



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5023 OF 2025

1. Sujata Rajkumar Patil
Age 52 Years, Occu. Adv.
R/o. 536-2, Vastibhag Area,
Uplavi, Tal. Tasgaon, Dist. Sangli.
2. Sunita Yeshwant More-Patil,
Age 49 years, Occu. Household,
R/o. B-1, Room No. 8,
S.G. Barvenagar, Municipal
Colony, Near Muktai Hospital,
Bhatwadi, Ghatkopar West,
Mumbai – 400 084.
3. Sangita Sukhdev Hasabe,
Deceased
Building No. 140,
Room No. 47/140, Mother Dairy
Road, Nehrunagar, Kurla (E), Mumbai.

..Petitioners

Versus

1. Sunil Subrao Hasabe,
Age 50 years, Occu. Agri.
2. Sanjay Subrao Hasabe,
Age 52 Years, Occu. Agri,
3. Subrao Atmaram Hasabe,
Age 84 years, Occu. Agri
All R/o Hivare, Tal. Khanapur,
Dist. Sangli.
4. Anil Pandurang Kirdat,
Age 50 Years, Occu Agri,
R/o. Dhavaleshwar, Tal. Khanapur,

Dist. Sangli.

...Respondents

Mr. Balwant Salunkhe, for the Petitioner.

Mr. Ajinkya Patil, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 7th MAY 2025

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The challenge in this Petition is to a Judgment and Order dated 20th February 2025 passed by the learned District Judge in MCA No. 330 of 2024, whereby the Appeal preferred by Respondent Nos. 1 to 3, the original Plaintiffs, came to be allowed, by setting aside an order passed by the trial Court in RCS No. 102 of 2024, and thereby the Defendant Nos. 1 to 4 have been restrained from disturbing the physical possession of the Plaintiffs over the suit property consisting of Gat No. 63 admeasuring 2 H 9 R situated at village Hivare, Taluka Khanapur, Dist. Sangli ("the suit property") and also creating any third party interest therein or any encumbrance or charge thereon till the final decision of the Suit, without following the due process of law.

3. There is not much controversy over the jural relationship between the parties. Plaintiff No.3 has purchased one half undivided interest in the land bearing Gat No. 63 admeasuring 2H 9R under a Registered Sale dated 14th March 1984. By another Registered Sale Deed of an

even date, late Sukhdeo, the brother of Plaintiff No.3 and predecessor-in-title of Defendant Nos. 2 to 4, also purchased the balance one half undivided portion of the suit property.

4. The Plaintiffs instituted the Suit with the assertion that the predecessor-in-title of the Defendant Nos. 2 to 4 was not in possession and cultivation of his one half portion of the Suit land. The Plaintiff No.3 has been cultivating the Suit land.

5. Under a registered Gift Deed dated 23rd March 2023. the Plaintiff No. 3 had gifted his one half undivided interest in the Suit land to Plaintiff Nos. 1 and 2, his sons.

6. Defendant Nos. 2 to 4, after the demise of late Sukhdev Hasabe surreptitiously got their names mutated to the Record of Rights of the Suit land.

7. On the strength of the said mutation, Defendant Nos. 2 to 4 have executed a Sale Deed of land admeasuring 40R out of the Suit land in favour of Defendant No.1. In fact, Defendant Nos. 2 to 4 were never in possession of the said portion of the Suit land nor they were owners thereof. On the strength of the said instrument, the Defendants started to cause obstruction to the possession and cultivation of the Plaintiffs over the Suit land. Hence, the Suit for declaration and injunction.

8. In the said Suit, the Plaintiffs filed an Application for temporary injunction seeking to restrain the Defendant Nos. 1 to 4 from causing

obstruction to the possession and cultivation of the Plaintiffs over the entire Suit land.

9. By an order dated 4th October 2024, the learned Civil Judge, was persuaded to reject the Application for temporary injunction observing, *inter alia*, that indisputably the Plaintiff No. 3 and late Sukhdev Hasabe, the predecessor-in-title of Defendant Nos. 2 to 4, had purchased one half undivided interest in the Suit land under the two separate Sale Deeds, there was no material to show as to how the said one half undivided portion of late Sukhdeo came in the possession of the Plaintiff No.3. Though the Plaintiffs claimed interest over one half portion of the Suit land, they were seeking to restrain the Defendants from causing obstruction to the possession and enjoyment of the entire Suit land. Thus, no *prima facie* case was made out.

