



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5249 OF 2025

Babasaheb Ganpat Borate and Anr. ..Petitioners

**Versus**

Rajaram Sadhu Borate and others. ...Respondents

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Mr. Kishor Patil i/b Mr. Pratik B. Rahade, for the petitioners.  
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Mr. Tejas Dande i/b Sarvesh Deshpande, for the Respondent  
Nos. 1 to 3.

Mr. Y. S. Jahagirdar, Senior Advocate a/w Mr. S. S.  
Patwardhan i/b Mrinal Shelar, for Respondent No. 28.

Mr. I. M. Khairadi (through V.C.) for Respondents No. 29A,  
29B, 30 and 31.  
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| CORAM:         | N. J. JAMADAR, J.              |
| RESERVED ON:   | 11 <sup>th</sup> NOVEMBER 2025 |
| PRONOUNCED ON: | 21 <sup>st</sup> NOVEMBER 2025 |

**JUDGMENT:**

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

**2.** This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order passed by the learned District Judge, Pune, in Miscellaneous Civil Appeal No. 57/2025 whereby the Appeal preferred by the petitioners against an order dated 07th February, 2025 on applications (Exh. - 5 and 55) in RCS No. 834/2023 thereby rejecting the prayer of the petitioners for temporary injunction, came to be dismissed.

**3.** The background facts necessary for the determination of this petition can be stated, in brief, as under:

**3.1** For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the Trial Court.

**3.2** Ganpat Sadhu Borate, was the father of Plaintiff Nos. 1 and 2 and Plaintiff Nos. 3 to 5, who have been transposed as the defendants. Rajaram – the Defendant No. 1 is the brother of late Ganpat. Late Gulab and Nanasaheb were also the brothers of Ganpat and Rajaram. Defendant No. 4 is the wife of Gulab. Defendant No. 6 is the wife of Nanasaheb.

**3.3** The plaintiffs assert Ganpat, their predecessor in title, had purchased agricultural land bearing Survey No. 72/1A admeasuring 7H 30 R at village Kharadi, Tq. Haveli, Dist. Pune (the suit property) under a registered sale deed dated 25th November, 1961 out of his own income. Thus, the suit property was the self- acquired property of Late Ganpat. It was mutated in the name of Late Ganpat vide mutation entry No. 732 as a holder thereof. Late Ganpat passed away on 30th June, 2003.

**3.4** After the demise of Ganpat, the names of Defendant No. 1 Rajaram and Defendant Nos. 4 and 6 were wrongly mutated to the suit property vide M.E. No. 14104. However, the Defendant nos. 1, 4 and 6 had no right, title and interest in the suit property. During his lifetime, Ganpat was in exclusive possession of the suit property and after the demise of Ganpat, the Plaintiff No. 1 has been exclusively use and occupation of the suit property. During his lifetime, Ganpat had permitted Rajaram (D1) to construct a house over a portion of the suit property. The possession of Rajaram (D1) over the said house premises was permissive in nature.

**3.5** Except the said house premises in the possession of Rajaram (D1), the plaintiff has been in exclusive possession of the rest of the suit property. The plaintiff has erected a number of sheds in the suit property and let out the same to various tenants/licensees.

**3.6** The Defendant Nos. 1, 4 and 6 never raised any objection to the ownership and possession of the Plaintiff No. 1 over the suit premises. However, since the year 2020, the defendants started to create instruments in relation to the suit property and transfer portions of the suit property by taking undue advantage of the mutation of the names of the Defendant no. 1, 4 and 6 in the record of rights of the suit property.

**3.7** Hence, the plaintiffs were constrained to institute the suit seeking a declaration that only class one legal heirs of Ganpat Borate are the owners of the suit property and the instruments brought into force by the Defendant Nos. 1, 4 and 6 are not legal and valid and do not bind the rights of the Plaintiffs and the consequential relief of injunction.

4. In the said suit, the plaintiffs took out the applications for temporary injunction to restrain the defendants from creating third party rights in the suit property and causing obstructions to the possession and enjoyment of the plaintiffs over the suit property.

5. The Defendant Nos. 1 to 3 and 4 to 7 resisted the prayers in the applications by filing replies. It was, *inter alia*, contended that the suit property was a joint family property. It was acquired in the name of late Ganpat as a manager of the joint Hindu family. After the demise of late Ganpat, the Plaintiff No. 1 had filed an application to enter the names of the heirs of late Ganpat including Rajaram and Defendant No. 4, clearly affirming that the suit property was the joint family property. Therefore, the claim of the plaintiffs that late Ganpat was the exclusive owner of the suit property was untenable.

