

Misc. Civil Appeal No. 18 of 2026
Judgment



Presented on : 02/05/2026
Registered on : 02/05/2026
Decided on : 01/08/2026
Duration : Yrs. Ms. Ds.
00 02 29

CNR No. : MHSI01-000495-2026

Exhibit No. : 33

IN THE COURT OF ADHOC DISTRICT JUDGE-1, SINDHUDURG

AT OROS, DISTRICT SINDHUDURG

(Presided over by Shri. S. S. Indalkar)

MISC. CIVIL APPEAL NO. 18 OF 2026

1. Smt. Benitta Manvel D'souza,
Age 55 Yrs., Occu. - Business,
R/o. House No. 269, Christianwadi,
Post - Dabholi, Tal. Vengurla,
Dist. Sindhudurg.
2. Smt. Mayshorn Maxy Fernandis,
Age 52 Yrs., Occu. - Household,
R/o. Near Ubhadanda Chapel,
Post - Ubhadanda, Tal. Vengurla,
Dist. Sindhudurg.
Through Power of Attorney Holder
Smt. Benitta Manvel D'souza,
3. Smt. Shahin Sajid Shaikh,
Age 46 Yrs., Occu. - Household,

APPELLANTS

(Ori. Plaintiffs)

R/o. Sai Krupa CHS, A/12, 1st Floor,
Room No. 2, Sector - 9, Koparkhairane,
Navi Mumbai - 400705.
Through Power of Attorney Holder
Smt. Benitta Manvel D'souza.

Vs.

Shri. Louis Manvel D'souza,
Age 43 Yrs., Occu.: - Nil,
R/o. House No. 268/A, Christianwadi,
Post - Dabholi, Tal. Vengurla,
Dist. Sindhudurg.

RESPONDENT
(Ori. Defendant)

Advocates for the Parties –

For Appellants	- Shri. R. L. Chaphekar
For Respondent	- Shri. A. K. Nirawadekar

JUDGMENT

(Delivered on 1st August 2026)

1. This is the appeal filed under Order XLIII, Rule 1(r), r/w. Section 104 of Code of Civil Procedure, 1908, (In short C.P.C.).

2. Being aggrieved and dissatisfied with the order passed by Ld. 2nd Joint Civil Judge (S.D.), Sindhudurg-Oros, rejecting application, below Exh. 5, dated 06/04/2026, in Special Civil Suit No. 78/2025, present appellants (original plaintiffs) have filed this appeal.

(The parties are hereinafter referred as they were referred before the Ld. Trial Court, for sake of convenience.)

3. The facts necessary to decide this appeal, in short, are as under:-

The properties situated at village Dabholi, Tal. Vengurla, Dist. Sindhudurg, are more particularly described as under:-

Schedule-A

Sr. No.	Survey No.	Hissa No.	Area H.R. Potkharaba	Assessment Rs. Ps.
1	3	6B/2	0-10-1	02.03
2	3	25	0-02-5	0.28
3	76	6C	0-10-0 P.K. 0-07-0	0.01
4	101	22 + 23	0-07-1	01.25
5	3	4	0-02-8	0.50
6	115	1	0-05-8	0.13
7	148	8A	0-24-0 P.K. 0-06-0	0.06
8	101	12	0-07-1	01.00
9	115	2A	0-00-8	0.01
10	4	21	0-20-6	03.51
11	101	14A	0-02-5 P.K. 0-01-3	0.01

Schedule-B

Grampanchayat House No. 268-A, situated at village Dabholi, Christianwadi, Tal. Vengurla, Dist. Sindhudurg.

(Hereinafter referred as '**suit properties**' for the sake of convenience.)

4. It is the contention of plaintiffs that, the suit properties were originally owned by Phasku D'souza. Plaintiffs and defendant are the legal heirs of deceased Manvel Phasku D'souza and they have equal share in the suit properties. On the basis of false and bogus Will-deed, dated 27/11/1997, the defendant is trying to establish his right and to grab the suit properties. He got certified the mutation entries on the basis of the Will-deed. Said Will-deed is the subject matter of the suit. The defendant is trying to establish his exclusive ownership and possession over the suit properties by declaring his right before Tantamukta Committee and Grampanchayat. The defendant also trying to alienate the suit properties and also trying to make construction over the suit properties.

