

HARSHADA H. SAWANT  
(P.A.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**APPEAL FROM ORDER NO. 657 OF 2025**  
**WITH**  
**INTERIM APPLICATION NO. 1503 OF 2026**  
**IN**  
**APPEAL FROM ORDER NO. 657 OF 2025**

Nansaheb Shankarrao Gaikwad

Appellant  
(Orig. Defendant  
.. No.1)

**Versus**

Mast. Sayajirao Ganesh Gaikwad and Ors.

.. Respondents

- .....
- Dr. Ranjit Thorat a/w Mr. Surel Shah, Senior Advocates a/w. Mr. Sandeep S. Salunkhe for Appellant.
  - Mr. Prasad Dhakephalkar, Senior Advocate appearing through Video Conferencing a/w. Mr. Shriram Kulkarni, Mr. Gaurav Ugale, Mr. Ajit Inkikar and Mr. Siddharth Jagushte, Advocates for Respondent Nos. 1 and 2 (Orig. Plaintiffs).
  - Mr. Pradeep Thorat a/w. Ms. Aditi Naikare, Advocates for Respondent Nos. 3 to 6.
  - Mr. Paras Pawar, Advocate i/by P. B. Gujar for Respondent No.17.
  - None for Respondent Nos. 7 to 16, 18 and 19.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : JUNE 8, 2026.**

**P.C.:**

**1.** Heard Dr. Thorat alongwith Mr. Shah, learned Senior Advocates for Defendant No.1 (Appellant), Mr. Dhakepalkar, learned Senior Advocate appearing through Video Conferencing alongwith Mr. Kulkarni, Advocates for Plaintiffs (Respondent Nos.1 and 2), Mr. Thorat learned Advocate for Defendant Nos. 2 to 5 (Respondent Nos. 3 to 6) and Mr. Pawar, learned Advocate for Respondent No.17. Parties will be referred to as Plaintiffs and Defendants as described before the

Trial Court.

**2.** The present Appeal from Order assails order dated 09.12.2024 passed below Exhibit – 5 by Trial Court in Special Civil Suit No.132 of 2023. Suit is filed by Mrs. M. G. Gaikwad being Plaintiff No.2 as mother and natural guardian of Mast. Sayajirao G. Gaikwad - Plaintiff No.1 (four and half years old minor) for and on his behalf for seeking Partition and specifically 1/15<sup>th</sup> undivided share in Suit properties described in paragraph Nos. 1(A) to 1(F) of Suit Plaint, 1/5<sup>th</sup> undivided share in Suit properties described in paragraph Nos. 1(H) and 1(I) of Suit Plaint and mandatory injunction. Impugned Order dated 09.12.2024 is appended below Exhibit ‘D’ at page no. 106(A) to 118 of the Appeal from Order No. 657 of 2025.

**3.** By consent of parties Appeal from Order No. 657 of 2025 is heard and decided finally. The brief facts in element for deciding this Appeal from Order are as follows :-

**3.1.** Plaintiff No.2 is mother of Plaintiff No.1. Plaintiff No.1 is four and half years old. Plaintiff No.2 is wife of Defendant No.3. Defendant Nos. 1 and 2 are father-in-law and mother-in-law of Plaintiff No.2. Defendant Nos. 4 and 5 are sisters of Defendant No.3 and married daughters of Defendant Nos. 1 and 2. Defendant Nos. 7 to 10 have undivided share in the Suit properties. Defendant Nos. 16 to 18 are partnership firms / companies established from Joint Family Funds

of Defendant Nos. 1 to 10. Parties claim to be descendants and successors-in-title one Mr. Shripati Yamaji Gaikwad who expired on 23.11.1950 and left behind the Suit properties which according to Plaintiffs are ancestral properties. Defendant Nos. 11 and 12 and mother of Defendant Nos. 13 to 15 are sisters of Defendant No.1 who have executed duly registered Release Deed dated 13.03.2003 relinquishing their right and entitlement in the Suit properties situated at Village - Aundh, Taluka - Haveli, District - Pune. Pursuant to this Release Deed, separate registered Partition Deed dated 13.03.2003 is executed and registered. Thereafter, there has been Partition of ancestral properties between Defendant Nos. 1 and 7.