10. Being aggrieved, the Plaintiffs preferred an Appeal before the learned District Judge. By the impugned order, the learned District Judge was persuaded to set aside the order passed by the trial Court and instead granted injunction to restrain the Defendant Nos. 1 to 4 in the terms, indicated above. The learned District Judge was of the view that the Plaintiffs have produced sufficient material to show that they were in possession of the entire Suit land. The trial Court committed an error in appreciating the material on record. Since the Defendant No.1 was a purchaser of a portion of land out of the undivided interest of

Defendant Nos. 2 to 4 in the Suit land. He was required to workout his remedies to get possession of the said portion.

11. Being aggrieved, the Defendant nos. 2 to 4 have invoked the Writ jurisdiction of this Court.

12. Heard the learned Counsel for the parties. With the assistance of the learned Counsel for the parties, I have perused the material on record and the documents which were tendered for the perusal of the Court.

13. The learned Counsel for the Petitioners would urge that that the learned District Judge committed an error in interfering with a well-reasoned order passed by the trial Court. In the face of indisputable position that Plaintiff No.3 had acquired only one half undivided interest in the Suit land, like the predecessor-in-title of Defendant Nos. 2 to 4, the trial Court had correctly exercised the discretion not to grant injunction. The said order cannot be said to be so perverse or unreasonable as to warrant interference by the learned District Judge in exercise of limited appellate jurisdiction.

14. Taking the Court through the documents on record and especially the copy of the Gift Deed which indicates that Plaintiff No.3 professed to gift away his one half interest in the Suit land by specifically describing the said distinct portion with the four boundaries, it was urged that the learned District Judge could not have restrained the

Defendant Nos. 1 to 4 from causing obstruction to the possession and enjoyment of the Plaintiffs over the entire Suit land. At any rate, if Defendant Nos. 2 to 4, who are the co-owners, could not have been restrained from entering into the Suit land, much less, from creating any third party rights therein as they were co-owners of the Suit land.

15. In opposition to this, the learned Counsel for Respondents-Plaintiffs would submit that there is overwhelming material on record to show that the Plaintiffs have been in possession and cultivation of the entire Suit land. Therefore, the learned District Judge was justified in granting the injunction. Laying emphasis on the fact that the learned District Judge has granted the injunction not to disturb the possession or create third party rights in the Suit land without following due process of law, it was submitted that the Defendants can invoke appropriate remedies to enforce their rights.

16. The learned Counsel further submitted that, it is not an immutable rule of law that injunction cannot be granted against the co-owners. To buttress this submission, the learned Counsel for the Respondents placed reliance on a decision of Kerala High Court in the case of **J. Rajendran Pillai Vs B. Bhasi and Ors.**¹ In the said case, a learned Single Judge of the Kerala High Court has culled out the circumstances in which injunction can be granted against a co-owner to

1 2022 SCC OnLine Ker 363.

protect one co-owner's rights from another. Observations in paragraph 20 of the said Judgment are material and, hence, extracted below.

“20.

(i) If one co-owner prevents the other from enjoying the common property, the affected co-owner can certainly approach the Court for appropriate relief including prohibitory injunction to protect his co-ownership right so that one co-owner can enjoy his right over the common property without hindrance to the other co-owner/co-owners.

(ii) one co-owner out of the many has no right to build on which is joint property, without the consent of others, notwithstanding that, the erection of such building may cause no direct loss to other joint owners or its stature can be termed as ‘improvement’, since on separation of sharers, one co-owner's right to enjoy his share shall not be hassled by such building.

(iii) a co-owner cannot be permitted to erect building in the common property without the consent of other co-owners, since one co-owner on separation of his share has every right to enjoy his property even as barren land for having gentle breeze or otherwise without a building therein.

(iv) one co-owner is not entitled to an injunction restraining another co-owner from exceeding his rights in the common property, absultely and simply, because he is a co-owner.

(v) before an injunction can be issued, the plaintiff has to establish that he would sustain, by the act he complains, which materially would affect his position as co-owner or his enjoyment or accustomed user of the joint

property would be inconvenienced or interfered with by the said act of another co-owner.

(vi) What relief to be granted in such Suits shall be decided by the court having jurisdiction guided by consideration of justice, equity and good conscience, after appraisal of the attending circumstances, the nature of injury caused and on the weighing the balance of convenience.

(vii) If one co-owner feels or apprehends obstruction in the matter of enjoyment of his co-ownership right, he can very well institute a Suit restraining the other co-owner from obstructing the enjoyment within the sphere of co-ownership right, without disturbing the similar right of the other co-owner/co-owners, even without opting for partition.”