5. It is further contention of plaintiffs that, plaintiffs have prima facie case, the balance of convenience lies in their favour. Therefore, they filed this application for interim reliefs that, the defendant be restrained from alienating the suit properties in any manner or creating third party interest in suit properties.

6. Defendant has filed say at Exh. 34 and opposed the application on various grounds. It is the contention of defendant that, the suit and interim application are false and frivolous. The cause of action for suit is wrongly mentioned. Plaintiffs have no right to file the said suit. The suit properties were tenanted properties of deceased Magdelin Phasku D'souza and some properties were exclusively owned by her. The suit properties were exclusively owned and possessed by Magdelin continuously. Her husband Phasku D'souza was jointly cultivated the properties with Magdelin. Phasku and Magdelin were not having male child. Therefore, they adopted Manvel Phasku D'souza. Manvel had three daughters and one son. The defendant is grandson of Magdelin.

7. It is further contention of defendant that, the defendant has taken all proper care and treated her with courtesy and love. Hence, Magdelin has executed the registered Will-deed bearing No. 255/1997, dated 27/11/1997, in favour of defendant. Though, Magdelin has adopted to Manvel, as the defendant was taking care of Magdelin, she executed Will-deed in favour of defendant. Therefore, only defendant become exclusive owner of the suit properties on the basis of the said Will-deed. Magdelin died on 26/10/1999. Thereafter, on 07/11/2000, the name of defendant has been entered to revenue record vide Mutation Entry No. 5219. Said entry has not been challenged till today. Plaintiffs have no any right to claim the partition and possession of the suit properties. Since, the year 2000, till today, the period of more than 25 years is lapsed. The suit is barred by limitation. Hence, defendant claiming compensatory cost of Rs.5,000/-. Therefore, he prayed for rejection of the application.

8. The Ld. Trial Court has after considering the rival pleadings, documentary evidence on record, decided application at Exh. 5 for temporary injunction and rejected the same. The plaintiffs have preferred this appeal against the order below Exh. 5, dated 06/04/2026, on the following grounds:-

(i) The order passed by the Ld. Trial Court is illegal and against the law.

(ii) The Ld. Trial Court has not considered the documents on record and misinterpreted the provisions of Indian Succession Act.

(iii) The Ld. Trial Court has not considered the provisions of Sections 65 and 110 of Limitation Act and only relied on mutation entries.

(iv) The Will executed by Magdelin Phasku D'souza is limited only her share, but, the Ld. Trial Court has not considered this fact.

(v) The Ld. Trial Court has not considered that, the suit properties are originally owned by deceased Phasku Salu D'souza. Therefore, as per Sections 31 and 32 of the Indian Succession Act, each owner has fixed share in the suit properties. Therefore, as per the said provision, the wife get $1/3^{\text{rd}}$ share and remaining $2/3^{\text{rd}}$ share goes to remaining other co-owners of the deceased. Accordingly, after demise of Phasku, $1/3^{\text{rd}}$ share devolved upon his wife namely, Magdelin and remaining $2/3^{\text{rd}}$ share devolved upon the five daughters and one adopted son, namely, deceased Manvel i.e. the appellants/plaintiffs and respondent/defendant. Therefore, the appellants/plaintiffs have right and interest in the suit properties.

(vi) The Ld. Trial Court has not considered that, after demise of Phasku, the suit properties are devolved upon the appellants/plaintiffs, respondent/defendant and they become the co-owner of the suit properties. Under such circumstances, the possession of the suit properties holds by the one co-owner on behalf of other co-owners. Therefore, the appellants/plaintiffs are having the joint possession in the suit properties.

(vii) The Ld. Trial Court has not considered the question of limitation. The question of limitation is mixed question of law and facts. Therefore, the question of limitation is not properly considered by the Ld. Trial Court. The appellants/plaintiffs have filed the suit within the limitation, after denial of the ownership right of appellants/plaintiffs. The alleged Will-deed, dated 27/11/1997, is not legal and valid and not binding on the legal right of appellants/plaintiffs. As per the Indian Succession Act, the Magdelin has no right to bequeath the share of other co-owners in

the suit properties. Therefore, alleged Will-deed is ineffective, invalid since inception and cannot be relied on.

