/3A and for the consequential injunction.

6. By an order dated 21st October 2024, the learned Civil Judge was persuaded to reject the Application for temporary injunction. Being aggrieved the plaintiffs preferred an Appeal before the District Court. By the impugned order, the learned District Judge was also persuaded to dismiss the Appeal.

7. Mr. Anturkar, the learned Senior Advocate, for the petitioners would urge that the Trial Court as well as the Appellate Court have committed a manifest error in discarding a vital recital in the Sale Deed executed by the late Nanasaheb and Sudhatai in favour of defendant nos. 5 and 6 that the courtyard in-between CTS No. 4075/3A and 4075/3B was kept in common. By deliberately omitting the said recital in the Sale Deed executed by defendant nos. 5 and 6 in favour of defendant nos. 1 to 4, the defendant nos. 1 to 6 have committed the breach of the obligations in favour of plaintiff and defendant no. 7 on account of the said stipulation in the Sale Deed, in favour of defendant nos 5 and 6. Defendant nos. 1 to 6 cannot have a better title than the one possessed by defendant nos. 5 and 6.

8. Mr. Talkute, the learned Counsel for the respondents, countered the submissions of the learned Senior Counsel for the petitioners. Laying emphasis on the description of the suit properties in the Plaint, especially paragraph 1B thereof, whereunder the plaintiffs were claiming ownership in common over 100 sq mtrs land out of house property CTS

No. 4075/3A, Mr. Talkute would urge that the plaintiff's claim does not find support in the Sale Deed executed by late Nanasaheb and Sudhatai in favour of defendant nos. 5 and 6.

9. From the perusal of the impugned order, it becomes evident that the aforesaid factor predominantly weighed with the Trial Court. In the Sale Deed executed by Nanasaheb and Sudhatai in favour of defendant nos. 5 and 6, it is explicitly recorded that the house property bearing CTS No. 4075/3A ademasuring 366.05 sq mtr was sold thereunder. What was kept in common was the courtyard in-between CTS No. 4075/3A and 4075/3B. The said recital cannot be read torn out of context to mean that only the courtyard out of CTS No. 4075/3A was kept in common as has been asserted by the plaintiffs. The learned Civil Judge was fully justified in holding that the said Sale Deed in favour of defendant nos. 5 and 6 nowhere indicates that 100 sq mtrs area was kept in common, and that too out of CTS No. 4075/3A only. To put in other words, there is no support to the claim of the plaintiffs that 100 sq mtrs property out of CTS No. 4075/3A only, as described in paragraph 1B of the Plaint, was kept in common.

10. Prima facie, it appears that an endeavour was made by the plaintiff to approach the Civil Court with a case which does not find support in the documents under which the plaintiff and defendant no. 7 claim. Having regard to the aforesaid expansive claim asserted by the

plaintiff, the learned Civil Judge as well as the learned District Judge did not commit any error in declining to grant injunction as claimed by the plaintiff.

11. Thus, no interference was warranted with the *prima facie* concurrent findings of facts, based on objective material, in exercise of supervisory jurisdiction.

12. The Petition stands dismissed.

[N. J. JAMADAR, J.]