



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5101 OF 2025

Rajkumar Radheshyam Agrawal,
Age : 60 Years, Occu. : Business,
R/o. Pimpalkar Marg, Paratwada,
Tq. Achalpur, Dist. Amravati.

.... Petitioner

VERSUS

1. Radheshyam Madanlal Agrawal,
Age : 90 Years, Occu. : Nil,
R/o. Purushottam Dal Mill,
Ram Nagar, Toshnival Layout,
Near Riddhi Siddhi Mangal Karyalay,
Akola, Tq. & Dist. Akola.

2. Murari Purushottam Agrawal,
Age : 36 Years, Occu. : Business,
R/o. Purushottam Dal Mill,
Ram Nagar, Toshnival Layout,
Near Riddhi Siddhi Mangal Karyalay,
Akola, Tq. & Dist. Akola.

.... Respondents

....
Advocate for Petitioner : Mr. V.P. Panpalia and Mr. P.M. Dahake
Advocate for Respondents : Mr. J.B. Gandhi
....

CORAM : PRAFULLA S. KHUBALKAR, J.

Dated : 28th APRIL 2026

JUDGMENT :

1. Heard.

2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.

3. By this petition, the petitioner has challenged the judgment and order dated 01.07.2025, passed by Ad-hoc District Judge-2, Achalpur, in Misc. Civil Appeal No.22 of 2024, by which the order passed by the trial court granting temporary injunction is reversed.

4. The petitioner is the original plaintiff, who has filed a suit bearing R.C.S. No.152 of 2022, seeking declaration and permanent injunction with respect to the property described in the plaint. The declaration sought for is that the document of gift deed dated 02.02.2022, executed by defendant No.1 (respondent No.1 herein) in favour of defendant No.2 (respondent No.2 herein), is not binding on the plaintiff and the permanent injunction is sought for to restrain the defendants from disturbing peaceful possession of the plaintiff till final disposal of the suit. In the said suit, the plaintiff filed a separate application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 (for short, "C.P.C."), seeking temporary injunction to restrain the defendants from interfering with the possession and enjoyment of the suit property till final disposal of the suit.

5. The defendants appeared in the suit and filed their written statement and reply to the application under Order 39 Rule 1 and 2 of C.P.C. The temporary injunction application at Exhibit 05 filed by the plaintiff was allowed by the trial court by order dated 20.04.2024, by which temporary injunction was granted to restrain the defendants from disturbing the possession of the plaintiff over the suit property. The defendants then filed an appeal bearing M.C.A. No.22 of 2024, under Order 43 Rule 1(r) of C.P.C., challenging the order dated 20.04.2024, which came to be decided finally by judgment and order dated 01.07.2025, by which the appeal is allowed. Resultantly, the order of temporary injunction, which was granted by the trial court, is quashed and set-aside. Feeling aggrieved by this order, passed by the appellate court reversing the discretionary order passed by the trial court, the original plaintiff (petitioner herein) has filed the instant petition.

6. Mr. V.P. Panpalia, learned Advocate for the petitioner primarily submitted that the impugned order passed by the appellate court rejecting temporary injunction is unsustainable in law in view of the observations recorded in the impugned order about the fact that the plaintiff is having actual possession of the suit property. The submissions of the learned Advocate for the petitioner are briefly stated below.

i) That, as the appellate court has itself observed that the plaintiff is in possession of the suit property, although in permissive possession, the relief of temporary injunction ought to have been maintained in his favour. The appellate court has passed the impugned order, thereby unnecessarily interfering with the discretionary order passed by the trial court.

ii) That, the trial court has granted temporary injunction by considering all the relevant factors including *prima facie* case, balance of convenience and irreparable loss and has exercised the discretion in favour of the plaintiff. The order passed by the trial court is based on the material available before it and it is a plausible view, which was not required to be interfered by the appellate court only by observing that another view based on the same documents is likely to be taken.

iii) That, the plaintiff has made out a strong *prima facie* case in view of the case put up by the plaintiff showing that the plaintiff is a co-owner of the suit property and his possession in that capacity cannot be disturbed during pendency of the suit. He, therefore, submitted that the relief of temporary injunction is only to protect the possession of the plaintiff during pendency of the suit, which he is entitled to assert in his own right.

7. By relying on judgment of the Hon'ble Supreme Court in the case of *Shyam Narayan Prasad Vs. Krishna Prasad and Others, [(2018) 7 SCC 646]*, learned Advocate for the petitioner submitted that the nature of suit property, which is partitioned in between brothers of defendant No.1, has to be considered as ancestral by virtue of effect of birth of a son to defendant No.1, which gives a right of co-ownership to the plaintiff and since this right is subject matter of adjudication in the suit, the plaintiff's possession has to be protected during pendency of the suit.

