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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6692 OF 2025**

Sumantrao Nivrutti Deshmukh ... Petitioner

vs.

Namdeo Sakharam Deshmukh deceased ... Respondents
through Lrs and Ors

Mr. Ramanik P. Pawar a/w. Ms. Arti Bajpai for Petitioner.

Mr. Vaibhav Gaikwad for Respondent.

CORAM : GAURI GODSE, J.

DATED : 1st JULY 2025

ORDER:

1. Not on board. Taken on the production board.
2. This petition is filed by the plaintiff to challenge the order passed by the appeal court setting aside the order of injunction in his favour. The suit is filed for declaration that the plaintiff is exclusive owner of the suit property. The trial court had granted order of injunction restraining defendant from disturbing plaintiff's possession over the suit property. The appeal court has reversed the findings and set aside the order granting injunction. The appeal court has held that since the property appears to be an ancestral joint family property, there cannot be any injunction against the co-sharer.
3. Learned counsel for the petitioner submits that the suit properties were entered in the name of the plaintiff's father as

'Karta' of the joint family. Thereafter, the name of plaintiff's mother was entered and after the death of plaintiff's mother, the name of plaintiff and his sister were entered. He therefore submits that the revenue record shows that the plaintiff is the owner of the suit property. Learned counsel for the petitioner however, rely upon the recent revenue entry to show that the plaintiff's name is entered in the suit property. The document sought to be relied upon is not a part of the pleading. Hence, in the absence of pleading, the document cannot be examined for the first time in this court.

4. I have perused the papers of the petition. In the plaint, the petitioner has mentioned the genealogy showing the family tree. The plaintiff has pleaded in plaint that the name of his father Nivrutti is entered in the revenue record as Karta of the joint family. Thus, as per the plaintiff's pleading his father's name was never entered as exclusive owner of the suit property. There is no dispute that the suit property is an ancestral joint family property. Hence, in the absence of any document of title showing exclusive ownership of the plaintiff or any document showing partition by metes and bounds, there cannot be any injunction against the co-sharer. Thus, I do not find any reason to interfere with the findings recorded in the impugned order by the appeal court to reverse the trial court's order of injunction.

5. In the absence of any prima-facie evidence to show exclusive ownership of the plaintiff, grant of any injunction as prayed would amount to an injunction against the co-sharer. Even otherwise, the nature of property as an ancestral joint family property is not in dispute. Hence, I do not see any illegality or perversity in the impugned order rejecting the application for injunction.

6. This is not a fit case to exercise discretionary jurisdiction under Article 227 of the Constitution of India. The petition is therefore dismissed.

7. At this stage, learned counsel for the petitioner insist that the document dated 30th June 2022, regarding partition between the parties needs to be accepted to conclude that the petitioner is exclusive owner of the suit properties. Admittedly this document is not a part of the pleadings. I have perused the document relied upon by the learned counsel for the petitioner. The document can neither be considered a valid document regarding partition and separate possession nor the document indicate any partition by following the procedure prescribed under Section 85 of the Maharashtra Land Revenue Code. Hence, I do not see any reason to rely upon the said document at this stage.

(GAURI GODSE, J.)