



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

APPEAL FROM ORDER NO.51 OF 2023.

1. Tejas s/o Kamalkar Chaware, Aged about 48 years, Occupation - Business.
2. Preeti w/o Tejas Chaware,
Aged about 35 years, Occupation - Household work.
Both 1 and 2 R/o. Mahavir Marg, Karanja (Lad), District - Washim.
- 3 Swarupa Sarvesh Sakale
Aged about 35 years, Occupation - Household,
R/o. Morya Indrayani Nagar, Bhosari, Pune,
Tq. & District – Pune.
Through its Power of Attorney (Appellant No.1) i.e Tejas Kamalakar Chaware,
Aged about 42 years, Occ: Business, Both R/o. Mahavir Marg, Karanja (Lad), District - Washim.
- 4 Shrutika Pankaj Nandgaonkar,
Aged about 33 years,
Occ.-Household, C/o Pankaj Prafulla Nandgaonkar, Plot No. 1706 Lalit D, Near Dhayriphata, Nanded City, Pune, District - Pune.
Through its Power of Attorney (Appellant No.1) i.e Tejas Kamalakar Chaware,
Aged about 42 years, Occ.-Business, Both R/o. Mahavir Marg, Karanja (Lad), District - Washim.

Appellants

Versus

1. Upama Bhanukumar Daryapurkar,
(Dead) Through L.R's.
Darshana alias Tejaswini Dipak Sangai,
Aged about 62 years,
Occupation - Household,

2. Megha Vivek Sangai, Aged about 60 years,
Occupation – Household, Nos. 1 and 2, R/o.
Near Jain Mandir, Post Anjangaon Surji,
District - Amravati.
3. Ravindra Ramasa Chaware,
Aged about 77 years, Occupation Agriculturist,
R/o. Mahavir Marg, Karanja (Lad), District-
Washim.
- 4 Ashok Mohanlal Kothari,
Aged about 65 years,
Occupation - Business,
R/o. Vidya Nagar, Akola,
Tq. & District - Akola.
- 5 Dilawar Haji Kasam,
Aged about 54 years, Occupation - Business,
R/o Mangalwara, Karanja, District - Washim
6. Yusuf Haji Shafi Punjani,
Aged about 54 years, Occupation - Business,
- 7 Rizwan Haji Shafi Punjani,
Aged about 44 years, Occupation - Business,
Nos. 6 & 7, R/o. Punjani Complex, Karanja
(Lad), District - Washim.
- 8 Suraj Punjabrao Jirapure, Aged about adult, R/
o. Kherda (Jirapure), Tq. Karanja, District -
Washim.
9. Mahavir Ramasa Chaware, (Dead) Through
L.R's.

9A. Deepti Jinendra Lad,
Aged about 48 years,
Occupation Household R/0 103, Maa Shakti
Apartment, Indiradevi Town, Middle Ring
Road, Vatoda Nagpur Tq. & Dist. Nagpur
444009 (deleted)

9B. Supriya Sandeep Deolasi, Aged about 45 years, Occupation Household R/o Dwarkadish Apartment, Pimpale Saudagar Pune Tq. & Dist. Pune 411 027 (deleted)

9C. Kiran Rahul Nandgaonkar, Aged about 41 years, Occupation Household R/o H-2-501, Highland Gardens, Dhokali, Opposite Twinkle Towers Thane (W) Tq. & Dist. Thane (deleted)

9D. Mamta Tushar Agrekar Aged about 39 years, Occupation Household R/o J-903, ISCKON Platinum, Near Bopal Circle, Bopal Ahmadabad Circle, Tq. & Ahmadabad 380 058 (deleted)

10 Santosh Chaganlal Raibagkar, Aged about 63 years, Occupation - Doctor, R/o. Shivam 1st Floor, Jalaram Temple Road, Old Shrada Mandir Cross Road, Paldi, Ellis bridge, Ahmedabad.

11 Rajul Shashikant Khandare, (Dead) Through L.R's.

11A. Sonal Shreyas Sanghai (deleted) Aged about 32 years, Occupation - Household, R/o. Block J, Kumar Priya Darshan, Jai Bhavani Nagar, Pashan Pune Tq. & Dist. Pune.

12 Rajesh Changanlal Raibagkar, Aged about 56 years, Occupation - Service, R/o. Sanmmati, Yogeshwar Society Irma Road, 13 Ajanta Park, Mangalpura Road, AT and post District - Anand (Gujrat).

13 Shashikant Shrikumar Khandare Aged about 64 years, Nagpur. Occupation - Retired,

R/o. Shashikant 32, Bajaj Nagar,
In front of Basket Ball Ground, Nagpur
14 Vrunda Suhas Mandge, Aged about 66 years,
Occupation - Doctor, Nagpur.
R/o. Shashikant 32, Bajaj Nagar,
In front of Basket Ball Ground, Nagpur.

