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

**INTERIM APPLICATION NO.336 OF 2024
IN
FIRST APPEAL NO. 39 OF 2024**

Gulab Jayaram Gaikar
(Since deceased through LRs)
Rajani Jayraj Juikar and Ors.
V/s.

...Applicants/Appellants

Shri.Vijay Narayan Patil and Ors.

...Respondents

Ms. Jonita Dabrea (through VC) a/w Mr. Roshan D'sa i/b. JRA Law Associate
LLP for Applicants/Appellants
Mr.Rajesh A. Revankar i/b. Mr. A. G. Revankar & Co. for the Respondent
Nos. 1 to 4

CORAM : M. M. SATHAYE, J.

DATED : 11th NOVEMBER 2025.

P.C.:

1. Heard learned Counsel for the parties. Perused the records.
2. This is an application seeking stay to the impugned judgment and decreed dated 23/02/2022 passed in S.C.Suit No. 1712 of 2009. The application also prays for restraining the Respondents/Plaintiffs from selling, alienating or creating encumbrances over the suit property.
3. The present Applicants are legal heirs of the original Defendant No. 1.
4. The suit was filed seeking declaration with the Defendant No. 1 is not co-parcener or heir of Shri Devram Patil in respect of the suit property bearing CTS No. 790, 790/1 to 3 of Village Andheri, Taluka – Andheri,

Mumbai Suburban District. A declaration was sought that the Defendant No. 1 has no right to sell, dispose of or alienate or create third party interest in the suit property. Further, a prayer was made to strike off and remove name of Defendant No. 1 from the records of suit property.

5. The case of the Plaintiffs is that the Defendant No. 1 has no right, title, interest in the suit property. According to the Plaintiffs, cause of action for the suit was that the Defendant No. 1 tried to include her name sometime in 2009 in the record of the rights of the suit property and therefore the present suit was required to be filed. The Defendant No. 1 appeared in the suit and contended that she is a daughter of the co-parcener and has a right by birth. It is contended that the Defendant No. 1 has share in the suit property including income arising thereof.

6. The Trial Court, after considering the evidence on record, has granted declaration that Defendant No. 1 is not the co-parcener or heir of Shri Devram Patil. It is further held that she has no right to sell, dispose of or alienate or create third party interest in the suit property. It is also held that she does not have 1/3rd share in the joint family property belonging to Shri. Devram Patil. Perpetual injunction is granted restraining her from selling or disposing of or alienating undivided 1/3rd share of Shri Devram Patil in the suit property.

7. Learned Counsel for the Applicant submitted that provisions of Hindu Succession Act are not properly considered and her right ought to have been recognized. It is submitted that the declaration as granted by the Trial Court amounts to taking away her right by birth.

8. On the other hand, learned Counsel for the Respondents/Plaintiffs

supported the impugned judgment and decree and submitted that no stay or injunction be granted.

9. I have considered the rival submissions.

10. Admittedly, the Defendant No. 1 has not filed any counter-claim seeking declaration of her right. No prayers are sought against the Plaintiffs. No prayer of partition is made. The perpetual injunction granted in favour of the Plaintiffs cannot be stayed at interim stage, as the same would amount to allowing the Appeal and vacating perpetual injunction.

11. So far as declaration is concerned, if interim stay is granted to the declaration, it will amount to permitting the Defendant No. 1 to assert her right during the pendency of the Appeal.

12. In paragraph no. 23 of the impugned judgment, the Trial Court has considered the devolution of interest and events prior to Hindu Succession Act, 1956 coming into force. It has come on record that Defendant No. 1 got married on 28/05/1954, which is prior to the Hindu Succession Act coming into force. The aspect of entitlement or share of Defendant No. 1, as contended by her, shall be considered at the time of final hearing of Appeal.

13. Prior to the application of Defendant No. 1 in 2009 seeking to enter her name in the records of right, no assertion of right was made by her. Further, the Defendant No. 1 is restrained from disposing of or alienating or creating third party interest since the year 2009, which is ultimately converted into perpetual injunction under the impugned judgment and decree. Considering that there is no original claim or prayer against the Plaintiffs, it is not possible to grant injunction against the Respondents/Plaintiffs for the first time in the Appeal.

14. In the aforesaid facts and circumstances, there is no strong prima facie case to grant interim stay to declaration and perpetual injunction.

15. The Application is accordingly dismissed.

16. It is however clarified that suit property shall remain subject to final outcome of the Appeal and subject to such orders that may be passed in the appeal.

(M. M. SATHAYE, J.)