

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3458 OF 2024

Vasant Ramchandra Patil and Ors.

.....*Petitioners*

: *Versus* :

Waman Ramchandra Patil and Ors.

....*Respondents*

Ms. Pinky Bhansali *with Ms. Dharini Jain, for the Petitioners.*

Mr. G. S. Godbole, Senior Advocate *with Mr. P. G. Hartalkar i/b Mr. Tejas Hartalkar, for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATED : 26 AUGUST 2025.

(In Chamber)

P.C :

1) The petition is filed challenging the order dated 27 January 2022 passed by the 5th Joint Civil Judge Senior Division, Kalyan rejecting Plaintiff's application at Exhibit-5 for grant of interlocutory injunction under the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 as confirmed by the order dated 18 October 2023 passed by the District Judge-3, Kalyan in Miscellaneous Civil Appeal No. 26 of 2022.

2) Plaintiffs' suit is for partition of the suit property. Plaintiffs believes that they have a share in the suit property. Defendants have apparently entered into a Development Agreement with a Developer who has taken up part of the suit property for development. In their suit, Plaintiffs filed application at Exhibit-5 for grant of temporary injunction to restrain Defendants from creating third party rights and from creating any new construction over the suit property or from disturbing Plaintiffs' possession in respect of part of the suit property.

3) It appears that an Undertaking was filed on behalf of some of the Defendants on 22 December 2018 by which the said Defendants undertook not to develop the suit property bearing Survey No.2/5A admeasuring 8 gunthas out of 16.2 gunthas till disposal of the suit. Despite filing of the said Undertaking, Plaintiffs were advised to press the application for temporary injunction, which met the fate of rejection vide order dated 27 January 2022. In Appeal, the learned District Judge has confirmed the order passed by the learned Trial Judge. Aggrieved by non-grant of temporary injunction, Plaintiffs have filed the present petition.

4) I have heard Ms. Bhansali, the learned counsel appearing for the Petitioners and Mr. Godbole, the learned Senior Advocate appearing for the Respondents.

5) Perusal of the impugned order dated 27 January 2022 passed by the learned Trial Judge would indicate that the Undertaking filed by some of the Defendants dated 22 December 2018 has been completely ignored by the learned Trial Judge. As a matter of fact, in view of the Undertaking dated 22 December 2018 it was not even necessary for the

Plaintiffs to press the application for temporary injunction and the Plaintiffs could have simply requested the learned Trial Judge to dispose off the application at Exhibit-5 in terms of the Undertaking dated 22 December 2018. However, despite securing an Undertaking from the Defendants, Plaintiffs were advised to press the application for temporary injunction, possibly because the Developer engaged by the Defendants who had commenced construction of part of the suit property. Be that as it may. In my view, once a specific undertaking was filed by the Defendants before the Trial Court, the learned Trial Judge could not have ignored the same altogether while deciding Plaintiff's entitlement for temporary injunction. The learned District Judge has also ignored the Undertaking dated 22 December 2018 and has proceeded to dismiss the Miscellaneous Civil Appeal filed by the Plaintiffs without recording any cogent reasons.

6) When the petition was heard on 22 August 2025, after this Court expressed its mind about the error committed by the Trial Judge as well as the District Judge in ignoring the Undertaking dated 22 December 2018, Mr. Godbole had sought time to take instructions from his clients about the possibility of protection of rights of Plaintiffs during pendency of the suit in the light of the Undertaking dated 22 December 2018. The order dated 22 August 2025 reads thus :-

1) Heard Ms. Bhansali, the learned counsel appearing for the Petitioners and Mr. Godbole, the learned Senior Advocate appearing for the Respondents.

2) Hearing of the Petition has commenced. However, due to paucity of time, same could not be concluded. *Prima facie* it appears that the Defendants had submitted an undertaking dated 22 December 2018 stating that they shall not develop the land admeasuring 8 gunthas out of 16.2 guntha of Survey No.2/5A till disposal of the Suit. Though

the Trial Judge has recorded the said undertaking in the order dated 27 January 2022, the prayer for interim injunction is still rejected. While dismissing the Miscellaneous Civil Appeal filed by the Petitioners, the learned District Judge has not even noticed the factum of execution of undertaking dated 22 December 2018.

3) In the light of the above position, Mr. Godbole seeks time to take instructions as to the manner in which rights of the Plaintiffs can be protected during pendency of the Suit in the light of the undertaking dated 22 December 2018.

4) List on **26 August 2025** under the caption 'part heard'.