(viii) The Ld. Trial Court has not considered the above facts and concluded in wrong decision. Hence, they preferred appeal against the order for above mentioned grounds.

9. The Ld. Advocate Shri. R. L. Chaphekar for appellants/plaintiffs in brief has submitted that, as per the Indian Succession Act, the appellants/plaintiffs have right, interest in the suit properties. They are the co-owners and having the joint possession in the suit properties. The Will-deed, dated 27/11/1997, is not legal, valid and effective. Conversely, the Magdelin has no right to bequeath the ownership right of others. Therefore, the alleged Will-deed is null and void and not binding on the right of the appellants/plaintiffs. He further submitted that, the question of limitation is mixed question of facts and law. Therefore, in order to decide the same, parties must be given opportunities in the trial. Therefore, suit of plaintiffs is not barred by the Law of Limitation. Therefore, appellants/plaintiffs are having prima facie case, balance of convenience and irreparable loss in their favour.

10. As against this, the Ld. Advocate Shri. A. K. Nirawadekar for respondent/defendant has submitted that, the defendant become the owner and possessor of the landed properties on the basis of Will-deed. He is in possession of the landed properties for more than 25 years. Therefore, the suit of appellants/plaintiffs is hopelessly barred by the Law of Limitation. Appellants/plaintiffs are not in possession of the suit properties. The share in the house property is separated and standing separately in the names of appellants/plaintiffs and respondent/defendant. Appellants/plaintiffs are not having any right, interest in the landed properties. Appellant/Plaintiff

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No. 2 and 3 have withdraw the suit. Therefore, now the suit as well as appeal is not maintainable and tenable. There is no cause of action to plaintiffs/appellants to claim any right, declaration in the suit. Therefore, the appeal is liable to be rejected with costs.

11. After hearing both parties at length, perusal of documents in the paper book, following points arise for determination, against which I have recorded my findings thereon with reasons as below:-

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiffs have a strong prima facie case ?	...Yes.
2.	Whether the balance of convenience lies in favour of plaintiffs ?	...Yes.
3.	Whether plaintiffs will suffer irreparable loss in case of rejection of application ?	...Yes.
4.	Whether the order passed in Special Civil Suit No. 78/2025, below Exh. 5, dated 06/04/2026, by the Ld. Trial Court is correct, legal and proper ?	...No.
5.	Whether interference by this Court is necessary in the impugned order, passed by the Ld. Trial Court ?	...Yes.
6.	What order ?	As per final order.

:- REASONS :-

AS TO POINT NO. 1 TO 3 :-

12. As all these points are interconnected and based on the same set of facts and evidence, therefore, I propose to club them together for discussion.

13. Before parting with discussion on the three tests, i.e. prima facie case, balance of convenience and irreparable loss, it is utmost important to put-forth the undisputed facts from the pleadings and evidence. Firstly, the pedigree of family and inter-relations between plaintiffs and defendant are undisputed. Undisputedly, the original predecessor of plaintiffs, namely, Phasku Salu D'souza and Magdelin Phasku D'souza are husband and wife. They died on 14/01/1980 and 27/11/1997, respectively. They were survived by five daughters and adopted son, namely, Manvel. Manvel died on 18/12/2007 and his wife died on 05/07/2007. Plaintiffs are their daughters and defendant is their son. It is matter of record that, Magdelin has executed the registered Will-deed, dated 27/11/1997, in favour of defendant, in respect of landed property described in Schedule-A. On the basis of the said Will-deed, name of defendant is entered in the 7/12 extract by Mutation Entry No. 5219.

Nature of suit properties :-

14. After perusal of the contentions of the parties and documentary evidence on record, the landed properties are described in Schedule-A properties and house property is described in Schedule-B property. Collectively, it is referred as 'suit properties'. Firstly, in respect

of the house property, it is undisputed fact that, it is jointly owned by plaintiffs and defendant and it is inherited from deceased Phasku and Magdelin. There is dispute in regards to the landed properties mentioned at Schedule-A. In this regards, it is contention of plaintiffs that, said landed properties are joint ownership properties of plaintiffs, defendant and the daughters of Phasku and Magdelin. Per contra, it is contention of defendant that, he become the owner and possessor of the landed properties described at Schedule-A, on the basis of Will-deed, dated 27/11/1997. Plaintiffs are at all not concerned with the said landed properties. Therefore, at this juncture, it is necessary to assess from the factual aspect that, what is the nature of landed properties.