**3.2.** According to Plaintiffs, properties described in paragraph no. 1(A) of Suit Plaint are ancestral properties whereas properties described in paragraph Nos. 1(B) to 1(F) of Suit Plaint are properties purchased from Joint Family Income of ancestral properties belonging to Defendant Nos. 1 to 10 and Plaintiff No.1. Plaintiff claim that apart from immovable properties there are substantial investments in Banks, particulars of which are not available with them.

**3.3.** Plaintiff No.2 married Defendant No.3 on 19.04.2017 and Plaintiff No.1 was born in wedlock on 29.05.2018. Thus, according to Plaintiffs, Plaintiff No.1 is having undivided share in subject properties by birth.

**3.4.** The cause of action for filing present Suit proceeding has arisen because Defendant Nos.1 to 3 have deprived the Plaintiffs of their legitimate share in the Suit properties. According to Plaintiffs all Suit properties are either ancestral properties and / or properties purchased or standing in the names of Defendant Nos.1 to 10 and 16 to 18 as joint family properties from joint family income and Plaintiff No.1 being the main coparcener has undivided right, title and interest in all Suit properties by birth. Plaintiffs apprehend and claim that all income generated from Suit properties is collected by Defendant Nos.1 and 3 and they with intention to deprive Plaintiff No.1 of his legitimate share alongwith Defendant Nos.16 to 18 are creating third party interest in Suit properties and attempting to change the nature of the Suit properties and therefore the present Suit for partition is filed.

**3.5.** *PER CONTRA*, Defendants' preliminary case as emanating from their written statement as argued and placed before me is to the contrary. All three principal contesting Defendants have filed their Written Statements below Exhibits – 148, 178 and 150 respectively wherein they have denied the Suit claim that the Suit properties are ancestral properties. Defendant No.1 in particular has stated that only some of the Suit properties are inherited by Defendant Nos.1, 7, 11, 12 and Smt. Lata Pawar from their father who expired on 06.12.1958.

**3.6.** However specific case of Defendant No.1 is that substantial

Suit properties as described in the Suit Complaint do not fall within the purview of Suit properties rather most of them are self acquired properties by Defendant No.1 from his own source of income and acquisition since the year 1968 onwards. It is Defendant No.1's specific case that he availed borrowings from Bank and financial institutions and purchased several Suit properties and developed schemes and projects thereon over the past five decades from his own source of income, businesses and ventures which do not have any nexus with ancestral properties derived from his father Mr. Shankarrao Shripati Gaikwad. Sum and substance of Defendant No.1's defence is that most of the Suit properties which are lucrative income generating properties are his self acquired properties including movables and therefore the Suit claim is denied.

**3.7.** Similarly Defendant Nos.4 and 5 have filed their say below Exhibit-202 contending that Suit properties which are owned and possessed by each of the Defendants belong to them in their individual capacity and Plaintiffs' claim is denied. Defendant Nos.7 to 15 have denied Plaintiffs' claim for having held and jointly owned the Suit properties described in paragraph Nos.1(A) to 1(F) of Suit Complaint. Defendant Nos.16 and 17 have pleaded non-joinder on the premise that they have not been a coparcener or member of the family and have been wrongly joined in the Suit Complaint.

**3.8.** On the aforesaid rival contentions, learned Advocates have made their submissions. However, before I advert to the submissions and adjudication, there is one significant development which has occurred with regard to Defendant Nos.1 to 4 who are in judicial custody which needs to be noted since it has an important consequence in the present case.

**3.9.** According to Plaintiffs, one of the significant income generating property is an IT Park called NSG IT Park which was constructed and developed by Defendant No.1 from Joint Family funds. According to Plaintiffs, Defendant No.1 leased out tenements / commercial premises to various companies / third parties in the said IT Park and out of the said income derived, purchased various further properties in the name of some of the Defendants which therefore qualify to be joint family properties.

**3.10.** It is averred in the Suit Plaint that Plaintiff No.2 filed two First Information Reports (for short '**FIR**') bearing No. 293 of 2021 against Defendant Nos. 1 to 6 under Section 498-A and FIR No. 466 of 2021 against Defendant Nos.1 and 3 under Sections 377, 307, 323, 324, 504, 506 and 109 of Indian Penal Code, 1860. It is averred that Defendant Nos. 1 to 6 are arrested in two crimes i.e. 29/2022 and 551/2022 registered against them under provisions of Maharashtra Control of Organized Crime Act, 1999 (for short '**MCOCA**') and are in

judicial custody as on date. The same position continues till today as informed to the Court. Plaintiff No.2 has also filed proceedings under Protection Of Women From Domestic Violence Act, 2005, against Defendant Nos. 1 to 5 which are pending.

