



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3809 OF 2025

1. Hussain Ahmad Abdul Rab, Aged about 61 years,
Occ.Business.
2. Mohammad Shoeb Abdul Rab, Aged about 57 years,
Occ: Business.
3. Abdul Hadi Abdul Shakur, Aged about 58 years,
Occ: Business.

R/o Patel Chowk, Shatranjipura, Akor, Tq. Akot, Dist. Akola.

PETITIONERS

VERSUS

1. Zubeda Bi Mohammad Wasim, Aged about 52 years,
Occ:Household, R/o Patwapura, Akot, Tq.Akot,
Dist. Akola.
2. Aamena Bi Abdul Sadique, Aged about 55 years,
Occ:Household, R/o Sahaфра Nagar, Behind Apni
Bakery, Walgaon Road, Amravati, Tq.&Dist. Amravati.
3. Nazem Bi Mehboob Khan, Aged about 49 years,
Occ: Household, R/o Hirapura, Infront of Darussalma
Masjid, Achalpur, Dist. Amravati.
4. Firoza Bi Abdul Sattar, Aged about 80 years,
Occ: Household, R/o Mominpura, Akola, Tq.&Dist.Akola.

RESPONDENTS

**WITH
WRIT PETITION NO. 4108 OF 2025**

Firoza Bi Abdul Sattar, Aged about 80 years, Occupation:Nil,
R/o Mominpura, Akola, Tq.&Dist.Akola. Through her Power
of Attorney holder Javed Akhtar Ansari Abdul Sattar Ansari.

PETITIONER

VERSUS

1. Hussain Ahmed Abdul Rab, Aged about 61 years,
Occ.Business.
 2. Mohammad Shoeb Abdul Rab, Aged about 58 years,
Occ: Business.
- Nos.1 and 2 are R/o Bagwanpura, Akot, Tq. Akot,Dist.Akola.
3. Abdul Hadi Abdul Shakur, Aged about 58 years,
Occ: Business, R/o Patel Chowk, Shatranjipura,
Akot, Tq. Akot, Dist. Akola.
 4. Aamena Bi Abdul Sadique, Aged about 55 years,
Occ:Household, R/o Sahaфра Nagar, Behind Apni
Bakery, Walgaon Road, Amravati, Tq.&Dist. Amravati.

5. Nazema Bi Mehboob Khan, Aged about 49 years,
Occ: Household, R/o Hirapura, Infront of Darussalma
Masjid, Achalpur, Dist. Amravati.
6. Zubeda Bi Mohammad Wasim, Aged about 52 years,
Occ:Household, R/o Patwapura, Akot, Tq. Akot,
Dist. Akola.

RESPONDENTS

Shri V.B. Bhise, counsel for the petitioners in Writ Petition No.3809 of 2025 and for respondent nos.1 to 3 in Writ Petition No.4108 of 2025.

Shri V.G. Lohia, counsel for the petitioner in Writ Petition No.4108 of 2025 and for respondent no.4 in Writ Petition No.3809 of 2025.

Mrs.Darshana K.Anandani, counsel for the respondent no.1 in Writ Petition no.3809 of 2025 and for respondent no.6 in Writ Petition No.4108 of 2025.

Shri Naval R. Shiralkar, counsel for the respondent nos.2 and 3 in Writ Petition No.3809 of 2025 and for respondent nos.4 and 5 in Writ Petition No.4108 of 2025.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : NOVEMBER 10, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the counsel for the parties.

2. By these petitions, the petitioners have challenged the judgement and order dated 27.02.2025 passed by the appellate Court by which Miscellaneous Civil Appeal no.33 of 2023 is allowed and the defendant nos.1 to 6 in Regular Civil Suit no.58 of 2023 are temporarily restrained from alienating the suit property till conclusion of the trial of the said civil suit.

3. The petitioners in Writ Petition no.3809 of 2025 are the original defendant nos.1 to 3 in Regular Civil Suit no.58 of 2023 and the petitioner in Writ Petition no.4108 of 2025 is original defendant no.6 in the said civil suit. Since the controversy involved in both the petitions is with respect to a challenge to the same judgement and order passed by the appellate Court and since the arguments of the parties are the same, both the writ petitions are being decided by this common judgment.

4. For the sake of convenience, facts of Writ Petition No.3809 of 2025 are being referred to. Regular Civil Suit no.58 of 2023 was filed by the respondent no.1 seeking declaration, partition, separate possession and permanent injunction with respect to four suit properties including agricultural lands and plots described in the plaint. Along with the suit, the plaintiff has also filed a separate application for grant of temporary injunction to restrain the defendants from alienating or creating any third party interest in the suit properties. This application came to be rejected by the order dated 05.10.2023. Feeling aggrieved by this order, the respondent no.1-original plaintiff filed Miscellaneous Civil Appeal no.33 of 2023 before District Judge-2, Akot seeking temporary injunction to restrain the original defendants from alienating the suit property and creating any kind of third party interest during pendency of the civil suit. The Court of District Judge-2, Akot allowed the said appeal by the judgement and order dated 27.02.2025 and the defendant nos.1 to 6 are ordered to be temporarily restrained from alienating, transferring or creating any third party interest or charge over the suit properties as described in paragraphs 1-A to 1-D of the plaint in Regular Civil Suit no.58 of 2023 till conclusion of the trial of the said suit. The petitioners have challenged this judgement and order by way of the instant writ petition.

