

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4418 OF 2025

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Athar Husain Hafizullah Chaudhari and
ors.

...Petitioners

Versus

Samiullah Abdul Majid Patel and ors.

...Respondents

Mr. Pandit Kasar, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATED: 3rd APRIL, 2025

ORDER:-

1. Heard the learned Counsel for the petitioners.
2. The petitioners – defendants assail the legality, propriety and correctness of a judgment and order dated 6th December, 2024 passed by the learned District Judge, Bhiwandi, whereby the appeal preferred by the petitioners came to be dismissed affirming the order passed by the trial court in Regular Civil Suit No.65 of 2024, thereby restraining the petitioners from carrying out further construction and creating third party rights over the suit property till the disposal of the suit.
3. The respondents – plaintiffs are the co-owners and in possession of the land bearing CTS No.4322/B, Survey No.39, Hissa No.1, admeasuring 4434 Sq. Mtrs. (“the suit land”). Late Kazi Saheb Shiakh Sahib Patel and Mohammad Siddeque

Shaikh Sahib Patel were the original holders of the suit land. After the demise of the original holders, Abdul Majid Siddique Patel, the predecessor-in-title of the plaintiffs, and other co-owners succeeded to the estate of the original holders. The plaintiffs have 4.81065% share in the suit property.

4. On 28th February, 2018, Waqar Abdul Malik Patel and other 80 co-owners executed a Deed of Conveyance in favour of defendant Nos.1 to 4. Massarat Mushta Moghal also executed a supplementary deed dated 27th March, 2018 in favour of defendant Nos.1 to 4. Under the said instruments, defendant Nos.1 to 4 have acquired approximately 1347.822 Sq. Mtrs. land, out of the suit land. Though there has not been a partition by metes and bounds and the suit land is still undivided, defendant Nos.1 to 4 started to develop the suit land and erect structures thereon. Hence, the suit.

5. By an order dated 18th July, 2024, the learned Civil Judge was persuaded to grant temporary injunction as the plaintiffs were indisputably co-owners of the suit land and there has not been partition by metes and bounds.

6. Being aggrieved, the defendants carried the matter in appeal before the District Court. The learned District Judge found no merit in the appeal.

7. Mr. Kasar, the learned Counsel for the petitioners, submitted that on the own-showing of the plaintiffs, they only have 4.81065% share in the suit land. The defendants have acquired only 1347.882 Sq. Mtrs. land under the instruments from more than 80 co-owners. Interest of the vendors of the defendants comes to around 95.189%. Ample land is still available out of CTS No.4322/B. The share of the plaintiffs can be carved out from the said unutilized land. Therefore, the courts below were in error in granting injunction which causes grave prejudice to the defendants, who have started the development and made huge investment for the same.

8. Evidently, there is not much dispute about the fact that the plaintiffs are the co-owners. Nor there is any controversy about the fact that defendant Nos.1 to 4, under the instruments in question have acquired undivided share of the majority of the co-owners. From the perusal of the Deed of Conveyance itself, it becomes clear that the defendants acquired 1347.822 Sq. Mtrs. land from the vendors, who claimed to have 95.18935% undivided share in the said land. The recitals in the sale deed thus fortify the claim of the plaintiffs that there has not been partition by metes and bounds and the suit land is still undivided.

9. In the aforesaid backdrop, the courts below cannot be said to have committed any error in restraining the defendants from carrying out further construction and creating third party interest in the suit land. The position of the defendants is that of stranger purchasers. The remedy of the defendants is to sue for partition and have the property purchased by them carved out of the suit land. Until the suit land is partitioned, the defendants cannot claim ownership over a particular area of the suit land.

10. Thus, the submission on behalf of the defendants that the shares of the plaintiff can be carved out from the unutilized part of the suit land, does not merit countenance, at least, in this suit. It would be open for the defendants to institute a suit for partition and in such suit seek appropriate reliefs by securing the interest of the co-owners, whose shares have not been acquired.

11. Thus, this Court does not find such infirmity in the impugned order as to warrant exercise of supervisory jurisdiction.

12. The petition stands dismissed.

[N. J. JAMADAR, J.]