

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11748 OF 2025

Liyakat Salaud ding Pathan

.....Petitioner

Vs.

Imtiyaj Salaud ding Pathan & Ors.

.....Respondents

Mr. Ramdas Shelake with Ms. Vaishnavi Shelake, and Mr. Swapnil Lokare, for the Petitioner.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 6th November 2025

PC.:-

1. Heard learned counsel appearing for Petitioner.
2. The present Writ Petition takes exception to order dated 14th July 2025 passed by District Judge-1, Jaisinghpur in Miscellaneous Civil Application No.49 of 2022, thereby upholding order dated 17th October 2022 by learned Civil Judge, Senior Judge, Jaisinghpur below Exhibit-5 in Regular Civil Suit No.47 of 2021, whereby prayer made by Plaintiff for grant of temporary injunction has been rejected.
3. The Petitioner is Original Plaintiff in Regular Civil Suit No.47 of 2021. The Plaintiff claims that he has acquired absolute

ownership in suit property on the basis of *Hibanama* dated 7th August 2015, executed by his father, i.e. Salauddin Pathan. He further claims that on the basis of *Hibanama*, he is in possession of property but Defendants are disturbing his possession without any right. Hence he approached court for relief of declaration of ownership and perpetual injunction against Defendants.

4. The Petitioner/Plaintiff has also filed an Application below Exhibit-5 claiming relief of temporary injunction. The learned Trial Court as well as Appellate Court, after considering rival contentions, observed that Plaintiff will have to prove Oral gift/Hibanama by leading cogent evidence during Trial. Both courts *prima facie* opined that Plaintiff as well as Defendant are enjoying joint possession of suit property. The Plaintiff therefore, failed to *prima facie* establish his exclusive possession over suit property. In that view of matter, courts refused to entertain Plaintiff's prayer for grant of temporary injunction.
5. Learned counsel appearing for Petitioner submits that pending hearing and final disposal of suit Defendant ought to have

restrained from alienating and creating third party interest in suit property.

7. It can be observed that Plaintiff and Defendants are enjoying joint ownership and possession over the suit property. There is nothing on record to show that Defendants are either dealing with property or trying to create a third party interest. When parties are in joint ownership and possession of property, even creation of third party interest does not appear to be eminent. In any case, the protection under Section 52 of Transfer of Property Act would be available.
8. In that view of matter, no case is made out to cause interference in exercise writ jurisdiction under Article 227 of Constitution of India. Hence, Writ Petition is **rejected**.
9. Since suit is pending from 2021 and issues are already framed, Trial Court to expedite hearing of suit and make every endeavour to dispose of same within a period of one year from date of this order.

(S. G. CHAPALGAONKAR, J.)