5. Shri. V.B. Bhise, counsel for the petitioners in Writ Petition no.3809 of 2025 and Shri. V.G. Lohia, counsel for the petitioner in Writ Petition no.4108 of 2025 primarily submitted that the appellate Court has reversed the order of the trial Court which had refused to exercise discretion in favour of the plaintiff without recording any reasons to differ with the discretionary order. It is submitted by learned counsel Shri V.G. Lohia that

the suit property in Regular Civil Suit no.58 of 2023 is admeasuring 1 Hectare 9 Are as stated in paragraph A of the description of the suit property and the petitioner i.e. defendant no.6 in the suit is the owner of remaining portion admeasuring 1 Hectare 9 Are from the said property. It is, therefore, submitted that the suit is with respect to the land admeasuring only 1 Hectare 9 Are and there is no question to interfere with the rights of the defendant no.6, who is independently owner of half portion of the suit property. It is further submitted that after considering the factual aspects involved in the suit, the trial Court has refused temporary injunction and this discretionary order needed no interference by the appellate Court. By relying upon the judgment of the Full Bench in *UTO Nederland B.V. & Another Versus Tilaknagar Industries Ltd.* [AIR 2025 Bombay 193] and the judgment of the Hon'ble Supreme Court in *Wander Ltd. & Another Versus Antox India P. Ltd.* [1990 (Supp) SCC 727], it is submitted that the appellate Court ought not to have interfered with the order of the trial Court refusing temporary injunction. It is submitted that the appellate Court has not at all discussed the most crucial aspect about any perversity or arbitrariness on the part of the trial Court while refusing the temporary injunction.

6. Per Contra, Mrs.D.K. Anandani, counsel for the respondent no.1 vehemently opposed the petitions. She submitted that the plaintiff's suit is for declaration, partition and separate position alongwith permanent injunction with respect to several properties as elaborately mentioned in the plaint. Considering the nature of the controversy involved being partition and separate possession, it was imperative to protect the suit properties during pendency of the civil suit. It is submitted that the suit

property mentioned at Serial Number 1A is a joint property and in absence of any partition by meets and bounds, the defendant no.6 cannot claim to have any independent right to alienate the property. She therefore submitted that the order of temporary injunction to restrain the petitioners—original defendant nos.1 to 6 from alienating, transferring or creating third party interest over the suit properties was very much warranted in the facts of the instant case. The learned counsel for the respondent no.1, thus, sought dismissal of both the writ petitions.

7. While dealing with the controversy, it has to be seen that the suit is for declaration, partition and permanent injunction with respect to several properties mentioned in the plant. Although the defendant no.6 claims to have purchased undivided portion admeasuring 1 Hectare 9 Are from the suit property, the fact remains that half undivided portion of the suit property is the subject matter of the suit. Until and unless the partition is effected by the persons having right and title over the suit property, the defendant no.6 cannot claim to have an independent right to alienate the suit property. Further, there are contesting issues with respect to the document of will dated 11.09.2015 and in the event the suit is finally decreed, the plaintiff will be deprived of her right with respect to the suit property, if the third party interest is allowed to be created. Apart from this, in the event the parties are allowed to alienate or create third party interest during pendency of the suit, the same will create multiplicity of the proceedings.

8. A perusal of the judgment passed by the appellate Court shows that due consideration is given to the relevant issues involved in the

controversy and by recording elaborate reasons in paragraphs 14 to 20, the appellate Court has exercised discretion to grant temporary injunction. A perusal of the reasoning of the appellate Court shows that all the relevant aspects for grant of temporary injunction are considered and even though there is no elaborate discussion about any perversity of the order passed by the trial Court, I am of the firm view that there is no perversity in the approach adopted by the appellate Court. It is trite law that the appellate Court is entitled to decide the issues independently and it cannot be said that in no case the appellate Court could interfere with the discretionary order passed by the trial Court. As such, the judgment relied upon by the learned counsel for the petitioners in *UTO Nederland B.V. & Another* (supra) and the judgment of the Hon'ble Supreme Court in *Wander Ltd. & Another* (supra) is of no assistance to the petitioners. The learned counsel for the petitioners by placing reliance on the judgment of the Co-ordinate Bench of this Court in *Kachhi Properties, Satara Versus Ganpatrao Shankarrao Kada & Others* [2010(5) Mh.L.J. 903], also submitted that adequate protection is provided to the parties under Section 52 of the Transfer of Property Act, 1882 and the temporary injunction was not required to be granted. The position of law with respect to protection under Section 52 of the Act of 1882 as elaborately discussed in the said judgment is not disputed. However, in the peculiar facts of the case in hand and considering the nature of reliefs claimed in the suit, allowing the parties to alienate the suit properties during the pendency of the civil suit would cause serious prejudice to the rights of the plaintiff.

9. Having regard to the overall factual and legal aspects involved in both the petitions, I am of the firm view that no indulgence under Article 227 of the Constitution of India is warranted with the judgment and order passed by the appellate Court. Needless to state, the observations recorded by the appellate Court and this Court are while deciding the application for temporary injunction and the issues raised by the parties in the civil suit will have to be decided on the basis of evidence and therefore the trial Court may not be influenced by the observations recorded herein.

10. In view of the above discussion, both the writ petitions are dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

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