

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15266 OF 2024

Ramesh Dhanaji Patil

..Petitioner

Versus

Kankubai Bhalchandra Patil & Ors

...Respondents

Mr. Sanjay Patil, for the Petitioner.

Mr. Chintan Shah, for the Respondent No.1.

Smt. Vaishali Nimbalkar, AGP, for Respondent No.3-State.

CORAM: N. J. JAMADAR, J.

DATED : 20th SEPTEMBER 2025

ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to a judgment and order dated 12th March 2024 passed by the learned District Judge, Thane, in MCA No. 199 of 2018, whereby the Appeal preferred by the Petition-Plaintiff against an order dated 21st September 2018 passed by the Trial Court on an Application for temporary injunction (Exhibit "5") to restrain the Respondent Nos. 1 and 2 from alienating or disposing of the Suit property or creating third party interest therein and Defendant No.3 from effecting the Mutation Entry in the Revenue Records, came to be dismissed.

3. By the said order dated 21st September 2018, the learned Civil Judge had rejected the Application for temporary injunction.

4. Late Ganpat Narayan Patil was the original holder of the Suit property. The Respondent No.1(D1) is the daughter of late Ganpat Pail. The Respondent No.2 (D2) is the son of another daughter of Ganpat Patil. The later was the grandfather of the Plaintiff-Petitioner.

5. On 5th March 2018, the Respondent No.1 executed a registered Gift Deed in favour of the Respondent No.2 in respect of her undivided 1/6 share in the Suit property.

6. The Plaintiff instituted the Suit for declaration that the said Gift Deed was illegal and void, and the consequential reliefs. It was averred that the Respondent No.1 had no right to execute the Gift Deed in respect of the Suit property as late Ganpat Patil had executed three Wills in favour of the Plaintiff and other six grand-sons on 13th June 1955, 2nd June 1959 and 1st June 1970. The Plaintiff and the other legatees were the absolute owners of the Suit property.

7. The Trial Court rejected the Application for temporary injunction on the premise that the Suit for declaration and injunction simplicitor without a prayer of partition of the Suit property was not tenable.

8. The learned District Judge concurred with the view of the learned Civil Judge that the Application for temporary injunction was required to be rejected, albeit for different reasons. The learned District Judge

noted that the Plaintiff and other legatees and beneficiaries under the Will had never applied to the Revenue Authorities to mutate their names to the Record of Rights of the Suit land or instituted the Suit for declaration and ownership on the basis of the said Will. The Respondent No.1, being a daughter of late Ganpat Patil, was entitled to 1/6th undivided share in the Suit property. Since late Ganpat Patil had not inherited the Suit property from his forefathers, the legal heirs of Ganpat Patil were entitled in law to dispose of their undivided share in the Suit property.

9. Mr. Sanjay Patil, the learned Counsel for the Petitioner, would submit that the Courts below erred in refusing to grant injunction. If, the Respondent No.2 further alienates the property on the basis of the Gift Deed, it would lead to multiplicity of the proceedings and would cause grave prejudice to the rights of the Plaintiff and other legatees.

10. It is imperative to note that the challenge in this Petition is to the concurrent, *prima facie*, findings of fact by the Courts below. This Court in exercise of the supervisory jurisdiction is not expected to reassess and reweigh the material as a Court of Appeal. Interference with the discretionary orders is not warranted unless the exercise of discretion is arbitrary or perverse.

11. The learned District Judge has taken a correct view of the matter. Firstly, the Wills which the Plaintiff propounded were not placed on

record of the Trial Court. Secondly, the learned District Judge recorded a *prima facie* finding that the properties in the hands of late Ganpat Patil were not his ancestral properties. In that view of the matter, once a *prima facie* finding was recorded that the Suit properties were not impressed with the character of the coparcenary property, the restraint as regards the gift of the coparcenary property by a coparcener does not operate.

12. In the aforesaid view of the matter, and having regard to the fact that the Suit itself has reached an advanced stage, and, there is no injunctive relief in favour of the Plaintiff since the year 2018, at this stage, there is no propriety in entertaining Petition against concurrent discretionary orders.

13. Hence the following order:

: O R D E R :

The Petition stands dismissed.

[N. J. JAMADAR, J.]