

AGK

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

WRIT PETITION NO.11122 OF 2024

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Rekha Mohan Kukareja

... Petitioner

V/s.

Ashokkumar Revachand Kukareja
& Anr.

... Respondents

Mr. Yuvraj Narvankar for the petitioner.

Ms. Manjiri Parasnis i/by Mr. Akkshay Mishra for
respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 22, 2025

P.C.:

1. Arguable questions are raised. Hence, **Rule.**
2. Prima facie, it appears that by sale deed dated 13th February 1979 the suit property was purchased by the predecessor-in-title of the plaintiff and defendants. The sale deed was in favour of two persons, namely, Rajkumar and Ashokkumar. Rajkumar on 25th August 2016 executed gift deed in respect of specified portion in favour of predecessor-in-title of the plaintiff. The predecessor-in-title of the plaintiff by gift deed dated 11th July 2021 gifted specified portion in favour of the plaintiff.
3. Defendant No.1 executed a sale deed on 23rd February 2022 in favour of defendant No.2 mentioning boundary of one Kukareja

on the north portion, which has led to filing of the suit.

4. The suit is filed for partition. In the said suit, the plaintiff is seeking injunction restraining defendants from creating third party rights. In view of serious dispute between the parties regarding boundary, title of both the parties is not in dispute. However, the dispute appears to be regarding identification of the portion. Therefore, both the Courts below ought to have protected the plaintiff by granting injunction against defendants from creating third party rights. The petitioner has made out a case for grant of interim relief.

5. There shall be interim relief in terms of prayer clause (c).

6. It is made clear that pendency of the instant writ petition shall not be an impediment from deciding the suit. The Trial Court shall decide the suit on merits uninfluenced by the observations made by the Courts below and by this Court in the present order.

(AMIT BORKAR, J.)