

MHND110003652025



Received on : 24-06-2025
Registered on : 24-06-2025
Decided on : 09-06-2026
Duration : 00Y. 11M. 15D.

IN THE COURT OF DISTRICT JUDGE-1, BHOKAR
DISTRICT NANDED.

(Presided over by Mr. Mohammad Nasir M. Saleem)

Misc. Civil Appeal No.19/2025

Exh. (38)

Shankar Devrao Solanke Patil,
Age:53 years, Occu: Business,
R/o.: Bhokar, Tq. Bhokar,
Dist. Nanded.

] Appellant.

V e r s u s

- 1] Govind Devrao Solanke Patil,
Age: 52 years, Occu: Business,
- 2] Balaji Devrao Solanke Patil,
Age:61 years, Occu: Agri,
- 3] Anand Devrao Solanke Patil,
Age: 46 years, Occu: Business,
- 4] Digambar Devrao Solanke Patil
Age: 43 years, Occu: Business,
All r/o.: Bhokar, Tq. Bhokar,
Dist. Nanded.
- 5] Vijaymala Vinayakrao Pawar
Age: 56 years, Occu: Household,
R/o.: Sonari, Tq. Himayatnagar,
Dist. Nanded.

] Respondents.

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Appearances:

Mr. S. C. Kadam for the appellant.

Mr. S. S. Kshirsagar for the respondents.

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ORAL JUDGMENT
(Delivered on 09th June, 2026)

Being aggrieved with the order dated 02-09-2024 passed below Exh.37 in Special Regular Civil Suit No.03/2021 by learned Civil Judge, Senior Division, Bhokar, whereby the application for temporary injunction moved under Order 39 Rule 1 and 2 of the Code of Civil Procedure came to be partly allowed, the original plaintiff/defendant no.2 in counter claim/appellant has preferred this appeal under Order 43 Rule 1(r) of the Civil Procedure Code.

For the brevity and convenience, the parties to this appeal are hereinafter referred to as per their status before the Trial Court as plaintiff and defendants.

2] Initially, the plaintiff filed Special Civil Suit No.03/2021 for declaration. In the suit, the plaintiff in counter claim appeared and filed counter claim seeking partition and separate possession of ancestral properties.

3] There is no dispute that the plaintiff and defendants are real brothers and sisters interse. The properties described in para no.4 of the counter claim except field Gut no.127, are ancestral and joint family properties.

4] The appellant/original defendant no.2 in counter

claim has come with the specific case that field Gut no.127 is his self acquired property. It was purchased by him vide registered sale deed dated 08-04-2000, therefore, he opposed the application Exh.37 to that extent. He contended no prohibitory order can be passed against his self acquired property bearing Gut no.127 situated at Bhokar, Tq. Bhokar, Dist. Nanded.

5] On merits, after hearing both sides and appreciating the evidence, the learned Civil Judge arrived at the conclusion that the plaintiff has a triable issue in respect of field Gut No.127 also and therefore, the defendants in the counter claim are restrained from creating third party rights in respect of the properties described in para no.4 of the counter claim till the decision of suit on merit.

6] The defendant no.2 contends that the impugned order directly affects his right to enjoy the property. By virtue of impugned order, he has been deprived from exercising his right over his self acquired property bearing Gut no.127, therefore, the impugned order requires to be modified to that extent.

7] Heard both the sides.

8] The following points arise for my determination and findings are recorded against each of them for the reasons given below:

<u>POINTS</u>	<u>FINDINGS.</u>
1] Whether the impugned order requires any modification ?	... No.
2] What order ?	... The appeal

is dismissed.

REASONS

AS TO POINT NOS.1 AND 2 :-

9] The Appellate Court scope in appeal against the temporary injunction orders is narrow. The Appellate Court does not re-appreciate the evidence or substitute his own discretion but only interferes if the trial court acted arbitrarily, ignored settled principles or reached a perverse conclusion. In the case in hand, there is no dispute between the parties that several properties as described in para no.4 of the counter claim had been left by their father and grand-father. The 7/12 extract of field Gut nos.5, 9, 11, 12, 40, 264 and 270 shows the name of defendant no.1 in the column of owner. The name of defendant no.2 appears in the 7/12 extract of field Gut nos.127, 332 and 5. Similarly, the names of other defendants appear in the 7/12 extract of field Gut nos.186, 192 and 332. The defendant no.2 is allowed to run Lodging and Hotel business from the property bearing G. P. No.887.

10] Obviously, the above properties are generating income. Even if the sale deed of field Gut no.127 is in the name of defendant no.2, in the given facts of the present case, the possibility of application of joint fund for the purchase of said field cannot be ruled out. Thus, the plaintiff has made out a case that there is serious question to be tried in respect of field Gut no.127. The issue whether the suit properties including field Gut no.127 are ancestral/joint family property can be gone into trial. Till the decision of suit on merit and in order to avoid the

multiplicity of proceeding, the learned Civil Judge has struck the balance between rights of both parties and made the interim arrangement with respect to the field Gut no.127. The learned Civil Judge observed that some plots carved out of the field Gut no.127 were sold for the repayment of loan. The nature of field Gut no.127 should not be changed hand and its status during the pendency of suit. In this premise, the learned Civil Judge appears to have exercised his discretion fairly. Hence, the point no.1 is answered in negative and in answer to point no.2, I pass the following order.

ORDER

- 1] The appeal is dismissed.
- 2] The impugned order dated 02-09-2024 passed below Exh.37 in Spl.Civil Suit No.03/2021 is hereby confirmed.
- 3] The hearing of suit is expedited, preferably be completed by the end of 2026.
- 4] Cost in cause.

Date: 09-06-2026.

Place: Bhokar

(Mohammad Nasir M. Saleem)

District Judge-1, Bhokar.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : M. K. Pawde,
Court Name : District Judge, Bhokar.
Date : 09-06-2026.

Judgment signed by the
Presiding Officer on : 09-06-2026.

Judgment uploaded on : 09-06-2026.