15. From the factual aspect, it reveals that, the landed properties stands in the name of deceased Phasku Salu D'souza. He has acquired right in the landed properties on the basis of tenancy right from Manohar Keshav Nadkarni, under the 32-M certificate. After demise of Phasku, said landed properties are entered in the name of Magdelin. Therefore, prima facie it reveals that, the landed properties described in Schedule-A, are inherited from Phasku to Magdelin. There is no any documentary evidence to show that, Magdelin has acquired the landed properties by any mode to claim that, said landed properties are exclusively owned by her. Under such circumstances, after demise of Phasku, the landed properties devolved upon the wife Magdelin, five daughters and adopted son Manvel. In this regards, undisputedly, all the parties and properties are belongs from Christian Community and Indian Succession Act, 1925, is made applicable for inhereents of the properties.

16. As per the Indian Succession Act, each member of family become the co-owner of the property and having his share in absence of

any testamentary disposition. In case of testamentary succession, the Part VI of the Indian Succession Act made applicable, whereas in case of intestate succession, the Indian Christians are governed by Part V of the Indian Succession Act from Section 31 to 49. In general, when a Christian dies intestate, the property devolved according to the provision of the Indian Succession Act, in view of above provision. Considering this above provision, after demise of the person, his property devolved upon his legal heirs as a co-owner having fixed shares. Therefore, after demise of person, as per the relevant provision, $\frac{1}{3}^{\text{rd}}$ share goes to the wife and the remaining $\frac{2}{3}^{\text{rd}}$ share devolved upon the other co-owners. Therefore, there is a distinct and separate share in case of intestate succession in the Christian Community. Therefore, from above discussion, it is clear that, in case of intestate succession and the testamentary succession, there are different and separate rule of succession in the Indian Succession Act. If the Christian dies without a Will, all legal heirs inherit strictly in accordance with the Sections 32 to 49 of The Indian Succession Act. No heirs can claim a larger or more share, except as provided by the statute. Likewise, if there is a Will, then, the testator can bequeath only the property or a share that legally belongs to him. The Will cannot be operate upon the share of the other co-owners. Considering this legal position, it is necessary to scrutinize the present situation about the right of parties and the alleged Will-deed.

17. In present case, undisputedly the landed properties described in Schedule-A belongs to Phasku. After demise of Phasku, the properties devolved upon his wife Magdelin, five daughters and adopted son Manvel. As per the Indian Succession Act, Magdelin is entitled for $\frac{1}{3}^{\text{rd}}$ share and remaining $\frac{1}{3}^{\text{rd}}$ share goes to the other legal heirs, namely, five daughters and adopted son equally, i.e. $\frac{1}{18}^{\text{th}}$ share each. The $\frac{1}{18}^{\text{th}}$ share again sub-

divided among the plaintiffs and defendant, equally. On this background, the Magdelin, five daughters and adopted son Manvel become co-owners of the landed properties with definite shares. On this backdrop, it is crystal clear that, the five daughters, adopted son and wife are entitled share in the landed properties.

Validity of Will-deed :-

18. Undisputedly, it is matter of fact and record that, Magdelin has executed the alleged Will-deed, dated 27/11/1997, in favour of defendant, in respect of the entire landed properties described in Schedule-A. The legal question arises, after the demise of Phasku, his wife Magdelin has not become the absolute owner of above landed properties. She has inherited the right in the said properties on the basis of rules governed under the Indian Succession Act. At the time of death of Phasku, he is survived by wife, five daughters, as well as one adopted son. Under such circumstances, Magdelin is entitled for only 1/3rd share in the above landed properties as a co-owner and remaining share devolved upon the five daughters and one son. The question remains that, one co-owner can execute a Will bequeathing the property to the extent of his right and not the right of other co-owners. Therefore, on this background, Magdelin is entitled to transfer her undivided share in the above landed properties to the extent of her share and not the share of other co-owners. The effect of this is that, the Will-deed executed by Magdelin, is ineffective and she has no any right to transfer the right of other co-owners. Therefore, the alleged Will-deed is not prima facie proof of title and it is a invalid document since from inception.