17. I have given anxious consideration to the submissions canvassed across the Bar. It is incontrovertible that Plaintiff No.3 and late Sukhdev Hasabe, the predecessor-in-title of Defendant Nos. 2 to 4, had purchased the one half undivided interest in the Suit land, under two distinct Sale Deeds. In the sense, the Plaintiff No. 3 and late Sukhdev Hasabe were the co-owners of the Suit land. Therefore, the principle of unity of possession and community of interest comes into play and each of the co-owners would have a right to use and occupy every infinitesimal portion of the entire Suit land.

18. It was the case of the Plaintiffs that, Plaintiffs were in possession and cultivation of the entire Suit land. The veracity of this assertion was

required to be tested in light of the conduct of the Plaintiffs which appears from the record. The manner in which the Plaintiffs especially, the Plaintiff No.3, reckoned his right over the Suit land, deserves appreciation.

19. By the Gift Deed, Plaintiff No. 3 professed to gift away his one half undivided interest in the Suit land, quantified to 1H 3.50 R in favour of Plaintiff Nos. 1 and 2. In addition to specifying 1 H 3.50 R area of the land which would fall to the one half share of the Plaintiff No.3, in the said Gift Deed, an endeavour was made to demarcate the said one-half portion of the Suit land by providing the four boundaries thereof. It was, inter alia, recorded that on the southern side of the said land, which was the subject matter of gift, there was balance land of the co-owner.

20. Once it is conceded that late Sukhdev Hasabe was the co-owner of the Suit land, incidence of co-ownership of the late Sukhdev Hasabe could not have been contested unless a clear case of ouster was made out. From this stand of point, the trial Court was justified in recording a finding that there was no material to show as to how Plaintiff No.3 came to acquire the one half interest of the late Sukhdev Hasabe in the Suit land. Having asserted ownership over one half portion of the Suit land, on first principles, the Plaintiffs could not have sought injunction in respect of the entire Suit land and that too against Defendant Nos. 2

to 4, who were the successor in interest of the late Sukhdev Hasabe. This aspect was completely lost sight of by the learned District Judge.

21. It is also imperative to note that an Appeal against an order passed by the trial Court granting or refusing injunction under Order XXXIV of the Code, is an Appeal of principle. It is not open for the Appellate Court to re-appreciate the material unless the order of the trial Court can be said to be perverse or in violation of the settled principles of law. Perversity in the order of the trial Court may arise on account of non-consideration of the relevant material or consideration of a material or circumstance which does not bear upon the determination of the controversy.

22. In the case at hand, especially having regard to the instrument of gift executed by the Plaintiff No.3 in favour of Plaintiff Nos. 1 and 2, it would be difficult to draw an inference that the Plaintiffs had been in possession and cultivation of the entire suit land.

23. The only aspect which warrants consideration is the status of Defendant No.1. Evidently, Defendant No.1 is the purchaser of a portion of land out of the undivided interest of Defendant Nos. 2 to 4. Ordinarily, the Defendant No.1 would be required to workout his remedies by instituting a Suit for partition and separate possession of his share. In the case at hand, however, by the own showing of the Plaintiffs, the area, out of the said land, which falls to the share of the

Plaintiff No.3, was clearly demarcated in the Gift Deed, under which the Plaintiff Nos. 1 and 2 claimed title over the said portion of the Suit land.

24. In this view of the matter, the prayer for injunction over the entire Suit land was clearly untenable. Nor can Defendant Nos. 2 to 4 be restrained from exercising their incidence of ownership over the balance portion of their undivided interest in the Suit land.

25. In the totality of the circumstance, in my considered view, the order of injunction passed by the learned District Judge is required to be modified and its effect restricted to the portion of the land which is shown in the Gift Deed.

26. Hence the following order;

(i) The Writ Petition stands partly allowed.

(ii) The impugned order stands modified as under:

(a) Defendant Nos. 1 to 4 are restrained from causing obstruction to the possession and enjoyment of the Plaintiff over the land admeasuring 1H 3.50 R, out of the suit land, bound by the boundaries shown in the Gift Deed i.e.

Towards East : Land of Kumbhar

Towards South : Land of co-owners

(Defendant Nos.2 to 4)

Towards West : Land of Subhash Laxman

Hasbe

Towards North : Vijapur – Guhagar Road

(b) Defendant Nos. 1 to 4 are also restrained from creating any third party interest in the afore-described portion of the Suit land.

Petition disposed.

[N. J. JAMADAR, J.]