

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.6017 OF 2025**

1. Smt. Shantabai Shripati Shinde
Age: 85 yrs., Occu: Household,
(through Power of Attorney Holder i.e.
Petitioner No.2, Sou. Vijaya Ashok Chavan)
 2. Sou. Vijaya Ashok Chavan,
Age: 63 yrs., Occu: Household,
Both R/at: Panmalewadi, Post: Varye,
Tal. & Dist. Satara.
- ..Petitioners
(Original Plaintiffs)

Versus

1. Dattatray Dhondiba Shinde,
Age: 67 yrs., Occu: Agriculturist
 2. Sou. Nirmala Dattatray Shinde,
Age: 60 yrs., Occu: Agriculturist,
Both R/at: Panmalewadi, Post: Varye,
Tal. & Dist. Satara.
- ..Respondents
(Original Defendants)

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Mr. Kishor S. Patil i/by Mr. Shrikant Dinkar Patil and Mr. Arjun Sanjay Pawar, Advocate for Petitioners.

Ms. Kalyani Tulankar a/w Mr. Vikrant Shinde i/by Mr. Ranjit Shinde, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 22nd SEPTEMBER, 2025.

PRONOUNCED ON : 25th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioners (original plaintiffs) impugn order dated 13.02.2025 passed by learned District Judge, Satara in Miscellaneous Civil Appeal No.52/2024, upholding order dated 22.04.2024 passed by learned Civil Judge Junior Division, Satara passed below Exhibit-5 in

Regular Civil Suit No.141/2024, thereby rejecting petitioners' application for grant of temporary injunction against defendants restraining them from disturbing plaintiffs peaceful possession over suit properties. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

3. The plaintiffs had previously instituted Regular Civil Suit No.89/2002 before learned Civil Judge Junior Division at Satara seeking decree of perpetual injunction against defendants in respect of properties described in plaint paragraph nos.1A to 1D and also sought declaration that plaintiffs become owner of suit properties relying upon registered partition deed dated 07.03.1983. On 23.07.2018, learned Civil Judge Junior Division, Satara decreed suit of plaintiffs and declared them to be owner of suit properties and restrained defendants permanently from interfering with possession of plaintiffs over suit properties.

4. The defendants filed Regular Civil Appeal No.225/2018 before learned District Judge, Satara, which has been recently dismissed. The plaintiffs moved Execution Application No.40/2019 before learned Civil Judge Senior Division, Satara and sought police protection vide application Exhibit-62, as defendants were obstructing them in ongoing construction over suit property. However, Executing Court rejected said application observing that House No.343 was not specifically shown as suit property and decree is silent as dimensions of house in

Gut No.434. It is observed that Executing Court cannot go behind decree, hence, police protection cannot be granted beyond scope of decree.

5. In this backdrop, plaintiffs instituted present suit i.e. Regular Civil Suit No.141/2024 before learned Civil Judge Junior Division, Satara against defendants claiming relief of perpetual injunction on the basis of fresh cause of action in respect of suit properties described in plaint paragraph nos.1A, 1B and 1C. The plaintiffs have also filed application below Exhibit-5 seeking temporary injunction under Order 39 Rules 1 and 2 of Code of Civil Procedure against defendants. However, on 22.04.2024, Trial Court rejected said application observing that in wake of decree passed in Regular Civil Suit No.89/2002, which is in respect of same suit property, fresh suit cannot be entertained and granting injunction in fresh proceeding will result in chaos. Aggrieved plaintiffs filed Miscellaneous Civil Appeal No.52/2024 before District Court. However, Appeal came to be dismissed observing that present suit is barred under Section 47 of Code of Civil Procedure. Eventually, plaintiffs' application for temporary injunction is rejected.

6. Mr. Kishor Patil, learned Advocate appearing for petitioners would submit that in previous suit i.e. Regular Civil Suit No.89/2002, plaintiffs are already declared owners of suit properties, so also decree of perpetual injunction is passed. However, while petitioners/plaintiffs

sought police protection to enforce decree of perpetual injunction, defendants resisted application under pretext that House No.343 was not specifically mentioned in original suit and decree is silent as to length and house numbers in Gut No.434. The decree holder cannot seek protection for construction, which is not part of decree. The said objection is accepted by Executing Court while rejecting application Exhibit-62. Therefore, plaintiffs filed present suit alongwith application for temporary injunction, but same has been rejected only for reason that decree in previous suit is in respect of selfsame suit properties. He would submit that present suit is filed on the basis of fresh cause of action, in wake of obstruction to construction started by plaintiffs after removing old dilapidated construction existing on suit property. Therefore, prayer for grant of temporary injunction ought to have been entertained.

7. Per contra, Ms. Kalyani Tulankar, learned Advocate appearing for respondents supports impugned order.

8. Having considered submissions advanced, it can be observed that in Regular Civil Suit No.89/2002 between same parties, plaintiffs are already declared as owners of suit property, which is part of Gut No.434. The plaintiffs have received share in Gut No.434 alongwith old construction. The said construction is now removed and plaintiffs are raising fresh construction over suit properties. In Regular Civil Suit No.89/2002 decree is passed holding title of plaintiffs over suit

properties. Similarly, decree of perpetual injunction is also passed against defendants.

9. The plaintiffs required to file present suit in view of objection of defendants raised in R.D. No.40/2019, whereby they contend that House No.343 was not part of decree passed in Regular Civil Suit No.89/2002 and decree is silent as to length and house numbers in Gut No.434. The Executing Court accepted such objections while rejecting petitioners application below Exhibit-62 for police aid. Apparently, present suit is filed on the basis of fresh cause of action when plaintiffs faced obstruction to ongoing construction. In this background, whether fresh suit would be barred by Section 47 of Code of Civil Procedure may be one of the issue to be considered during course of trial. However, when defendants are not disputing that construction sought to be raised by plaintiffs is in part of suit property, which was subject matter of Regular Civil Suit No.89/2002 and plaintiffs are already declared as owners and possessors of suit property, there is no reason to refuse protection of temporary injunction.

10. On technical count plaintiffs cannot be denied temporary injunction when they have established *prima facie* case in their favour. The balance of convenience is also lies in favour of plaintiffs. The refusal to grant relief at this stage may cause irreparable injury to plaintiffs. On other hand, defendants would have no prejudice, if temporary injunction as prayed is granted.

11. Both Courts committed serious error of jurisdiction while refusing plaintiffs' application for grant of temporary injunction when *prima facie* finding is recorded that properties, which were subject matter of Regular Civil Suit No.89/2002 are subject matter of present suit and plaintiffs are already declared owners thereof. Hence, following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 13.02.2025 passed by learned District Judge, Satara in Miscellaneous Civil Appeal No.52/2024 as well as order dated 22.04.2024 passed by learned Civil Judge Junior Division, Satara below Exhibit-5 in Regular Civil Suit No.141/2024, are hereby quashed and set aside.
- c. Application below Exhibit-5 in Regular Civil Suit No.141/2024 is allowed.
- d. Pending hearing and final disposal of Regular Civil Suit No.141/2024 defendants or their agents are restrained from causing interference in construction carried by petitioners/plaintiffs over suit property described in claim Clause No.1(c).
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE