

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

WRIT PETITION NO. 13180 OF 2025

Ramadevi Maruti Kamble And Others

VERSUS

Chetan Dasharath Kamble And Anr

...

Mr. Poras Shah, Advocate for Petitioners.

Mr. Datta Pawar a/w Mr. Abhijeet B. Desai, Advocate for  
Respondents

....

CORAM : SACHIN S. DESHMUKH, J.

DATE : 8<sup>th</sup> APRIL, 2026

P. C. :

1. The present Petition assails the order dated 15.11.2025 rendered by the District Judge-2, Gadhinglaj, in Misc. Civil Appeal No.40 of 2025, whereby the order dated 03.10.2025 passed by the trial Court below Exhibit-5 in Regular Civil Suit (R.C.S.) No. 132 of 2025 has been confirmed.
2. The Petitioners are the original defendants in the suit while the respondents are the plaintiffs. The parties shall hereafter be referred to by their original status in the suit.
3. The plaintiffs had instituted the R.C.S. No.132 of 2025 before the Civil Judge Junior Division, Gadhinglaj seeking partition of the ancestral property under Section 4 of the Specific Reliefs Act. In the interregnum, the plaintiffs had preferred an application seeking interim injunction below Exhibit-5 against the defendants.

4. The learned trial Court partly allowed the said application vide order dated 03.10.2025, thereby temporarily restraining the defendants from creating any disturbance or obstructing the peaceful joint possession of the plaintiffs in the suit property. The defendants were also further restrained from making any construction or creating any encumbrance over the suit property.

5. Aggrieved by the same, the defendants preferred Misc. Civil Appeal No.40 of 2025 before the District Court, Kolhapur, which came to be dismissed with costs by the order under challenge. Resultantly, the defendants are before this Court under Article 227 of the Constitution of India.

6. Learned counsel for the Petitioners/defendants has submitted that the order under challenge is unsustainable in law. Both the Courts below have failed to appreciate that a plot No.17 is also a joint family property. However, the plaintiffs have failed to disclose about the same in the suit. As such, in the absence of disclosure of all the joint family properties, the suit for partition is not maintainable. There is non-joinder of the necessary parties and disputed the relationships with the plaintiffs. Hence, prayed to allow the petition.

7. Learned counsel for the respondents have supported the orders under challenge and in view of the concurrent findings, prayed to dismiss the Petition.

8. Having heard the submission from both the litigating sides, it is evident that the primary issue raised by the defendants is regarding the relation of the plaintiffs with defendants disputing the lineage and ancestry. Further, contention is raised regarding the suppression of an alleged plot by the plaintiffs. Prima facie, all these contentions go to the root of the maintainability of the suit which can be considered at an appropriate stage by the concerned Court.

9. 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 for granting interim 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.”

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.

11. It is a settled principle of law that where the Trial Court and the Courts below have concurrently exercised discretion in favour of the Plaintiff, this Court would be cautious 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 respondents/plaintiffs 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.)