Respondents.

Mr. Palash K. Mohta, Advocate for Appellants.
Mr. C.A. Joshi, Advocate for respondent Nos. 1 and 2.

CORAM: MRS. VRUSHALI V. JOSHI, J.

**Judgment reserved on :- 10/07/2025.
Judgment pronounced on :- 16/07/2025**

JUDGMENT :

Heard.

(2) **Admit.** Heard finally by consent of the learned counsel appearing for the respective parties.

(3) The appellants have challenged the order dated 03.07.2023 passed by the learned Civil Judge, Senior Division, Mangrulpir allowing the application below Exhibit 5 for temporary injunction and restrained the defendants from alienating, transferring or creating third party interest in the suit property till the disposal of the main suit.

(4) The facts of the case in brief are as under:-

The appellants are the original defendant Nos. 2,3,4 and 5 in Civil Suit No.2 of 2018. The respondent Nos.2 and 3 and late Bhanukumar Daryapurkar are the legal heirs of original plaintiff. During the pendency of suit, Bhanukumar Daryapurkar also died. The original plaintiff Upama Bhanukumar Daryapurkar has filed the Civil Suit against the appellants for partition, separate possession, cancellation and declaration and permanent injunction.

(5) It is the case of the plaintiff that Ramasa Padmasa Chaware, Chandrabai Padmasa Chaware and Sakhubai Padmasa Chaware possessing the ancestral property, which is mentioned in the plaint, Sakhubai Ramasa and Chandrabai died intestate and the original plaintiffs have 1/6th share in the properties. It was joint family property. However, there was a partition between them and they became the owner of the respective share. Sakhubai and Chandrabai died before Ramasa and therefore, the original plaintiffs became the joint owner of share of those properties along with other legal heirs. It is alleged that deceased Kamlakar, who is the brother of original plaintiff No.1, prepared a false will of Ramasa Chaware behind the back of original plaintiffs and other legal heirs. Few of the properties are sold by the appellant no.1 and therefore, the defendants have filed the Civil Suit. The original plaintiff prayed that a decree of partition, and separate possession and

defendant and direct defendant Nos.2 to 4 to hand over the possession of 1/6th share of each of the suit properties. The trial court has granted temporary injunction and restrained the defendants from creating third party interest in the suit property till the decision of the suit.

(6) The learned counsel appearing for the petitioner has stated that there was a partition between deceased Ramasa, Sakhubai and Chandrabai, Kamlakar and Ravindra in the year 1960. It was oral partition. The original plaintiff Upama got shares of Bombay Dying by said oral partition, the possession of respective properties were handed over to all the parties. Mutations were effected in the revenue record on the basis of the said oral partition. Sakhubai expired in the year 1984 and Chandrabai expired in the year 1997. All the shares in the properties of Sakhubai and Chandrabai came in the possession of Ramasa. Thereafter, on 30.08.2004, Ramasa executed a will and bequeathed all the shares in the properties to Kamlakar. Kamlakar, Rajashree and the appellant Nos.1 and 2. Ramasa expired on 08.08.2005. The will executed by Ramasa is acknowledged by respondent No.3 Ravindra in a mutual agreement dated 11.09.2015. On the basis of said will, the mutation of properties were effected in the revenue record. Therefore, the appellants have denied that those properties are the ancestral properties.

(7) Deceased Kamlakar moved an application to TILR, Karanja on 14.12.2005 for mutating his name on the Nazul properties as per will. The plaintiff was aware in the year 2005, itself that deceased Ramasa had executed a will. However she did not raise any objection and kept mum. It is not correct that the original plaintiff got knowledge of the will deed on 13.10.2015. Therefore, the suit is hopelessly barred by limitation. Hence, prayed to set aside the order passed by the trial court granting temporary injunction to the respondents.

(8) The learned counsel appearing for respondents has stated that number of properties are there. Will deed is itself bogus. Only after the mutation entries in the revenue record, the plaintiff came to know about the entries recorded on the basis of the will of Ramasa. There is no question of limitation as she came to know it in the year 2015. She is in possession of the suit property. Many properties are alienated by the appellants and therefore, the trial Court has rightly granted the injunction. Hence, prayed to dismiss the appeal against order.

(9) Heard the learned counsel appearing for the respective parties.

(10) It is an admitted fact that the appellants and respondents are the close relatives and this is a property dispute. It is not disputed that the properties, which are mentioned in the plaint are the ancestral properties, which the appellants have stated as the self acquired properties. According to the plaintiffs, the share which he has received in will of Ramasa, he has become the absolute owner of the suit property and therefore, he is the only owner of the said property. The appellants are the legal heir of the deceased Kamlakar and he is also the power of attorney holder for other defendants.

