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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 50 OF 2025**

Suhasini Jaypal Kamate
VERSUS
Babutai Appasaheb Kabade
(deceased)
Anilkumar Appaso Kabade And Others

...Appellant

...Respondents

WITH
INTERIM APPLICATION NO. 782 OF 2025
IN
APPEAL FROM ORDER NO. 50 OF 2025

Suhasini Jaypal Kamate
IN THE MATTER OF
Suhasini Jaypal Kamate
VERSUS
Babutai Appasaheb Kabade
(deceased)
Anilkumar Appaso Kabade And Others

...Applicant

...Respondents

Adv. Tejpal S. Ingale a/w Aditya Patil, and Sauraph Patil for the Appellant.
Mr. Yuvraj Narvankar a/w Rahul Patil and Omkar Whagule for Respondent
Nos. 4 and 5.
Adv. Umesh H. Pawar for Respondent Nos. 3, 6, 7 and 8.

CORAM : M. M. SATHAYE, J.
DATE : 23rd FEBRUARY 2026.

P.C.

1. Heard learned counsel for the parties. Perused the record.
2. By this Appeal from Order, the unsuccessful Plaintiff is challenging an order dated 29.11.2023 passed by the Joint Civil Judge, Senior Division, Islampur below Exhibit-6 in Special Civil Suit No. 49 of

2019. By the said impugned order, the Application of the Appellant seeking interim injunction against the Respondents from creating third party interest/alienating or encumbering the suit property, is rejected.

3. Learned counsel Mr. Ingale for the Appellants submitted that the suit is filed for declaration about documents in favour of the Respondents as well as for partition of 1/8th share in the suit property. That the relationship between the parties is not disputed. That the Respondents are admittedly in possession of respective suit properties and therefore, in order to safeguard the share claimed, they must be restrained from selling, alienating or encumbering the suit property. He further pointed out that this Court by order dated 24.01.2025, has passed an ad-interim injunction restraining the Respondents from transferring, alienating or creating third party rights in the suit property.

4. Learned counsel Mr. Narvankar for Respondent Nos. 4 and 5 (from the branch of Defendant No. 2-Anilkumar) submitted that if the plaint is perused carefully, the daughter in the family is claiming partition after the properties were partitioned under a compromise decree passed in earlier suit (Regular Civil Suit No. 104/1973) after which the shares are received as absolute properties. That therefore the impugned documents are the documents under which certain properties are either bequeathed under Will or gifted and therefore, there is no *prima facie* case in favour of the Appellant. He further submitted that so far as suit property No. 1B(6) is concerned (City Survey No. 11131 at Sangli), the same is acquired by Defendant No. 2-Dr. Anilkumar from his own funds and the acquisition is of the year 2000. He submits that the document by which City Survey No. 11131 is purchased from third person, is not challenged in the suit and therefore, even *prima facie* this property cannot be put under any injunction.

5. Learned counsel Mr. Pawar for Respondent Nos. 3,6,7 and 8 (from the branch of Defendant No. 3-Suresh) submitted that said Defendants are partly supporting the Plaintiff and partly opposing and claim. That they also have share in the suit property. He submitted that such of the properties for which Defendant No. 3 and his branch members are supporting the Plaintiff, the interim injunction must be continued. He further submitted that such of suit properties which are received by Defendant Nos. 3 and 6 from Banda and Sulochana, must be kept out of injunction.

6. Having considered the rival submissions and having perused the impugned order, it appears that suit property No. 1B(6) was not subject matter of the earlier suit.

7. The ad-interim injunction has been granted by this Court without hearing the Respondents.

8. In paragraph No. 35 of the impugned order, the learned Trial Judge has considered that the Defendant No. 2 - Anilkumar is a Doctor, who has purchased the suit property and has raised loan thereon and has constructed a hospital. The Trial Judge has considered that it not Plaintiff's case that any joint family property is sold and his consideration is utilized for purchasing said property. Admittedly, the document by which Defendant No. 2 claims to have purchased suit property 1B(6) in the year 2000 from a third-party, is not challenged in the suit. Therefore, in my view, the rejection of injunction as far as suit property No. 1B(6) is concerned, does not suffer from any illegality.

9. However, so far as injunction qua other suit properties are concerned, it must be noted that since the relationship between the parties is admitted and since the suit is filed seeking declaration about documents

of June, 2018 and 1/8th share is claimed, interim injunction granted by this Court (by way of ad-interim relief) is required to be maintained to the extent of 1/8th share.

10. The suit is pending from 2019 and it is desirable that it is heard on merits in accordance with law. Therefore it is not appropriate to comment anything more about the rival contentions of the parties at this stage.

11. Hence, the **Appeal from Order and pending Civil Application are disposed of** by passing following order :

(A) During the pendency of the suit, the Respondents are restrained from creating third party interest, selling, alienating or encumbering the suit properties to the extent of 1/8th share, **except** suit property No. 1B(6) i.e. City Survey No. 11131 at Sangli.

(B) It is clarified that the suit shall be heard on its own merits, in accordance with law, without being influenced by observations made in the impugned order. Needless to mention that the observations made in this order are only *prima facie* in nature and will not come in the way of the Trial Court while deciding the suit on its own merits.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

[M. M. SATHAYE, J.]