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

CIVIL WRIT PETITION NO. 1192 OF 2025

Govind Balu Shinde & Anr ...Petitioners
Versus
Sanjay Sadashiv Shinde & Ors ...Respondents

Mr. Nikhil N. Pawar, for the Petitioners.

**CORAM: N. J. JAMADAR, J.
DATE: 30th JANUARY 2025**

ORDER:-

1. Heard the learned Counsel for the Petitioners.
2. By this Petition the Petitioners-Defendant Nos. 1 and 2 take exception to a Judgment and Order dated 22nd October 2024 passed by learned District Judge, Islampur, in Misc. Civil Appeal No. 62 of 2021 whereby the Appeal preferred by Defendant Nos.. 1 and 2 against an Order dated 25th October 2022 passed by the learned Civil Judge, Islampur, restraining the Defendants from causing obstruction to the possession of the Plaintiffs over the suit land described in paragraph 1B of the Complaint came to be dismissed.
3. Pandurang Shinde was the original holder of the property bearing Gat No. 235. Pandurang had three sons, namely, Tanaji Shinde(P2), Shivaji Shinde (P3) and Sadashiv, the father of Sanjay Shinde (P1) and

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Sangita Yevare (D3), and husband of Shantabai Shinde (D4). The property bearing Gat No. 235 was partitioned among Plaintiff Nos. 2 and 3 and Sadashiv. Far eastern portion of the land (the suit property) was allotted to the share of Sadashiv. Sadashiv passed away on 27th November 2017.

4. The Plaintiffs approached the Civil Court with a case that Defendant No. 3 by taking undue advantage of old age and precarious condition of Defendant No. 4, got executed a registered Gift Deed of the interest of Defendant No. 4 in the suit property, in her favour. Defendant Nos. 3 and 4 also executed a registered Sale Deed of their interest in the suit property in favour of Defendant Nos. 1 and 2. The said Sale Deed and the Gift Deed are illegal and void and have been obtained by exercising undue influence and practicing fraud on Defendant No.4. The suit property has exclusively been in the possession of the Plaintiffs. Hence the Plaintiffs filed the suit for declaration that the Plaintiffs have a preferential right to acquire the suit property and Defendant nos. 1 and 2 be restrained from causing obstruction to the enjoyment and possession of Plaintiff No.1 over the suit property.

5. In the said Suit, by an Order dated 25th October 2021, the learned Civil Judge was persuaded to restrain Defendant Nos. 1 and 2 from causing obstruction to the possession of the Plaintiffs over the suit

property. The appeal preferred there against by Defendant Nos. 1 and 2 came to be dismissed

6. Mr. Nikhil Pawar, the learned Counsel for the Petitioners, would urge that the Petitioners had acquired a specific portion of the suit property, which was in the possession of Defendant Nos. 3 and 4. However, the Courts below have proceeded on the premise that the Petitioners had acquired an undivided interest of Defendant Nos. 3 and 4 in the suit property. It is, therefore, necessary to interfere with the impugned orders passed by the Courts below.

7. There is not much dispute over the relationship between the Plaintiffs and Defendant Nos. 3 and 4. The fact that Plaintiff No.1 and Defendant Nos. 3 and 4 succeeded to the estate of late Sadashiv, post partition between Sadashiv and his brother Shivaji and Tanaji is also rather incontrovertible. There was no partition by metes and bounds amongst the heirs of Sadashiv. In this backdrop, the Courts below have recorded a *prima facie* finding that Defendant Nos. 1 and 2, the transferees of Defendant Nos. 3 and 4, have tried to cause obstruction to the possession of Plaintiff No.1 over the suit property, on the strength of the instrument executed by Defendant Nos. 3 and 4.

8. As Plaintiff No.1 and Defendant Nos. 3 and 4 have undivided interest in the suit property, the principle of community of interest and

unity of possession comes into play. The remedy of the stranger purchaser is to sue for partition.

9. The submission on behalf of the Petitioners that specific portions of the suit property were sold by Defendant Nos. 3 and 4 and that does not impair the rights of Plaintiff No.1 does not merit acceptance. *Prima facie* in the absence of division by metes and bounds, the stranger purchaser cannot lay claim over a particular portion of the suit property. Thus, the learned Civil Judge has correctly exercised the discretion to grant injunctive relief.

10. The learned District Judge has kept in view the principles which govern the exercise of appellate jurisdiction against a discretionary order. No interference is thus warranted in exercise of the writ jurisdiction.

11. Hence, the following order.

ORDER

- (i) The Petition stands dismissed.
- (ii) No costs.

[N. J. JAMADAR, J.]