

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 1383 OF 2025**

Ramsheth Sahebrao Waghmare,  
Age: 57 years, Occupation: Business,  
Resident of Nana Sagar, Plot No. 405,  
Sector – 22, Navi Mumbai – 400 703.

..Petitioner

ARUN  
RAMCHANDRA  
SANKPAL

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ARUN RAMCHANDRA  
SANKPAL  
Date: 2025.04.08  
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**Versus**

1. Radhakrishna Sahebrao Waghmare  
Age: 51 years, Occupation: Business
2. Seema Radhakrishna Waghmare  
Age: 45 years, Occupation: Business

3. Datta Sahebrao Waghmare,  
Age: 47 years, Occupation: Business  
All resident of Plot No. 405, Sector – 22,  
Turbhe, Navi Mumbai 400 703.

...Respondents

Mr. Suryajeet P. Chavan, with Bajrang M. Solanke, for the Petitioner.  
Mr. Vinayak B. Gadekar, i/b Jidnyasa P. Rankar, for Respondent Nos. 1  
and 2.

**CORAM: N. J. JAMADAR, J.**

**DATED : 2 APRIL 2025**

**JUDGMENT:**

- 1.** Rule.
- 2.** Rule is made returnable forthwith and, with the consent of the  
learned Counsel for the parties, heard finally.

**3.** By this Petition under Article 227 of the Constitution of India, the Petitioner assails the legality, propriety and correctness of the judgment and order dated 22<sup>nd</sup> October 2024 passed by the learned District Judge, Panvel-Raigad, in MCA No. 14 of 2024 whereby the Appeal preferred by the Petitioner-original Plaintiff came to be dismissed by affirming an order dated 20<sup>th</sup> January 2024 passed by the learned Civil Judge, Senior Division, Panvel, rejecting Application for temporary injunction preferred by the Plaintiff in SCS No. 380 of 2023.

**4.** Shorn of unnecessary details, background facts leading to this Petition can be stated as under:

4.1. Defendant No.1 is the brother of Plaintiff. Defendant No.2 is the wife of Defendant No.1. Defendant No.3 is another brother of the Plaintiff.

4.2 The Plaintiff avers that the Plaintiff had permitted the Defendant Nos. 1 and 3 to reside in a building owned by the Plaintiff. Defendant No.1 had requested the Plaintiff to provide finance to purchase a plot, i.e., Survey No. 4/1/a/3/b/1 at Mouje – Halkhurd, Taluka Khalapur, District Raigad (the suit property) and had promised to get the Sale Deed executed in the name of the Plaintiff.

4.3 The Plaintiff claimed to have parted with a substantial part of the consideration. Yet, the Defendant No.1 got the Agreement for Sale in respect of the suit property executed in the name of Defendant No.1

alone. The balance consideration was also paid by the Plaintiff. Eventually, Defendant No.1 got the sale Deed executed in the name of Defendant No.1 alone. The Plaintiff was fraudulently made to sign as a witness to the said instrument.

4.4 When the Plaintiff demanded Defendant No.1 to transfer the suit property in the name of the Plaintiff, Defendant No.1 avoided to do so, on one or the other pretext. As the dispute between the Plaintiff and Defendant No.1 escalated, Defendant No.1 surreptitiously executed a Gift Deed of the suit property in favour of Defendant No.2. Hence the Suit of declaration and consequential relief of injunction.

4.5 In the said Suit, the Plaintiff preferred an Application for temporary injunction. By an order dated 20<sup>th</sup> January 2024, the learned Civil Judge, rejected the said Application observing *inter alia* that, *prima facie*, it appeared that the suit property was acquired by Defendant No.1 under the registered Sale Deed dated 28<sup>th</sup> April 2008 and the question as to whether the consideration to acquire the suit property was paid by the Plaintiff, was a matter for adjudication at the trial. Therefore, the Plaintiff was not entitled to injunction.

4.6 The learned District Judge, Panvel, did not find any fault with the discretion exercised by the Trial Court. It was observed that, pursuant to the Gift Deed executed by Defendant No.1 on 26<sup>th</sup> March 2021 in favour of Defendant No.2, the latter has become absolute owner of the suit

property and, therefore, no injunction could be granted against Defendant No.2.

**5.** Mr. Chanvan, the learned Counsel for the Petitioner, submitted that the Courts below have completely ignored clear and categorical admissions in the reply filed on behalf of Defendant Nos. 1 and 2 that, all the properties, including the suit property, were jointly acquired by the Plaintiff and Defendant No.1. The subject property, in particular, was acquired from the funds generated out of the joint family business, namely, Gajanan Automobiles. In view of the aforesaid stand of Defendant Nos. 1 and 2, according to Mr. Chavan, the character of the property was not in contest and, therefore, the Courts below ought to have at least restrained the Defendant Nos. 1 and 2 from creating further third party rights in the suit property.

**6.** Mr. Gadekar, the learned Counsel for Respondent Nos. 1 and 2, made a valiant attempt to urge that Defendant Nos. 1 and 2 have not admitted that the suit property was acquired out of joint family funds. If the reply filed on behalf of Defendant Nos. 1 and 2 is read as a whole, according to Mr. Gadekar, no such admission is discernible.