**3.11.** Cause of Action in the Suit Plaintiff for the principal interim relief is that though Defendant Nos. 1 to 4 are presently in judicial custody, they are attempting to create third party interest in the Suit properties with the intention to deprive Plaintiffs (namely Plaintiff No.1) of their legitimate share in the Suit properties and are also trying to siphon off funds of joint family. Valuation of the Suit properties in Suit Plaintiff is Rs.1000 crore and Plaintiffs claim 1/15<sup>th</sup> undivided share in Suit properties described in paragraph Nos. 1(A) to 1(F) and 1/5<sup>th</sup> undivided share in Suit properties described in paragraph Nos. 1(H) and 1(I) for and on behalf of Plaintiff No.1.

**3.12.** Suit is filed on 03.01.2023. Impugned order below Exhibit '5' is dated 09.12.2024 wherein learned Trial Court has given reasons in paragraph Nos. 17 to 20 on the points for consideration for grant of injunction namely, *prima facie* case, balance of convenience and irreparable loss. I'll consider the said findings after noting and considering the submissions of learned advocates for the respective parties before me in the present Appeal from Order.

**4.** Dr. Thorat appears alongwith Mr. Shah, both Senior Advocates for Defendant No.1 in Appeal from Order No. 657 of 2025. He would submit that no case whatsoever is made out to show *prima facie* case and balance of convenience in favour of Plaintiffs. He would submit that Plaintiffs filed Suit seeking declaration of their 1/15<sup>th</sup> undivided share in Suit properties which are claimed to be coparcenary properties. He would submit that it is apprehension of Plaintiffs that there is likelihood of Defendants creating third party rights in respect of Suit properties. He would submit that Defendant No.1 executed Power of Attorney (for short “**POA**”) in favour of Rahul Dattatraya Paigude after obtaining permission from the Court to deal with the Suit property since he is under arrest. He would submit that the said POA does not authorize Mr. Rahul to create any third party rights but only present, protect and augment the Suit properties in the absence of Defendant Nos.1 and 3 who were looking after the Suit properties and hence apprehension of Plaintiff is misconceived. He would submit that Plaintiffs are required to show some *prima facie* material to establish their substantive right in respect of Suit properties in order to sustain the injunction Order against Defendants. He would submit that except for bald allegations and bare words Plaintiffs have failed miserably to bring on record any material to show their subsisting right in Suit properties.

**4.1.** He would vehemently submit that most of the lucrative income yielding Suit properties are not coparcenary properties but self acquired properties of Defendant No.1 over the past 6 decades therefore Plaintiffs cannot have any claim in them according to Hindu Law. He would submit that Trial Court rightly held that Plaintiffs will have prove whether the Suit properties are ancestral properties, however Trial Court has erred in allowing the Injunction Application without recording any findings regarding *prima facie* case and balance of convenience. He would submit that without any *prima facie* evidence on record to show any subsisting right in Suit properties, Trial Court has held that Plaintiffs have an undivided share in all Suit properties.

**4.2.** He would submit that despite Plaintiffs' claim to only 1/15<sup>th</sup> and 1/5<sup>th</sup> share in the Suit properties, Trial Court has erred in granting temporary injunction in respect of the all properties which were looked after and controlled by the Defendants thereby depriving them of their property rights. He would submit that Trial Court has failed to assign reasons for grant of injunction in respect of entire Suit properties, hence such order in above circumstances cannot be sustained. He would submit that Plaintiffs failed to show in what manner irreparable loss would be caused to Plaintiffs if temporary injunction is not granted. He would submit that Trial Court ought to have dismissed the Exhibit '5' Application in view of Defendant No.1's say stating he had

no intention of disposing of any of the Suit properties. He would argue and inform the Court that Plaintiff No.2 is now collecting entire lease / rent / license fee at present in respect of all commercial properties which are let out by her on lease / Leave and license basis without leave of the Court and any accounts furnished in respect of the amounts collected by her. He would submit that without considering Defendants contentions, Trial Court proceeded only on the assumption that Plaintiffs have undivided share in the Suit properties.