8. Per contra, Mr. J.B. Gandhi, learned Advocate for the respondents vehemently opposed the petition and submitted that the order passed by the appellate court need not be interfered on any count. His submissions are briefly stated below.

i) That, in view of the plaintiff's case claiming himself to be co-owner of the suit property, a relief of temporary injunction cannot be claimed against co-owner and hence, the application for temporary injunction deserved to be rejected.

ii) That, the documents on record in respect of the period from 2018 to 2022, including the electric bills and municipal tax receipts show that defendant No.1 Radheshyam is the absolute owner of the suit property and had full liberty to gift the suit property in

favour of defendant No.2 Murari and as such, the plaintiff is having no ownership rights over the suit property and is not entitled to retain possession by claiming any discretionary relief either of temporary injunction or of any sort.

9. By inviting my attention to the FIR lodged by one Purushottam Agrawal, against the plaintiff and others, learned Advocate for the respondents submitted that the plaintiff was in fact never in possession of the suit property for long time and has grabbed the possession forcibly for some period, which cannot be a basis to seek any discretionary relief.

10. In support of his submissions, learned Advocate for the respondents placed reliance on following judgments.

i] Amoda Properties LLP Vs. Joy Mrinalkani Basu and Others, [2022 SCC Online Bom 399].

ii] Vyankati Raghobaji Parbat and Another Vs. Sau. Varsha W/o. Vinod Deshpande and Another, [2005(2) ALL MR 157].

iii] M/s. Karan Marketing Vs. Shagun Mahila Audyogik Sahakari Sanstha Maryadit and Another, [2005(2) ALL MR 167].

iv] Sakahari Parwatrao Karahale and Another Vs. Bhimashankar Parwatrao Karahale, [(2002) 9 SCC 608].

v] Gaffar Wangoo Vs. Ghulam Qadir Mir and Others, [AIR 1967 Jammu and Kashmir 17].

vi] Angadi Chandranna Vs. Shankar and Others, [2025 SCC Online SC 877].

vii] Premji Ratansey Shah and Others Vs. Union of India and Others, [(1994) 5 SCC 547].

11. By pointing out the legal position as laid down in **Vyankati Raghobaji Parbat (Supra)** and **Sakhahari Parwatrao Karahale (Supra)**, learned Advocate for the respondents submitted that the relief of temporary injunction cannot be claimed against a co-owner and as such, the application for temporary injunction filed by the plaintiff deserved to be rejected. By pointing that the legal position as laid down in aforesaid judgments, he submitted that the nature of suit property, which defendant No.1 Radheshyam has got in partition, has to be considered as separate property of Radheshyam with exclusive right to execute a gift deed.

12. By relying on judgment of the Hon'ble Supreme Court in the case of **Amoda Properties (Supra)** and **Angadi Chandranna (Supra)**, learned Advocate for the respondents submitted that after the joint family property has been distributed in accordance with law by way of partition, it ceases to be joint family property and shares of respective parties become their self acquired properties. In view of this legal position, he submitted that the plaintiff cannot claim to have any kind of right over the suit property

13. In support of his submission, learned Advocate for the respondents also placed reliance on various provisions of the Hindu Succession Act, 1956 and submitted that the nature of suit property has to be considered as separate property of defendant No.1 Radheshyam, with exclusive authority to transfer it.

14. In the backdrop of above submissions, rival contentions thus fall for my consideration.

15. The controversy involved is about entitlement of the petitioner (original plaintiff) for grant of temporary injunction with respect to his possession over the suit property. Learned Advocate for the petitioner as well as learned Advocate for the respondents have advanced elaborate submissions about the nature of suit property being ancestral or separate, by relying on provisions of Hindu Succession Act and position of law as laid down in various judgments of Hon'ble Supreme Court.

16. It has to be noted that the suit is for declaration and permanent injunction based on certain assertions by the plaintiff about the nature of suit property being ancestral and about his share in it. The defendants have filed their respective written statements and have opposed the contentions of the suit property being ancestral in nature and have taken a stand that the suit property being

originally owned by one Mr. Madanal Agrawal. The son of Madanal i.e. defendant No.1 Radheshyam got a right in partition, who had the right and authority to execute gift deed and as a result of which, the nature of suit property got changed. However, it has to be noted that, all these issues are subject matter of adjudication in the civil suit. It is not desirable at this stage to record any findings, even before any evidence led in the civil suit.

17. The controversy involved in the instant petition is about the entitlement of the original plaintiff to claim temporary injunction. Pertinent to note, by the application for temporary injunction at Exhibit 05, the plaintiff (petitioner herein) has prayed to restrain the defendants (respondents herein) from interfering with the possession and enjoyment of suit property till final disposal of the suit. Thus, he has not claimed any restrain order against the defendants from entering in the suit property. It is relevant to note as to whether the plaintiff, who has claimed temporary injunction, has any *prima facie* material to show that he is having possession over the suit property.

