

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.474 OF 2025**

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Kashinath Anna Jaygude (Deceased)  
Through Legal Heirs  
Ravindra Kashinath Jaygude & Ors. ... Appellants  
**V/s.**  
Vijay Anna Jaygude & Ors. ... Respondents

**WITH  
INTERIM APPLICATION NO.11120 OF 2025  
IN  
APPEAL FROM ORDER NO.474 OF 2025**

Kashinath Anna Jaygude (Deceased)  
Through Legal Heirs  
Ravindra Kashinath Jaygude & Ors. ... Applicants  
**V/s.**  
Vijay Anna Jaygude & Ors. ... Respondents

Mr. Vishwanath Talkute with Mr. Mahesh R. Bhosale for  
the appellants.

Mr. Nikhil Wadikar with Yogesh Morbale i/by Nandu  
Pawar for respondent No.1.

**CORAM : S. G. CHAPALGAONKAR, J.**

**DATED : DECEMBER 24, 2025**

**P.C.:**

1. Present appeal takes exception to impugned order dated 22nd September 2025 passed by District Judge, Wai in Regular Civil Appeal No. 28 of 2025 on application filed below Exhibit 5,

by which the Appellate Court granted injunction against appellants/defendants restraining them from constructing house property.

2. Respondent No. 1 instituted suit seeking decree of partition and separate possession in respect of suit properties. Trial Court dismissed the suit vide judgment and decree dated 3rd July 2025. Aggrieved thereby, Regular Civil Appeal No. 28 of 2025 was filed. Application for temporary injunction below Exhibit 5 was also filed under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 seeking injunction against the appellants, thereby restraining appellants/defendants from erecting construction over suit property. The Appellate Court allowed said application observing that such injunction was granted by Trial Court and was in operation during pendency of suit.

3. Mr. Talkute, learned advocate appearing for appellants, submits that undisputedly the appellants/defendants have right in suit property. Plaintiffs may have some share in it. However, there are two house properties which are subject matter of suit. Defendants are raising construction for their own residence. Therefore, even if decree is passed, equities can be adjusted while

allotting share. As such, there is no reason to restrain the appellants/defendants from raising construction. Mr. Talkute, learned advocate, has filed on record undertaking on behalf of appellants/defendants stating that if appellants are permitted to continue construction over the suit property No. 1B bearing City Survey Nos. 2430 admeasuring 238.3 square metres, situated at Mouje Kasbe Wai, Siddhanathwadi, Taluka Wai, District Satara, it shall be subject to final outcome of suit and adjustment of equities. He would further submit, on instructions, that even after adjustment of equities, if it is found necessary that partition is required to be made in suit property No. 1B bearing City Survey No. 2430, appellants/defendants shall remove construction subject to adjustment of equities or may pay compensation to plaintiffs.

4. The undertaking filed by appellants is taken on record and marked as Exhibit 'X' for identification.

5. In view of aforesaid undertaking filed on record, interest of respondents/plaintiffs is sufficiently protected. In that view of the matter, impugned order dated 22nd September 2025 passed by District Judge, Wai in Regular Civil Appeal No. 28 of 2025 is quashed and set aside. Copy of same shall be made part of record

of pending appeal before learned District Judge

6. Learned advocates appearing for respective parties inform that paper book is already filed in Regular Civil Appeal No.28 of 2025 and they are ready to cooperate Court for early disposal.

7. In that view of the matter, learned District Judge shall endeavour to decide appeal within a period of four months from today.

8. In result, appeal from order stands disposed of.

9. Interim application also stands disposed of.

**(S. G. CHAPALGAONKAR, J.)**