6. By an order dated 07th February, 2025, the learned Civil Judge was persuaded to reject the application recording that the Plaintiff No. 1 failed to establish that the suit property was the self- acquired property of late Ganpat. Instead there was an admission that the suit property was the joint family property.

And the plaintiffs failed to establish that they were in exclusive possession of the suit property.

7. Being aggrieved, the petitioners carried the matter in Appeal before the District Court. By the impugned judgment and order dated 29th March, 2025, the learned District Judge was persuaded to dismiss the Appeal concurring with the view of the learned Civil Judge.

8. Being further aggrieved, the petitioners have invoked the writ jurisdiction.

9. Mr. Kishor Patil, the learned Counsel for the petitioners, submitted that, in the face of the sale deed dated 24<sup>th</sup> November, 1961 to show that, the suit property was purchased by late Ganpat, the Courts below were in error in holding that, the plaintiffs failed to establish the suit property was the self-acquired property of late Ganpat. Mr. Patil would urge that, both the learned Civil Judge and the learned District Judge committed a manifest error in placing undue emphasis on the purported application presented by the Plaintiff No. 1 for mutation of the names of the heirs of late Ganpat, after latter's

demise in the year, 2003. In the face of the registered instrument indicating that the suit property was purchased by late Ganpat, the Courts below could not have given primacy to entry in the record of rights.

10. Mr. Patil, further submitted that, at one stage, the learned Civil Judge recorded that, the suit property appeared to be the self acquired property of late Ganpat and, yet, the injunction was refused. Taking the Court through the instruments excluded by the defendants, Mr. Patil submitted that, a clear case breach of the obligations on the part of the defendants was made out. Therefore, the impugned orders, which are *ex facie* perverse, deserve to be interfered with in exercise of the supervisory jurisdiction.

11. In opposition to this, Mr. Jahagirdar – the learned Senior Advocate for the Respondent No. 28, submitted that, the Courts below were justified in declining to exercise the discretion in favour of the plaintiffs. First and foremost, the suit appeared to be hopelessly barred by law of limitation as the M.E. No 14104, certified in the year 2003, was not at all challenged till the filing of the instant suit. Secondly, the mutation entry was not

effected behind the back of the Plaintiff No. 1. On the contrary, there is overwhelming material to show that, the Plaintiff No. 1 had filed the application to mutate the names of other heirs of late Ganpat, including Defendant Nos. 1 to 4 and 6. At any rate, there is not an iota of material to show that, the Plaintiff No. 1 has been in exclusive possession of more than 70% area of the suit property.

**12.** Mr. Tejas Dande, learned Counsel for the Respondent Nos. 1 to 3, and Mr. I. M. Khairadi, learned Counsel for the Respondent Nos. 29A, 29B, 30 and 31, supplemented the submissions of Mr. Jahagirdar.

**13.** I have given careful consideration to the submissions canvassed across the bar. With the assistance of the learned Counsel for the parties, I have perused the material on record. The sale deed dated 24.11.1961 indicates that the suit property was purchased by late Ganpat. However, as it was not the case of the plaintiffs that, at the time of the acquisition of the suit property, there was no joint family and the joint family did not have adequate family nucleus, the mere fact that the sale deed was executed in the name of late Ganpat cannot be the

determinative factor in regard to the character of the suit property.

14. The Courts below have considered the contemporaneous conduct and the attendant circumstances. The Plaintiff No. 1 and Rajaram (D1) – the brother of late Ganpat, after the demise of late Ganpat, filed an application to mutate the names of the heirs of late Ganpat and Rajaram (D1). It was categorically contended therein that, though the suit property was mutated in the name of late Ganpat only, the suit property was the joint family property and late Ganpat and Rajaram had  $\frac{1}{2}$  share therein. The plaintiff No. 1 had also sworn an affidavit. On the basis of these documents, the Courts below have drawn an inference that, the suit property *prima facie*, appeared to be joint family property.

15. Secondly, the Courts have recorded a *prima facie*, finding that, the Plaintiff No. 1 failed to establish that 70% portion of the suit property was let out by the Plaintiff No. 1 to various tenants/licensees by erecting sheds. The said fact could have

been substantiated by filing affidavits of those tenants/licensees, reasoned the Courts below.