**4.3.** He would submit that balance of convenience in fact lay in favor of Defendants and irreparable loss is caused to the Defendants by grant of such blanket injunction in favor of Plaintiffs, who have now assumed control over all Suit properties. He would submit that Plaintiffs took advantage of observations made in paragraph No.20 of the impugned order dated 09.12.2024 and have collected rent of all commercial premises which were under Defendants' control to the exclusion of the Defendants. He would submit that Trial Court erred in passing order of injunction whereby it restrained Defendants from changing nature of Suit properties described in paragraph Nos. 1(A) to 1(F). He would submit that some of the aforesaid properties are commercial in nature which are required to be developed and constituted upon and hence Defendants cannot be restrained by way of complete injunction. In support of this submission, he has referred to and relied upon the decision of this Court in the case of ***Baburao***

***Shivputra Erandole and Ors. Vs. Kumar Adwait NiKhil Erandole and Ors.<sup>1</sup>***

**5.** Additionally he would submit that Defendant Nos. 1 to 3 and 16 to 18 are temporarily restrained from creating third party interest over 1/5<sup>th</sup> share in Suit properties described in paragraph Nos. 1(H) and 1(I) of Suit Plaint. He would submit that Plaintiffs ought to have deposited the security deposits and license fee / lease rent collected from lessees licensees of the Suit properties in Court to show their bonafides and also ought to have submitted the details of accounts of rent collected so as to enable the Court to determine the amounts to be recovered by parties pending adjudication of the Suit. He would submit that Plaintiff No.1 is minor and Plaintiff No.2 has taken control of all Suit properties taking advantage of the fact that Defendant No.1 and Defendant No.3 are in prison and has suppressed this fact from the Court. He would submit that only on Court's insistence Plaintiffs filed additional Affidavit of disclosure stating that they have full / entire control over all Suit properties especially when their highest case is to the extent of 1/15<sup>th</sup> and 1/5<sup>th</sup> share in partition assuming they succeed. Hence he would persuade the Court to vacate Exhibit '5' order and allow the Appeal From Order.

**6.** Mr. Thorat appearing for Defendant Nos. 2 to 5 adopts the submissions of Dr. Thorat which for sake of brevity are not repeated

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<sup>1</sup> 2023 SCC OnLine Bom 2329

and reiterated herein. In support of his submissions, he has referred to and relied upon the decision of Supreme Court in the case of ***Sunil Kumar and Anr. Vs. Ram Parkash and Ors.***<sup>2</sup>. He would urge the Court to consider balance of convenience and prejudice caused to Defendant No.1 and Defendant No.3, who with the dint of their labour developed the Suit properties over the past several decades and Plaintiff No.2 taking advantage of the pending criminal proceedings initiated by Plaintiff No.2, has now usurped all Suit properties under her control.

**7. PER CONTRA**, Mr. Dhakepalkar, Senior Advocate alongwith Mr. Kulkarni, Advocate appearing for Plaintiffs have made the following submissions to oppose the Appeal From Order and in support of the Exhibit '5' order:-

**7.1.** He would submit that Plaintiffs have gained complete control and possession of all Suit properties after passing of the impugned order. He would submit that only 47.26% area admeasuring 60,500/- sq. ft. out of the entire usable area of the IT Park premises i.e. 1,28,000/- sq. ft. has been dealt with and given on Leave and License basis by Plaintiffs to preserve and meet all recurring and outgoing expenses and costs whereas the remaining premises are vacant. He would submit that injunction sought by Plaintiffs cannot be restricted to 1/15<sup>th</sup> share as such limitation would defeat the purpose of granting interim relief for protection of Suit properties from creating third party

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2 (1988) 2 Supreme Court Cases 77 : 1988 SCC OnLine SC 48

rights hence *status quo* in respect of entire property ought to be maintained pending final disposal of the Suit and Plaintiffs are willing to do so.

**7.2.** He would submit that Affidavit filed on behalf of Defendant Nos. 1 to 5 is restricted only to the property situated at NSG IT Park and is conspicuously silent with regard to other properties forming part of the Suit properties. He would submit that such selective disclosure renders the Affidavit incomplete and misleading. He would submit that said reply Affidavit filed by answering Defendants demonstrates how the interest of the Plaintiff No.1 minor child, who is a special child will be safeguarded when it merely states that 1/15<sup>th</sup> of the total rent shall be deposited by them in Court without any justification as to why the minor be deprived of his rightful income and financial benefit arising out of the Suit properties.

