

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9018 OF 2025

Sarojini Vijaykumar Mohite
Deceased Through Legal Heirs 4 And 5.

VERSUS

Champabai Pandurang Desai
Deceased Through Legal Heirs And Ors.

...

Mr. Sandeep Koregave, Advocate for Petitioner

Mr. Satyajeet Mirajkar, Advocate for Respondent No.1.

...

CORAM : SACHIN S. DESHMUKH, J.
DATE : 29th APRIL, 2026.

P. C. :

1. The Petitioners have raised an exception to the judgment and order dated 21.03.2024 rendered by the learned District and Additional Sessions Judge-1, Sangli, dismissing Misc. Civil Appeal No.120 of 2020 presented by the Petitioners confirming the order dated 14.07.2020 below Exhibit-5 rendered by the learned 2nd Joint Civil Judge, Junior Division, Miraj, in Regular Civil Suit No.165 of 2018 under Order XXXIX Rules 1 and 2 of the CPC.

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2. The Petitioners are the original defendants Nos.11 to 15, while the Respondent No.1 is original Plaintiff and Respondent No.2 to 30 are the other original defendants and are represented by their respective legal heirs. Hereinafter the parties shall be referred to by their original status in the suit.

3. The Plaintiff presented Regular Civil Suit No.165 of 2018 against the defendants seeking partition, possession and declaration and perpetual injunction before the 2nd Joint Civil Judge Junior Division, Miraj. In the interregnum, the Plaintiff presented an application under Order XXXIX, Rule 1, 2 of the Code of Civil Procedure (CPC) below Exhibit-5 seeking interim injunction against the defendants, came to be partly allowed vide order dated 14.07.2022, rejecting the prayer against Defendant Nos.11 to 16 to obstruct the joint pathway while granting interim injunction by restraining Defendant Nos.11 to 16 from carrying out Sale, Lease, Gift, Mortgage or other way of transfer in relation to the suit property.

4. Aggrieved by the same, the Defendants filed Misc. Civil Appeal No.120 of 2020 before the learned District and Additional Judge-1, Sangli, which came to be dismissed by the order under challenge.

5. In the backdrop of the aforesaid facts, the learned counsel for the Petitioners submits that the order under challenge is unsustainable in law. Both the Courts below failed to appreciate that the Petitioners being legal heirs, are also coparceners of the suit property and cannot be restrained from enjoying their rights. The Plaintiff has failed to produce any document pertaining to the legal heirship. As such, prayed to allow the Petition.

6. Learned counsel for Respondent No.1 has supported the order under challenge and prayed to reject the Petition.

7. Having heard the submissions from both the sides and upon perusal of the record *prima facie* indicates that the suit is for partition and the parties are coparceners. The contention regarding the legal heirs of the deceased is a matter of fact and can be dealt in detail during the trial. While granting interim relief, this Court ought to consider the pleadings and ascertain a *prima facie* case without going into the merits of the same. Considering the material on record, both the Courts below have conclusively recorded a finding regarding the heirship of the plaintiff.

8. The issue while dealing with this petition under Article 227 of the Constitution of India before this Court is whether the Courts

below failed to uphold the triple test while granting interim injunction.

9. Thus, applying the aforesaid principles of triple test i.e. prima facie case, balance of convenience and the irreparable loss, the trial Court has exercised the discretion in favour of the Plaintiff while allowing the application for injunction.

10. The cardinal principles governing the grant of injunctions are dealt in detail in the verdict of **Dalpat Kumar And Anr. vs Prahlad Singh And Ors. AIR1993 SC 276 B**, wherein the apex Court has held as follows:

“4. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.”.

“5...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 which 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.”

11. It is a settled principle of law that where the Courts below have concurrently exercised discretion in favour of the Plaintiff, this Court would be loath to interfere, particularly in view of the judgment of the *Hon’ble Apex Court in Wander Limited And Another vs. Antox India P. Ltd. 1990 (Supp) SCC 727*, in particular, para 13 and 14 thereon, which reads as under :

“13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* :

... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

12. In view of the aforesaid precedents and upon perusal of the orders under challenge, it is clear that there are concurrent findings in favour of the respondent No.1/plaintiff while exercising the discretion in favour of the Plaintiff and the same is endorsed by the first appellate Court. Thus, no exceptional circumstance or irreparable loss is demonstrated even before this Court by the Petitioners to warrant interference in the concurrent findings.

13. In view of the aforesaid discussions, the petition sans merit. Resultantly, the same stands dismissed.

[SACHIN S. DESHMUKH, J.]