7) Today, when the petition is called out for hearing, Mr. Godbole has placed on record Affidavit-cum-Undertaking executed by Sunil Ramchandra Patil (Defendant No.3), which is shown to have been executed on behalf of all the Defendants. As per the said Affidavit-cum-Undertaking, Defendants have identified the following residential flats in C-Wing of the building :-

9. I say that the Respondents have identified the following residential flats which are cumulatively admeasure 314.95 Sq.Mtrs. = 3390 Sq.Ft. which have a ready reckon value of Rs. 2,64,19,989.00

Sr.No.	Flat No.	Type	Area (sq.mtr.)
1.	C-204	2 BHK	62.99
2.	C-304	2 BHK	62.99
3.	C-404	2 BHK	62.99
4.	C-904	2 BHK	62.99
5.	C-1104	2 BHK	62.99

8) Mr. Godbole would submit that the Defendants or the Developer engaged by him shall not create any third party rights in respect of the said flats during pendency of the suit. He would further

urge that the Defendants/their Developer be granted leave to engage licensees in respect of the said flats upon receipt of Occupancy Certificate primarily with a view to cover maintenance charges, municipal charges, electricity dues etc.

9) Ms. Bhansali, would dispute the contents of the Affidavit-cum-Undertaking. She would submit that the undertaking was in respect of 8 gunthas of land and Plaintiffs are entitled to FSI of 2.2 on said land admeasuring 8 gunthas. She would submit that Plaintiff's entitlement in respect of the constructed portion would be to the tune of 1,800 sq.mtrs. whereas the Affidavit-cum-Undertaking is sought to be filed only in respect of the built-up area admeasuring 314.95 sq.mtrs.

10) In my view, the learned Trial Judge has examined Plaintiff's entitlement for temporary injunction by considering the merits of the case. The learned Trial Judge has found that the Plaintiffs could not make out a *prima-facie* case nor could meet the other tests of balance of convenience or irreparable loss. The exercise of discretion by the learned Trial Judge has been upheld by the learned District Judge. In that view, scope of the present petition in the light of two concurrent findings recorded by the learned Trial Judge and the District Judge lie in an extremely narrow compass. Ordinarily this Court would not have interfered in the orders passed by the Trial Judge or the District Judge. However, since the Defendants have filed Undertaking dated 22 December 2018, this Court expressed during the course of hearing of the petition on 22 August 2025 that the Undertaking could not have been flouted by the Defendants by undertaking construction of 8 gunthas of land at Survey No.2/5A. Considering this position, in my view, it is not

necessary to protect the entire alleged rights of the Plaintiffs in respect of the land admeasuring 8 gunthas at this stage. In any case, the Defendants have computed Ready Recknor value of land admeasuring 8 gunthas at Rs. 1.70 crores whereas they have agreed to reserve five flats admeasuring 3390 sq.ft. having Ready Recknor value of 2.64 crores. Considering this position, in my view, interest of justice would be met if Defendants and their Developer are directed not to create any third party rights in respect of the five identified flats in the Affidavit-cum-Undertaking dated 26 August 2025.

11) Mr. Godbole, fairly concedes the position that the five identified flats cannot be put on leave and license basis during pendency of the suit and accordingly he has not pressed the request made in paras-8 and 10 of the Affidavit-cum-Undertaking.

12) The Affidavit-cum-Undertaking dated 26 August 2025 is taken on record and marked 'X' for identification.

13) I accordingly proceed to passs the following order :

(I) Pending the hearing and final disposal of R.C.S. No.531/2016, the Defendants or the Developer engaged by them shall stand temporarily restrained from creating third party rights in respect of the following five flats :-

Sr.No.	Flat No.	Type	Area (sq.mtr.)
1.	C-204	2 BHK	62.99
2.	C-304	2 BHK	62.99
3.	C-404	2 BHK	62.99

4.	C-904	2 BHK	62.99
5.	C-1104	2 BHK	62.99

(II) The Trial Court is requested to expedite the hearing of R.C.S No. 531/2016 and to make an endeavour to decide the same as expeditiously as possible, preferably within a period of 2 years.

(III) In view of the interim arrangement directed above, Defendants shall stand relieved of the Undertaking dated 22 December 2018 filed in Regular Civil Suit No.531/2016.

14) Needless to observe that the Trial Judge shall proceed to decide the suit on its own merits without being influenced by any of the observations made in the present order.

15) With the above directions, the petition is **partly allowed and disposed of.**

[SANDEEP V. MARNE, J.]

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