**7.3.** He would submit that Suit properties are undivided coparcenary properties and Defendant No.1 cannot sell them or create third party rights therein until partition is effected. He would submit that all Defendants are acting independently and there cannot be any application or representation made merely on behalf of Defendant Nos. 2 to 5 who have already opted for independent relief before the Trial Court. He would submit that on 12.09.2024 Defendant No.2 filed Application for Temporary Injunction in the Suit. He would submit that

thereafter on 21.08.2025 Defendant No.5 filed Application for Temporary Injunction vide Exhibit No.208 in the Suit. Plaintiffs have filed reply thereto on 19.09.2025 and presently both applications are pending adjudication.

**7.4.** He would submit that Plaintiff No.2 is willing to render complete and transparent accounts with respect to the Suit properties namely NSG IT Park at Aundh under her control which includes expenses incurred towards statutory and maintenance obligations, payment of electricity bills paid from the income generated through Leave and License agreements in respect of said property. He would submit that Plaintiff No.2 has paid Rs.39,07,680/- towards NSG House (02.12.2023 to 27.03.2026), Rs.68,79,200/- towards Shrinanda Exllency (30.11.2022 to 27.03.2026) and Rs.1,90,35,225/- towards SGG IT Park (24.08.2023 to 27.03.2026), aggregating to a total sum of Rs.2,98,22,105/-. He would submit that Plaintiff No.2 is ready to disclose details of maintenance expenses along with supporting receipts and documents, electricity bills to Court. He would submit that the Suit properties were wasted since Defendant No.1 and Defendant No.3 were in prison, hence Plaintiff No.2 assumed control over them and has dealt with them and ready to provide full disclosure. Hence he would persuade me to retain the Exhibit '5' order as it is and dismiss the Appeal From Order.

**8.** I have heard Dr. Thorat alongwith Mr. Shah, learned Senior Advocates for Defendant No.1 (Appellant), Mr. Dhakepalkar, learned Senior Advocate appearing through Video Conferencing alongwith Mr. Kulkarni, Advocate for Plaintiffs (Respondent Nos.1 and 2) and Mr. Thorat learned Advocate for Defendant Nos. 2 to 5 (Respondent Nos. 3 to 6) and with their able assistance perused the record of the case. Submissions made by Counsels have received due consideration of this Court.

**9.** The facts in the present case are *prima facie* admitted. The *lis* between the parties emanates from seeking Partition but is now resting with control of Suit properties. *Prima facie*, it is seen that there are substantial Suit properties which are involved in the present case which are described in paragraph No.1(A) and 1(G) of the Suit plaint. They are compartmentalized into two categories namely properties described in paragraph Nos.1(A) to 1(F) which are primarily controlled by Defendant Nos.1 to 10 and properties in paragraph Nos.1(G) and 1(H) which are controlled by Defendant Nos.14 to 16.

**10.** To put the matter in perspective it would be appropriate to note down the timeline and certain facts which are relevant for adjudication of present Appeal from Order proceeding. Plaintiff No.2 and Defendant No.3 entered into wedlock on 19.04.2017. Plaintiff No.1 was born on 29.05.2018. Plaintiff No.2 filed two FIRs against

Defendant Nos.1 to 5 under several provisions of Indian Penal Code, 1860, Arms Act, 1959 and complaints under the Protection Of Women From Domestic Violence Act, 2005 before Competent / Enforcement Authorities between the years 2021 and 2022. In the year 2022, Defendant No.3 filed for divorce with Plaintiff No.2. In all it has been brought on record by Plaintiffs that there are nine FIRs filed against Defendant Nos.1 and 3 who have been arrested under the stringent MCOCA provisions and other statutes on 19.08.2021 and since then they have been in custody. I am informed that their request for bail has also been rejected. It is also placed on record that Defendant Nos.2, 4 and 5 who are the mother-in-law and sisters-in-law of Plaintiff No.2, were also in custody, but being women were granted bail subsequently but were directed to remain outside the State of Maharashtra initially, however the said condition has now been relaxed and they have been permitted to reside in Maharashtra.