(11) It appears from the record that the plaintiffs case is that the share of Chandrabai and Sakhubai, who died before Ramasa came in the possession of Ramasa after the death of both of them and Ramasa has executed the will including the said properties. It appears from the family tree, which is filed on record that Upama is the daughter of Ramasa and Chandrabai. The entire property was bequeathed in the name of Kamlakar and appellants Tejas, Swarupa and Shrutika are the legal heirs of Kamlakar.

(12) According to the appellants, the original plaintiff-Upama has received the share of Bombay Dying in her share at the time of oral partition. As the oral partition was there and the mutation entries were recorded as per the said oral partition, the partition was acted upon. As the

property was in the name of Ramasa, which comes in his share was bequeathed in the name of Kamlakar. On perusal of plaint, it appears that number of properties are there, which are mentioned as the properties on which the name of Kamlakar and his legal heirs is recorded in mutation entries.

(13) While discussing about *prima facie* case and *prima facie* title this Court in the case of ***Chetan D.Shelke and ors. Vs. Savannah Vasant Lawns Tower and ors.*** reported in ***2025 SCC OnLine Bom.130*** has placed reliance on the observations of Hon'ble Apex Court in paragraph Nos.21 and 22:-

"21. The Supreme Court in the case of Dalpat Kumar & Anr. Vs. Prahlad Singh and Ors.13 in paragraph No.5 of the said judgment has commented upon the existence of the prima facie right and infraction of the enjoyment of the property or the right as to whether the condition for the grant of temporary injunction or otherwise. What is crucial to be noted is that prima facie case is not to be confused with prima facie title which has to be established on evidence and on trial. Paragraph No.5 of the aforesaid judgment of the Supreme Court reads thus:-

"5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits.

Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

22. From the above it is seen that the fundamental principle required to be followed by the Court is that the Court should adopt whichever course appears to carry a lower risk of injustice if it turns out to have been wrong while granting interim injunction".

(14) The appellants have also relied on the judgment in the case of *M/s Kachhi Properties, Satara and etc. Vs. Ganpatrao Shankarao Kadam and ors.* reported in 2010(5) AIR Bom R 353. In paragraph No.22 it is observed as under:-

“22. *Thus a plaintiff need not at all worry about transfers pendente lite and so, occasions for invoking powers under Order XXXIX, Rules 1 and 2 would arise only in rare cases where the plaintiff can demonstrate that rule of lis pendens is inadequate to protect plaintiff's interest*”.

(15) It is the contention of the appellants that the trial court has not discussed about *prima facie* case and irreparable loss caused to plaintiff . The plaintiff has relied on the judgment in the case of *Shyam Sel and Power Limited and anr. Vs. Shyam Steel Industries limited reported in (2023) 1 SCC 634*.

“In any event, though the Division Bench of the High Court observes that for deciding the question with regard to grant of interim injunction, it has to put itself in a position as if it was moved to pass an interim order in the suit, it even fails to take into consideration the principles which a court is required to take into consideration while deciding such an application. It is a settled principle of law that while considering the question of grant of interim injunction, the courts are required to consider the three tests of prima facie case, balance of convenience and irreparable injury. Besides a stray observation that the respondent plaintiff has made out a prima facie case, there is no discussion as to how a prima facie case was made out by the respondent plaintiff. In any case, insofar as the tests of balance of convenience and irreparable injury are concerned, there is not even a mention with regard to these in the

impugned judgment and order of the Division Bench of the High Court. In our view, the approach of the Division Bench of the High Court was totally unwarranted and uncalled for. We refrain ourselves from using any stronger words”.

(16) The plaintiff was aware about will deed and she has not taken any action at the earlier stage. The appellants have relied on the judgement in the case of *Mandli Ranganna and other Vs. T. Ramachandra and ors* reported in (2008) 11 SCC.

“Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively”.

(17) Some of the properties were sold by the legal heirs of Kamlakar. The will deed will be decided only after considering the evidence which includes the share of Sakhubai and Chandrabai. The trial court has considered the mutation entries of all the properties, how it is recorded in the

name of the appellants and considering the case laws, the trial court has granted the injunction stating that *prima facie* case is made out against the plaintiff. It is necessary to consider the evidence while deciding the will deed, which Ramasa Chaware has executed and whether, the plaintiff is having 1/6th of share in the suit properties. As it requires the evidence and number of properties are mentioned, the trial court has rightly granted the temporary injunction during the pendency of the suit. Hence, no interference at the hands of this Court is required. The appeal against order stands dismissed.

[MRS. VRUSHALI V. JOSHI, J.]