18. It has to be noted that the trial court has granted temporary injunction in favour of the plaintiff by considering certain documents in the nature of Aadhar card, bank and postal passbooks and ration card and by considering the documents filed along with list

of documents at Exhibit 31, the trial court has inferred that the documents of Government record show the plaintiff's possession over the suit property. Thus, on the basis of certain documents, the trial court, *prima facie*, found entitlement of the plaintiff for temporary injunction and the application for temporary injunction was allowed.

19. In the appeal filed by the defendants (respondents herein) challenging the order of temporary injunction passed by the trial court, the appellate court has considered the legal issues raised by the defendants, who had alleged that defendant No.1 Radheshyam was absolute owner of the suit property and had exercised his liberty to gift the suit property in favour of defendant No.2 Murari, by executing the gift deed dated 02.02.2022.

20. Pertinent to note, the appellate court has although observed that the plaintiff may be residing in the suit property as a permissive possessor, defendant No.1 Radheshyam had become absolute owner of the suit property and therefore, it is inferred that the plaintiff failed to prove *prima facie* case to substantiate his exclusive right of possession over the suit property. Thus, despite observing the fact of possession of the plaintiff, although permissive possession, the appellate court has reversed the order of temporary injunction passed by the trial court and allowed the appeal filed by

the defendants. In this situation, it has to be noted that the appellate court has interfered with the discretionary order passed by the trial court. The trial court has granted temporary injunction on the basis of certain material available before it and by recording reasons in support of its conclusions. It has to be noted that the view taken by the trial court was a plausible view based on the material available before it and the trial court has exercised the discretion positively in granting temporary injunction in favour of the plaintiff.

21. In this regard, it is relevant to note down the legal position as laid down in various judgments of the Hon'ble Supreme Court and this Court time to time and reference is made to a Full Bench judgment of this Court in the case of *Uto Nederland B.V. and Another Vs. Tilaknagar Industries Ltd., [2025 SCC Online Bom 6140]*. After considering the various judgments on the issue, the Full Bench has clarified the position that the discretionary order passed by the trial court on temporary injunction application may not be interfered with only because the appellate court finds that another view is possible. The Full Bench in **Uto Nederland (Supra)** observed that the appellate court will not interfere with exercise of discretion of Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, capriciously, perversely or where the Court had ignored the settled

principles of law regulating grant or refusal of interlocutory injunctions. The relevant paragraph in the case of **Uto Nederland (Supra)**, being paragraph No.31(ii), is reproduced below ;

“31(ii). The scope and ambit of an appeal from an order passed by the trial Judge has already been delineated by the Supreme Court in Wander Ltd. (Supra), Shyam Sel and Power Limited (Supra) and Ramakant Ambalal Choksi (Supra). In view of aforesaid enunciation of law by Supreme Court, it is evident that the Appellate Court will not interfere with exercise of discretion of 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. The Appellate Court while deciding an appeal, has to examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law and the Appellate Court may, in a given case, has to adjudicate on facts even in such discretionary orders.”

22. Thus, in the instant matter, the appellate court has reversed the discretionary order passed by the trial court by exercising its own discretion. A perusal of the order passed by the trial court, I do not find any patent illegality or perversity since the trial court has passed a well reasoned order based on material available before it. It is crucial to note that even the appellate court has observed that the plaintiff is having possession of the suit property although permissive and therefore, in view of this important fact, the possession of the plaintiff ought to have been protected during pendency of the suit.

Hence, I am of the firm opinion that the plaintiff is entitled for protection of his possession during pendency of the suit and the order passed by the appellate court needs to be interfered.

23. It has to be noted that the instant petition is decided by considering the contentions with respect to grant of temporary injunction and the contentions of the parties about the nature of suit property being ancestral or otherwise are not decided in this judgment. The trial court is free to adjudicate the issues based on the evidence to be led by the parties.

24. In view of the above mentioned factual and legal aspects, following order is passed.

ORDER

- I) The writ petition is allowed.
- II) The judgment and order dated 01.07.2025, passed by Ad-hoc District Judge-2, Achalpur, in Misc. Civil Appeal No.22 of 2024, is quashed and set-aside.
- III) Resultantly, the order dated 20.04.2024, passed by the trial court on application at Exhibit 05 in R.C.S. No.152 of 2022 is restored.
- IV) The trial court is directed to expeditiously decide the civil suit preferably within a period of six months from the date of uploading of this order.

V) No order as to costs.

VI) Rule is made absolute in the above terms.

[PRAFULLA S. KHUBALKAR]
JUDGE

25. After the judgment was pronounced, learned Advocate for the respondents prayed for continuation of interim order of status quo for further period of six weeks to enable the respondents to approach the Hon'ble Supreme Court.

26. Considering the fact that this Court has passed the interim order on 09.09.2025 and both the parties were directed to maintain status quo, which is operating till the decision of this petition, it is directed that the same shall operate for a further period of six weeks from the date of uploading of this order and it shall cease to operate after expiry of period of six weeks.

[PRAFULLA S. KHUBALKAR]
JUDGE