**11.** In the aforesaid backdrop Special Civil Suit No.132 of 2023 is filed by Plaintiffs, essentially by Plaintiff No.2 - mother of Plaintiff No.1 (minor four and half year old) seeking partition and share on the basis that he is a coparcener and entitled to 1/15<sup>th</sup> share in all Suit properties described in paragraph Nos.1(A) to 1(F) and 1/5<sup>th</sup> share in Suit properties described in paragraph Nos.1(H) and 1(I) being ancestral properties. Perusal of pleadings do not show whether all Suit properties are ancestral. Bare statement of Plaintiffs in Suit Plaintiff is

the only material and nothing more placed on record in support of this contention. Suit properties are substantial. On the face of record, they are / were being controlled by Defendant Nos.1 to 5 who developed them. Suit properties comprise of land, built up properties having cross holdings between Defendants. Admittedly Plaintiff No.2 is wedded into the family of Defendant No.1 to his son (Defendant No.3) in 2017. Their personal disputes began in 2021 and several FIRs are filed. On overall consideration of facts there is no denying that all Suit properties are curated, developed and were always under Defendants' control. There is no doubt about this fact which has been clearly ignored by the Trial Court. Case before the Trial Court is of injunction and anything extraneous cannot be considered.

**12.** Though written statement is filed by Defendant Nos.1 and 2 on 14.11.2023 and it was on record the impugned order dated 09.12.2024 passed by learned Trial Court below Exhibit-5 which gives a complete 100% blanket injunction against all Defendants temporarily restraining them from transferring, alienating and creating any third party interest over the properties which are described in paragraph Nos.1(A) to 1(F) and against Defendant Nos.1, 13, 16 to 18, with regard to properties described in paragraph Nos.1(H) and 1(I) as also enjoining Defendants from changing the nature of Suit properties in the interregnum.

**13.** Principal objection by Defendant Nos.1 and 2 who are Appellants before me is to the blanket injunction which has been granted by the learned Trial Court especially in view of the substantive right claimed by Plaintiffs being in respect of 1/15<sup>th</sup> and 1/5<sup>th</sup> share in the Suit properties. Reliance is placed by Mr. Thorat on the decision of this Court in case of *Baburao Shivputra Erandole* (1<sup>st</sup> *supra*) in similar circumstances where the facts were somewhat similar to the present case to contend that once there is a specific averment made in the Suit Plaint to the extent of entitlement to a fraction of the Suit properties claimed to be joint family properties, Court cannot grant a blanket injunction on the entire 100% properties restraining the family members from dealing with the properties any further. I agree and concur with submission of Mr. Thorat.

**14.** In the present case, it is *prima facie* evident on the face of record that Suit is filed by Plaintiffs for and on behalf of Plaintiff No.1 who is a minor which is a clear fallout of a matrimonial dispute as also criminal complaints filed by Plaintiff No.2 against the Defendants. Plaintiff No.2 in her Affidavit-in-Reply dated 04.02.2026 has claimed that she is entitled to deal with the Suit properties in order to provide for Plaintiffs' maintenance because she has no means for their livelihood. There is no doubt that she is entitled to maintenance as also other reliefs against Defendant No.3 who is her husband and father of Plaintiff No.1 as also other Defendants but that would

undoubtedly be decided in the pending matrimonial proceedings between the parties. That cause of action is different. However even if that cause of action overlaps the claim in the Suit, then whether Plaintiff No.2 is right in assuming control of the Suit properties and deal with them by taking advantage of the Exhibit '5' order is the question to be answered by her. Mr. Dhakepalkar has merely argued on rhetoric. I am unable to accept his reasoning that because the Suit properties were being wasted, Plaintiff No.2 assumed full control over them and dealt with them.

**15.** Plaintiff No.2 has staked claim in the joint family properties seeking partition and possession on behalf of Plaintiff No.1. However, it is an admitted fact on record that all Suit properties which are substantial in number were dealt by Defendant Nos.1 to 3 as also other Defendants who are all family members of Gaikwad family all along until Defendant Nos.1 to 3 were arrested. However there is a larger question which is involved in the present case. In paragraph No.17 of the Affidavit-in-Reply dated 04.02.2026, Plaintiff No.2 has stated that she has taken control of one of the property namely a property described as IT Park and has stated that she has dealt with the said property in the interregnum. Now whether the other Suit properties are under her control or otherwise, when inquired, Mr. Dhakepalkar would on instructions submit that they are under her control. The Affidavit however deals with one particular property, a commercial IT

Park.

