

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3179 OF 2026**

Kailas Arjun Bhakare and Ors ..Petitioners
Versus
Arjun Laxman Bhakare and Ors ...Respondents

**WITH
WRIT PETITION NO. 731 OF 2026**

Suresh Arjun Bahkre & Ors ..Petitioners
Versus
Arjun Laxman Bhakare and Ors. ...Respondents

Mr. Mayuresh Ingale, i/b Aditya Hegde, for the Petitioners in
WP/3179/2026 and for Respondent Nos. 2, 5, 6 & 7 in
WP/731/2026.
Mr. Mayuresh Lagu, i/b Sagar Patil, for the Petitioners in
WP/731/2026 and for the Respondent Nos. 2, 3 and 4 in
WP/3179/2026.
Mr. Venkatesh Shinde, for Respondent No.1 in both matters.

ARUN
RAMCHANDRA
SANKPAL

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ARUN RAMCHANDRA
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CORAM: N. J. JAMADAR, J.
DATE : 28th APRIL 2026

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in these Petitions is to a judgment and order dated 31st October 2025, passed by the District Judge, Pune, in MCA No. 261 of 2025, whereby the learned District Judge has allowed the Appeal

preferred by Respondent No.1-Plaintiff against an order dated 28th July 2025 passed by the learned Civil Judge thereby rejecting an application for temporary injunction preferred by the Plaintiff in RCS No. 192 of 2024 instituted by Respondent No.1 seeking partition and separate possession of his 1/5th share in the properties described in paragraph 1 of the Plaint and a declaration that the Will of Sundarabai (the wife of the Plaintiff) bequeathing land bearing Gat No. 101/1/1A, in favour of the Petitioner in Writ Petition No. 731 of 2026-original Defendant No.1 and the son of the Plaintiff, is illegal and bogus and not binding upon the Plaintiff and the consequential reliefs of injunction to restrain Defendant No.1 from alienating or otherwise creating any third party interest in the said land on the basis of the said Will.

3. The learned District Judge was persuaded to interfere with the order passed by Trial Court as in the view of the learned District Judge there was *prima facie* material to show the genuineness of the Will.

4. Mr. Lagu, the learned Counsel for the Petitioner in Writ Petition No. 731 of 2026, submitted that once the execution of the Will by Laxman Bhakare, the father of the Plaintiff in favour of Sundarabai, the wife of the Plaintiff and daughter-in-law of the testator, was proved and acted upon, the property bearing Gat No. 101/1/1A ceased to be the joint family property. Thus the Suit for partition in respect of the said property, obtained under a testamentary document, could not have been

instituted. The Trial Court had adverted to the said fact. However, the Appellate Court had completely misconstrued the character of the property obtained by Sundarabai under the Will of Laxman Bhakare. Therefore, the Appellate Court was in error in restraining the Petitioners from alienating the suit property till the final disposal of the suit.

5. Mr. Mayuresh Ingale, the learned Counsel for the Petitioners in WP/3179/2026, submitted that the learned District Judge has rejected the Application for injunction (Exhibit “29”), preferred by the Petitioner, though that order was not subject matter of challenge before the District Court. The Petitioner did not get opportunity to challenge the order of rejection of the Application for temporary injunction (Exhibit “29”), passed by the Trial Court and, hence, the Petitioners deserve an opportunity to challenge the said order before the Appellate Court.

6. Mr. Shinde, the learned Counsel for Respondent No.1-Plaintiff submitted that the Plaintiff had not disputed that his father Laxman Bhakare had bequeathed $\frac{1}{2}$ share in the land bearing Gat No. 101/1/1A in favour of Sundarabai, the Plaintiff’s wife. The challenge of the Plaintiff was to the purported Will executed by late Sundarabai in favour of Defendant No.1. Attention of the Court was invited to the averments in paragraph 5 of the Plaint.

7. Having heard the learned Counsel for the parties and perused the impugned order, this Court finds that the core controversy with regard

to the land bearing Gat No. 101/1/1A revolves around the legality and validity of the Will purportedly executed by Sundarabai in favour of Defendant No.1-Suresh.

8. The rights of the parties to succeed to the estate of late Sundarabai would hinge upon the question whether late Sundarabai had disposed of her property by a legal and valid testamentary disposition. If the testamentary disposition is not proved, the Plaintiff would also be entitled to succeed to the estate of late Sundarabai along with her children.

9. The learned District Judge has recorded *prima facie* finding that the attesting witnesses to the purported Will executed by testatrix have filed contradictory Affidavits. The name of the person, who claimed to have witnessed the execution of the Will and has filed Affidavit to vouch for the due execution of the Will by the testatrix, does not find mention in the Will.

10. These circumstances, which *prima facie* render the aspects of genuineness and validity of the Will debatable, persuaded the learned District Judge to restrain Defendant No.1 , 6 and 7 from alienating the suit property and create third party interest therein till the disposal of the suit.

11. This Court finds that the aforesaid approach of the learned District judge is in consonance with the overarching consideration of protecting the subject matter of the dispute till the final disposal of the

suit. The view taken by the learned District Judge, therefore, cannot be said to be perverse, unreasonable or legally infirm so as to warrant interference in exercise of the supervisory jurisdiction. Thus, this Court is not inclined to interfere with the impugned order passed by the learned District Judge.

12. However, having regard to the nature of the dispute and age of the parties, it would be appropriate that RCS No. 192 of 2024 is heard and decided by the learned Civil Judge as expeditiously as possible.

13. Before parting, the grievance of the Petitioner in WP No. 3179 of 2026 deserves to be considered. Evidently, against the order of rejection of the Application for injunction (Exhibit “29”), the Petitioner did not prefer any Appeal before the District Court. It is also pertinent to note that though the Petitioner was impleaded as party-Respondent in the Appeal preferred by the Plaintiff, the Petitioner neither preferred a cross-appeal nor cross-objection against the common order dated 28th July 2025 passed by the Trial Court.

14. In these circumstances, as the Petitioners chose to allow the order of rejection of the Application for injunction (Exhibit “29”) attain finality, despite opportunity to prefer Appeal and even cross-objection, at this juncture, the grievance of the Petitioner in WP No. 3179 of 2026 cannot be entertained. This Court refrains from making any observation as to whether the Petitioners in WP/3179/2026 can still

invoke their remedies against the order of rejection of their application for temporary injunction (Exhibit “29”) by the Trial Court. Suffice to clarify, if such remedies are available in law, the Petitioners may invoke those remedies.

15. Subject to the aforesaid clarifications the Petitions stand dismissed.

16. The learned Civil Judge is requested to hear and decide the suit RCS No. 192 of 2024 as expeditiously as possible and, preferably, within a period of one year from the date of communication of this order.

[N. J. JAMADAR, J.]