16. The aforesaid, *prima facie*, findings of fact cannot be said to be perverse or the one, which no Court could have recorded. At this juncture, the limits of the writ jurisdiction deserve to be kept in view. Though, the writ jurisdiction is of wide amplitude, yet, it is supervisory and corrective in nature. The High Court is not expected to act as a Court of Appeal. The High Court cannot review, reappreciate or reweigh the evidence/material on the basis of which the findings has been recorded by the Courts below and substitute its own decision for that of the Court or Tribunal.

17. In the case of ***Shamshad Ahmad & Ors. Vs. Tilak Raj Bajaj***<sup>1</sup> the limits the exercise of writ jurisdiction were expounded as under:

“38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal

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1 (2008) 9 SCC 1.

or a court of error. It can neither review nor re-appreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct error of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law.”

18. In the case of **Krishnanand Vs. State of U.P.**<sup>2</sup>, the Supreme Court reiterated the legal position that it is a well settled law that writ jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse.

19. In the case of **Ajay Singh Vs. Khacheru & Ors.**<sup>3</sup>, the Supreme Court expounded that it is a well established principle that the High Court, while exercising its writ jurisdiction, cannot reappreciate the evidence and arrive at a finding of facts

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2 (2015) 1 SCC 553.

3 (2025) 3 SCC 266.

unless the authorities below had either exceeded its jurisdiction or acted perversely.

**20.** On the aforesaid touchstone, reverting to the facts of the case, it appears that the discretion exercised by the Courts below cannot be said to be either perverse or against the settled principles of law. A factor which materially impairs the claim of the Plaintiff No. 1 is that for over 20 years, the names of the defendants were allowed to stand in the record of rights of the suit property. It is not the case of the Plaintiff No. 1 that he had not known about the said mutation. On the contrary, it was the case of the Plaintiffs that the name of Defendant No. 1 was wrongly mutated to the record of rights of the suit property. Thus, the Courts below were justified in drawing an inference of knowledge about the said mutation entry and admission on the part of the Plaintiff No. 1.

**21.** The fact that the Plaintiff No. 1 could not substantiate his claim that he was in possession of the substantial portion of the suit property and let out more than 70% portion thereof to tenants/licensees was also rightly arrayed against the plaintiffs. To add to this, original Plaintiff Nos. 3 to 5, the siblings of the

plaintiffs, disowned the plaintiffs case and professed to convey their undivided interest in the suit property.

**22.** A period of more than 20 years, since the demise of Ganpat is such that, it could have given multiple opportunities to the plaintiffs to assert possession and have the documents which substantiate the said claim, had the plaintiffs been in exclusive possession of more than 70% of the suit property. The failure of the plaintiffs, especially the Plaintiff No. 1, who asserts claim of exclusive possession, even to the exclusion of other Class I heirs of Ganpat, *prima facie*, runs counter to the case set up by the plaintiffs.

**23.** Lastly, the submission of Mr. Patil that, the plaintiffs have been creating third party interest in specific portions of the suit property is belied by the documents which were tendered for the perusal of the Court. For instance, the deed of conveyance dated 7<sup>th</sup> February, 2024, executed by Lilabai – Defendant No. 4, makes it clear that, the Defendant No.4 has asserted 1/4<sup>th</sup> undivided right, title and interest in the suit property and professed to sell undivided share out of the said property. As the principle of unity of possession and community of interest

comes into play, when it is *prima facie* shown that the plaintiffs and the other heirs of Late Ganpat are co-owners, the prayers of injunction against the co-owners cannot be sustained. Needless to clarify that, the stranger purchasers would have to work out their remedies if they acquire undivided interest in the suit property.

**24.** For the foregoing reasons, this Court does not find any justifiable reason to interfere with the concurrent, *prima facie*, findings of fact, and the exercise of discretion by the Courts below. Resultantly, the Petition deserves to be dismissed.

**25.** Hence, the following order:-

**:: ORDER ::**

- (i) The petition stands dismissed.
- (ii) Rule discharged.
- (iii) No costs.

**[N. J. JAMADAR, J.]**

Mr. Patil, learned Counsel for the petitioners, seek continuation of the ad-interim relief granted by this Court, for a period of six weeks.

Mr. Dande, learned Counsel for the Respondent Nos. 1 to 3 opposes the said prayer.

In the light of the concurrent, prima facie, findings of facts by the courts below and the view this Court is persuaded to take, the oral application for continuation of ad-interim relief stands rejected.

**[N. J. JAMADAR, J.]**