**16.** Affidavit-in-Rejoinder dated 25.03.2026 filed to the Affidavit-in-reply dated 04.02.2026 of Defendant No.1 and another Rejoinder is filed jointly on behalf of Defendant No.1 and Defendant Nos.2 to 5 which is also dated 25.03.2026 seeking directions from Court to permit them to deal with the Suit properties which are being dealt with by Plaintiff No.2. Defendants have also stated on Affidavit that they are ready and willing to disclose all their dealings with the subject properties and make adequate disclosure as also deposit share of Plaintiffs to the extent of 1/15<sup>th</sup> and 1/5<sup>th</sup> share with regard to the subject properties in the Court without prejudice to their rights and contentions. Additional Affidavit-in-Sur-Rejoinder dated 28.03.2026 has been filed by Plaintiffs. This Affidavit was filed only after this Court desired to know from Plaintiffs the extent of Plaintiff No.2's control of the Suit properties which was disclosed to the Court. Appended to the said Affidavit are certain statements and charts which show Plaintiff No.2's control of the immovable properties which are substantial commercial properties in the IT Park which she has dealt with.

**17.** *Prima facie*, on reading the pleadings it is seen that Plaintiffs have not obtained the leave of the Trial Court for dealing with the Suit properties which should have been done in these circumstances. One

of the reason stated by Plaintiffs is that since properties were wasted and since there was no person to deal with them, Plaintiff No.2 took steps to deal with the Suit properties. It is case of Plaintiff No.2 that electricity bills of some of the properties remained unpaid and there was threat of disconnection of electricity which she averted by paying the bills from the amounts collected by her as security deposit and license fees. She has also submitted that tenure of certain leave and license Agreements granted to licensees by Defendants who were occupying substantial commercial properties in the said IT Park came to an end in the interregnum and in view of Defendant Nos.1 to 3 being in custody, there was no person to take charge, renew or again give them on fresh license / lease and therefore she stepped in to take care of the properties.

**18.** What I find from the record is that Plaintiff No.2 has not taken leave of the Court to deal with the Suit properties. Assuming for the sake of argument that she has attempted to prevent, augment and protect the Suit properties, however the Plaintiffs cannot forget that their own case in the Suit Plaint is that they are entitled to a fraction of the Suit properties only.

**19.** In view of the above observations and findings, I am of clear opinion that the *lis* between the parties cannot be mixed in the present case. In so far as the criminal proceedings are concerned, they will

take its own course and in accordance with law. However, the issue before the Court is a pure question of injunction in the given facts pleaded. In so far as injunction is concerned, trite law is required to be applied. It is an admitted position that Defendants are / were controlling the entire gamut of the Suit properties which are described in the Suit Plaint until they got arrested and/or until the impugned order is passed. There is no dispute about this fact. However because Defendant Nos.1 to 3 were in custody, they were unable to deal with the properties further.

**20.** If Plaintiff No.2 felt that she had to deal with the Suit properties, it was then with them with leave of the Court. However, Plaintiff No.2 did not do so fully knowing well that if she had approached the Civil Court seeking permission to deal with the Suit properties, the Trial Court would have directed her to disclose all her dealings which she wanted to suppress. She alongwith Plaintiff No.1 is a resident of a bungalow which infact belongs to the Defendants. Undoubtedly she can seek solace for providing care for Plaintiff No.1 but she ought to have done so. She did not approach the Trial Court.

**21.** In that view of the matter, conduct of Plaintiffs in dealing with the Suit properties during the interregnum is something which is not appreciated by this Court. When the matter was heard by this Court, Plaintiff No.2 was not coming clean forthwith despite repeated

questioning to the Advocate for Plaintiff No.2 about the exact status and dealing of the Suit properties by her. It was only on Court's insistence that Affidavit-in-sur-Rejoinder dated 28.03.2026 was filed pursuant to which this Court heard the matter fully and gathered that according to Plaintiff No.2, she has taken over dealing of all Suit properties.