**7.** Mr. Gadekar would further urge that the Plaintiff miserably failed to demonstrate that he had financed the acquisition of the suit property and it was nominally purchased in the name of Defendant No.1. Emphasis was laid by Mr. Gadekar on the fact that the Plaintiff had

signed the said Sale Deed as an identifying witness to the Defendant No.1. Since the said Sale Deed was executed in the year 2008 and the Plaintiff acted as a witness thereto, the challenge to the exclusive ownership of Defendant No.1, sought to be mounted in the year 2023, was clearly barred by limitation. Therefore, the Courts below committed no error in rejecting the Application for temporary injunction, urged Mr. Gadekar.

**8.** I have carefully perused the pleadings and the documents on record and given anxious consideration to the submissions canvassed across the bar. The substance of the case of the Plaintiff is that though the suit property was purchased in the name of Defendant No.1, under the registered Sale Deed dated 28<sup>th</sup> April 2008, yet, he had paid the entire consideration. Defendant No.1, who had agreed to transfer the suit property in favour of the Plaintiff, resiled from the said promise.

**9.** Evidently, the Plaintiff acted as a witness to the said Sale Deed. *Prima facie* Defendant No.1 could sustain the claim of exclusive ownership of the suit property on the strength of the said Sale deed. However, the stand of Defendant Nos. 1 and 2, in the reply to the Application for temporary injunction, *prima facie* materially erodes the said claim of Defendant Nos. 1 and 2.

**10.** In paragraph 2 of the said Reply, Defendant Nos. 1 and 2 have contended that the Plaintiff, Defendant No.1 and Defendant No.3 were

residing together. The Plaintiff was the eldest. They had started the business of Gajanan Automobiles and generated huge income out of the said joint family business. They had acquired a number of properties in the name of the Plaintiff, his wife and children. As many as 14 properties were shown to have been jointly acquired by the brothers, including the suit property which is described at Sr. No. 8 in the table, below paragraph 2.

**11.** If there was any doubt about the correctness of the aforesaid contention, on account of any inadvertence or otherwise, the same stands removed by the further contentions in paragraph 3 that, the Plaintiff and Defendant No.1 have purchased the aforementioned 14 properties out of the joint income of all three brothers but the Plaintiff with malafide intention to grab all the properties, including the suit property, purchased the said properties in his name and that of his wife and children.

**12.** In the reply, especially to the assertion in paragraph 2 of the Application, an endeavour was made to demonstrate that the amounts which were shown to have been utilized to acquire the suit property were credited to the account of the Plaintiff out of the income of the Gajanan Automobiles. It was contended that the money contributed by the Plaintiff did not belong to the Plaintiff exclusively but constituted the joint family property.

**13.** The situation which thus obtains is that, on the one hand, the Sale Deed under which the suit property was acquired shows that it was acquired in the name of Defendant No.1 alone. The Plaintiff had, in fact, acted as a witness to the said Sale Deed. On the other hand, there are clear and categorical admissions of Defendant Nos. 1 and 2 that the suit property was one of the 14 properties acquired by all the three brothers out of the joint family income. The endeavour of Mr. Gadekar to wriggle out of the situation by asserting that the contentions in the reply, cannot be construed as admissions, does not merit countenance at this stage. Undoubtedly, admissions are not conclusive and can be shown to be incorrect or can even be withdrawn. However, at this stage, the Courts below were required to be given due weight to those admissions.

**14.** As noted above, the admissions regarding the character of the suit property do not appear to be in the nature of a stray contention raised in an unguarded moment. There are clear, categorical and conscious contentions in paragraphs 2 and 3 of reply not only with regard to the suit property but also in respect of other properties, which were acquired out of the joint family funds. It would be difficult to jettison away those contentions as immaterial or inconsequential.

**15.** If the character of the suit property enters into the arena of contest, especially, on account of the contentions of Defendant Nos. 1

and 2, then, in my considered view, the matter cannot be decided on the strength of the registered instrument alone. The Courts below were thus required to take into account the aforesaid contentions of the Defendants and appropriately modulate the relief so that the subject matter of the suit is not lost on account of actions of the parties, during the pendency of the Suit.

**16.** Therefore, a limited order of injunction to restrain the Defendant Nos. 1 and 2 from creating further third party rights in the suit property was required to be passed to protect the subject matter of the suit. An injunction, of the aforesaid nature, would balance the equities between the parties and would not also cause irreparable loss to the Defendants.

**17.** I am, therefore, inclined to allow the Petition.

**18.** Hence the following order:

#### ORDER

- (i) The Petition stands partly allowed.
- (ii) The impugned order dated 22<sup>nd</sup> October 2024 as well as the order passed by the Trial Court dated 20<sup>th</sup> January 2024 stand quashed and set aside.
- (iii) The Application for temporary injunction stands party allowed

(iv) Defendant Nos 1 and 2 are restrained from transferring, alienating or otherwise creating third party rights in the suit property, till the final disposal of the suit.

(v) The learned Civil Judge, seized with SCS No. 380 of 2023, is requested to hear and decide the Suit as expeditiously as possible.

(vi) Rule is made absolute to the aforesaid extent.

(v) No costs.

[N. J. JAMADAR, J.]