

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5819 OF 2025

Kavita Meghraj Thobde & Ors	..Petitioners
Versus	
Kamlabai Annarao Thobde & ors	...Respondents

WITH
WRIT PETITION NO. 5845 OF 2025

Kavita Meghraj Thobde & Ors	..Petitioners
Versus	
Sudhir Annarao Thobde & ors	...Respondents

Mr. Vishwanath Patil, with Pradip Patil & Kedar Nhavkar, for the
Petitioners in both Petitions.

Mr. R.M. Haridas, with Prasad Kulkarni, for Respondent Nos. 1 to 5 in
WP/5845/2025 and for Respondent Nos. 1 and 5 to 8 in Writ
Petition No. 5819 of 2025.

Mr. Surel S. Shah, Senior Advocate, with Amol Kanaki, i/b Rushabh
Phade, for Respondent Nos. 2 to 4 in WP/5819/2025 and
Respondent Nos. 6 to 8 in WP/5845/2025.

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CORAM: N. J. JAMADAR, J.
DATED : 30th APRIL 2025

P.C.:

1. The challenge in this Petition is to the judgments and orders dated 12th February 2025 passed by the learned District Judge, Solapur in MCA No. 51 of 2024 and MCA No. 60 of 2024, which were preferred against an order dated 10th May 2024 passed by the Trial Court on an

Application for temporary injunction (Exhibit “5”) in SCS No. 561 of 2023.

2. The Petitioners-Plaintiffs instituted a Suit for Partition and separate possession of their share in a number of properties described in paragraph 1 of the Plaint, which were stated to be joint family properties. The Plaintiffs claimed that the Plaintiffs and Defendant Nos. 1 to 7 were the members of a Joint Hindu Family. Plaintiff No.1 is the mother of Plaintiff Nos. 2 to 4.

3. Bhimashankar (Shivshankar) Thobde was the common ancestor. He had two sons, i.e., Annarao and Siddhanna. Meghraj, the husband of Plaintiff No.1 and father of Plaintiff Nos. 2 to 4, was born to Siddhanna from Vimal. Defendant No. 8 is the sister of Meghraj. Defendant No.1 is the wife of Annarao, Defendant Nos. 2 and 5 are the sons of Annarao. Defendant Nos. 3 and 4 are the sons of Defendant No.2 and Defendant Nos. 6 and 7 are the sons of Defendant No. 5.

4. The Plaintiffs alleged the names of the Plaintiffs were mutated to the Record of Rights of the Suit lands along with Defendant Nos. 2 and 5. Upon implementation of the Town Planning Scheme, the 7/12 extracts of the Suit lands were closed and property cards were issued. The Defendants allegedly got the names of the Plaintiffs deleted from the CTS Record. However, there has not been a partition by metes and bounds. Taking undue advantage of the situation in life of Bhagirathi,

the grandmother of the Plaintiff Nos. 2 to 4 and Meghraj, the father of Plaintiff Nos. 2 to 4, the Defendants allegedly obtained certain testamentary and instruments inter-vivos, from them, and Defendant Nos. 8-Bharti. Those instruments are not binding on the Plaintiffs. On the strength of those instruments, the Defendants have alienated certain properties. Hence the Suit for partition and separate possession of Plaintiffs shares.

5. By an order dated 10th May 2024, the learned Civil Judge, Senior Division, Solapur, was persuaded to allow the Application for temporary injunction (Exhibit “5”) observing, *inter alia*, that the Plaintiffs were members of the Joint Hindu Family and the entries in the Revenue Record supported the claim of the Plaintiffs. Thus, to avoid further complexities and multiplicity of litigation, it was necessary to restrain the Defendants from creating any further third party rights over the suit properties till the conclusion of the trial.

6. Being aggrieved, Defendant Nos. 1 to 4 preferred MCA No. 51 of 2024 and Defendant No. 5 o 7 preferred MCA No. 60 of 2024.

7. By the impugned judgments, the learned District Judge was persuaded to allow the Appeal and set aside the order passed by the trial Court and reject the Application for temporary injunction.

8. The learned District Judge was of the view that there was material to indicate that the 7/12 extracts were closed long back and, in

fact, there was a prior partition and on the basis of the said partition, the erstwhile co-shares had, thereafter, executed Partition Deed, Sale Deed, Will, Gift Deed and other documents. Likewise, the erstwhile co-shares had acquired properties independently. In these circumstances, on the basis of entries in the Record of Rights, the learned Civil Judge could not have granted temporary injunction.

9. Mr. Vishwanath Patil, the learned Counsel for the Petitioners, laid emphasis on an order passed by Tahsildar on 18th June 2021 whereby the 7/12 extracts in respect of Survey Nos. 487/1, 487/2 and 487/3 were ordered to be closed as, upon implementation of the Town Planning Scheme, property cards were issued. Mr. Patil would urge that no notice of the said closure of the 7/12 extract was ever issued to the Plaintiffs. It was submitted that till the question as to the entitlement of the Plaintiffs to partition and separate possession of the suit properties is adjudicated, the suit properties deserve to be protected lest the Petitioners would suffer irreparable loss.

10. Mr. Surel Shah, the learned Senior Advocate, for Respondent Nos. 2 to 4, in WP No. 5819 of 2025, and for Respondent Nos. 6 to 8, in WP No. 5845 of 2025, and Mr. Haridas, the learned Counsel for the Respondent Nos. 1 to 5, in WP No. 5845 of 2025, and for Respondent Nos. 1 and 5 to 8, in Writ Petition No. 5819 of 2025, stoutly resisted the submissions on behalf of the Petitioners.

11. As the learned District Judge had interfered with the exercise of discretion by the Trial Court, this Court was anxious to consider whether there is perversity in the order of the Trial Court which warranted interference by the learned District Judge.

12. From the perusal of the order passed by the Trial Court, it becomes evident that, despite noting the fact that there have been several alienations by the predecessor-in-title of the Plaintiffs and Defendant No.8, the sister of Meghraj, and no objections were raised by them to the exercise of the incident of ownership over the suit properties., the learned Civil Judge passed an order of injunction, primarily on the basis of an entry in the Record of Rights.

13. Perversity in the order of the Trial Court may arise on account of non-consideration of the relevant material or giving weight to a circumstance which is not relevant for the determination of the issue. In the case at hand, the learned Civil Judge lost sight of the fact that the execution of the various instruments by the predecessor-in-title of the Plaintiffs and Defendant No.8 was specifically adverted to in paragraph 7 of the Plaint, albeit with a rider that those instruments were not binding on the Plaintiffs. Yet, no relief with regard to the legality and validity of those instruments was sought.

14. Conversely, there was material to indicate that Bhimashankar (Shivshankar) had effected partition of his properties amongst himself

and his sons, Annarao and Siddhanna on 22nd April 1956. Pursuant to the said partition, the erstwhile co-sharers had exercised dominion over their respective properties. Meghraj, the predecessor-in-title of the Plaintiffs and Bharati, Defendant No.8, had also alienated the properties which devolved upon them. Likewise there were a number of alienations of the properties allotted to the predecessor-in-title of the Defendants. Properties changed hands multiple times. In these circumstances, the learned District Judge was fully justified in correcting the error into which the Trial Court had fallen in granting a blanket injunction.

15. Thus, no interference is warranted in the impugned orders in exercise of supervisory jurisdiction.

16. The Petitions stand dismissed.

[N. J. JAMADAR, J.]