**22.** Submissions made by Mr. Dhakephalkar that Plaintiff No.1 is a coparcenar and therefore Plaintiff No.2, his mother as guardian has every right to deal with the Suit properties because share of Plaintiff No.1 is undivided is something which does not inspire any confidence of the Court in the facts and circumstances stated above delineated herein above. His submission that since the Suit properties are undivided, there is no harm in the Plaintiff No.2 deals with the properties is not appreciated by the Court at all. Infact the intention of Plaintiff No.2 to settle scores with Defendant Nos.1 and 3, rather Defendant Nos.1 to 6 in this manner is a completely dishonest act on her part. There was no harm for Plaintiffs to seek leave of the Trial Court to deal with the Suit properties but knowing fully well that Defendants were in prison and that Plaintiffs will not be fully entitled to keep all the spoils from the Suit properties, Plaintiff No.2 did not approach the Trial Court.

**23.** Submission made by Mr. Dhakephalkar that Defendants have not shown whether the properties were acquired by them were self-acquired properties or separate properties cannot be accepted as an argument at this stage. Such submission deserves to be rejected outrightly in the above facts. Rather it would be matter of trial where the Plaintiffs will have to discharge the burden first and lead evidence and Defendants will have to lead evidence in rebuttal. Fact that Plaintiff No.2 assumed control of some Suit properties is evident from the Affidavits-in-reply which are filed on 04.02.2026 and the Sur-Rejoinder filed on 28.03.2026.

**24.** In my opinion in the facts and circumstances of the present case, act of Plaintiffs rather Plaintiff No.2 to assume control of all Suit properties amounts to overreaching the orders of the Court. Though the impugned order restrains Defendants from dealing with the Suit properties, it nowhere states that Plaintiffs and / or Plaintiff No.2 can take control and determine dealing with all Suit properties. It was therefore the duty of Plaintiffs to have approached the Trial Court in view of the Exhibit '5' order which was passed, if Plaintiffs wanted to deal with the Suit properties exclusively.

**25.** Reliance placed by Defendants on the decision in the case of *Baburao Shivputra Erandole* (1<sup>st</sup> *supra*) squarely applies to the facts and circumstances of the present case. I am of the considered view

that during adjudication of such claim of Plaintiffs, blanket injunction order with regard to all 100% Suit properties in the manner in which learned Trial Court has passed cannot and could not have been passed. Trial Court has not considered the factual circumstances which have been discussed above at all. All along the Defendants had in fact been dealing with the Suit Properties since inception but due to the disputes between parties discussed hereinabove, and unavailability of the Defendants due to their imprisonment / externment orders, Plaintiff No.2 took advantage of the situation and assumed control of all Suit Properties.

**26.** Further considering Plaintiffs' case that Plaintiff No.1 is entitled to 1/15<sup>th</sup> and 1/5<sup>th</sup> share in so far as the remaining properties are concerned, there cannot be a blanket injunction and embargo. In that view of the matter, the impugned order dated 09.12.2024 is clearly unsustainable and cannot be countenanced and allowed to be continued. I am inclined to accept the submissions of Dr. Thorat and Mr. Pradeep Thorat. The Exhibit '5' order is vacated forthwith. The order dated 09.12.2024 is quashed and set aside Exhibit '5' Application filed by Plaintiff is dismissed.

**27.** However, in the above facts and circumstances of the present case, Plaintiffs are directed to file complete disclosure of all dealings made by Plaintiff No.2 about dealing with the Suit properties on

Affidavit furnishing all details of agreements executed / registered, amounts received before the Trial Court within a period of two weeks to enable parties to apply to the Trial Court. This Affidavit shall be served on the Defendants.

**28.** Simultaneously in the meanwhile, on the basis of the server copy of this order, Judge of Trial Court seized with the Suit is directed to appoint any Competent Officer of the District Court as Receiver with regard to all Suit Properties. Plaintiff No.2 shall disclose and hand over all details, documents and amounts received by her with regard to dealing with all Suit properties to the Receiver along with accounts forthwith. Receiver to make appropriate Report before the Trial Court within a period of two weeks from the date of such disclosure.

**29.** Liberty to Parties including the Plaintiffs and Defendants to apply to the Trial Court for orders seeking to deal with the Suit Properties in accordance with law and for being appointed as agent of the Receiver is expressly given. Trial Court to determine the same on the basis of merits of the case pleaded by the parties regarding handling and control of the Suit Properties.

**30.** With the above directions, Appeal from Order is partially allowed and disposed. In view of disposal of Appeal from Order, pending Interim Application is disposed.