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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9495 OF 2025

Rasik Daji Kadu and ors

.....Petitioners

Vs.

Sunil Devji Kadu and ors

.....Respondents

Mr. R.M. Haridas i/b. Mr. Somnath Thengal for the Petitioners

Mr. Sudhir Gupta i/b. Ms. Kalavati Kadu and Ms. Trisha Kadu

Thakur for the Respondents

CORAM : GAURI GODSE, J.

DATE : 22nd JULY 2025

ORDER:

1. This writ petition is filed by defendant nos. 26 and 27 to challenge the order granting injunction in favour of the plaintiffs in a suit filed for declaration of oral partition. The plaintiffs' application for temporary injunction is allowed and these petitioners are restrained from entering into property no. 2 as described in the plaint. These petitioners are further restrained from dispossessing the plaintiffs from the suit property no.2. The

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Note : This is the corrected order pursuant to speaking to minutes order dated 6th August 2025

appeal court has dismissed the petitioners' appeal and confirmed the order of injunction.

2. Learned counsel for the petitioners submit that these petitioners have specifically pleaded that they are in possession of the suit property and are cultivating the same. He submits that in the oral partition, the property no.2 was given to the share of these defendants. He further submits that even the plaintiffs admit in their pleadings that they are taking water from the water-well situated in the land of these defendants. He therefore submits that the pleadings of these defendants should have been considered by both the courts for examining the issue of possession. He therefore submits that both the courts have ignored the specific pleadings of these petitioners that they are in possession of the suit property no. 2 and they are cultivating the same.

3. I have perused the papers of the petition. The plaintiffs filed a suit for declaration that there was an oral partition between the parties and the suit property no. 2 was given to the share of the plaintiffs. The plaintiffs relied upon the 7/12 extract to support their submissions that as per the oral partition effected in **1966** the suit

property was given to their share and they are cultivating the same. The 7/12 extracts and the revenue records relied upon by the plaintiffs are not challenged by any of the defendants. The registered partition deed dated 8th March 1947 is relied upon by the plaintiffs to support their contention. Thus based on the registered partition deed and the 7/12 extracts in the name of the plaintiffs both the courts have accepted the plaintiffs' possession on the suit property and thus granted injunction against these petitioners.

4. The reasons recorded in the impugned orders are based on correct appreciation of the pleadings and the supporting documents relied upon by the plaintiffs. Theory of oral partition is not disputed by the petitioners. There is no supporting evidence produced by the petitioners to show that they are in possession of the suit property no. 2. Hence, in the facts and circumstances of the case, discretionary and equitable relief granted by the trial court and confirmed by the appeal court would not warrant any interference in the writ jurisdiction under Article 227 of the Constitution of India.

5. I do not find any illegality or perversity in the impugned orders. The writ petition is dismissed.

6. At this stage, learned counsel for the petitioners submits that the order passed by the appeal court on 20th June 2025 be continued for four weeks.

7. I find it necessary to record that the trial court has granted injunction on 9th January 2025. This order of injunction was never stayed by the appeal court.

8. Learned counsel for the petitioners submits that by order dated 20th June 2025, the learned District Judge has stayed its own order dismissing the appeal. He therefore requests that the said order be extended for a period of four weeks. The order of stay to the district court's order dismissing the appeal would have no meaning.

9. The injunction is operating since 9th January 2025. Hence, I see no reason to extend the order of stay to the order of district court dismissing the appeal. Hence, the prayer to extend the order is rejected.

[GAURI GODSE, J.]