19. From the above discussion, one can easily gathered that, on the basis of the alleged Will-deed, defendant is claiming the title is found

to be invalid, null and void. The right of plaintiffs are in the landed properties. In this regards, considering the contentions of plaintiffs, the plaintiffs are having a right, interest in the suit properties mentioned in Schedule-A.

Possession of suit properties :-

20. In the present case, the suit properties are two types, one is landed properties described in Schedule-A and house property described in Schedule-B. In regards to the above suit properties described in Schedule-A, the defendant has claimed that, he is in exclusive possession over the suit properties since year 2000. Whereas, in regards to the suit property described in Schedule-B, it is the contention of defendant that, the names of plaintiffs and defendant are entered in the assessment list of house separately. Therefore, there is a separate possession in the said house property. On this background, it is necessary to discuss the possession over the suit properties.

21. As per above discussion, five daughters of Magdelin and deceased Manvel i.e. plaintiffs and defendant are joint owners of the above landed properties. There is no case of previous partition of said landed properties. In this regards, the alleged Will-deed is valid to the extent of right of Magdelin and not binding on the right of five daughters and adopted son Manvel. On this legal aspect, it is settled principle of law that, possession of one co-owner is in law presumed to be possession on behalf of all co-owners, unless there is a clearcut evidence of ouster or hostile assertion of exclusive legal title. Considering this, after perusal of the record, defendant has not contended the clearcut ouster of the other co-owners on the basis of exclusive legal title. The title of defendant is defective or imperfect on the basis of Will-deed on the entire landed

property. Therefore, the possession of defendant is on behalf of other joint owner in the landed properties. The exclusive legal possession by defendant does not by itself, amount to exclusive legal ownership referable to the valid possession over the landed properties. Therefore, the possession of defendant is deemed to be possession on behalf of all other co-owners. Such possession is ordinarily permissive and representative possession and not adverse possession. Therefore, there is presumption in the law that, the co-owner in possession holds the property for himself and on behalf of other co-owners. Therefore, after perusal of the documentary evidence and contentions of defendant, it reveals that, the name of defendant is entered in the revenue record as a possessor of the landed properties. Therefore, considering this situation, it cannot be accepted that, the defendant is in exclusive possession, excluding the possession of other co-owners in the landed properties. Therefore, at this juncture, it can be inferred that, the possession of defendant is for himself and on behalf of other co-owners in the landed properties.

22. In regards to the house property, plaintiffs are claiming the joint possession and partition of the said property. Whereas, it is contention of defendant that, said house property is separated and separate names of plaintiffs and defendant are entered in the said house property. Therefore, considering all above facts, it reveals that, in the said house property the daughters of Magdelin are having undivided share. Therefore, unless and until partition is effected in the said house property among all the joint owners, said house property required to be held that, it is a joint ownership property of all joint co-owners and having possession over it of plaintiffs, defendant and other co-owners jointly.

23. Therefore, considering all above discussion, defendant cannot obstruct the joint possession of plaintiffs over the suit properties. Plaintiffs, defendant and other co-owners are having joint possession in the suit properties, until and unless there is a partition and separate possession among the co-owners. Therefore, in this regards, plaintiffs are entitled for the relief of temporary injunction against the defendant, not to obstruct the joint possession in undivided suit properties.

The Prima facie Case :-

24. Considering the power of Appellate Court in the appeal, is supervisory in nature in respect of discretionary order. The Appellate Court is not expected to substitute its own discretion, merely because another view is possible. The interference is justified only when the Trial Court has ignored the settled legal principles, omitted the consideration of the material evidence, relied upon the irrelevant considerations or exercised its discretion arbitrarily or perversely. Therefore, the impugned order is required to be examined in the light of pleadings, documentary materials and the reasons assigned by the Ld. Trial Court. Thus, considering this, the Ld. Trial Court has admitted the nature of suit properties, the relations of the parties and existence of the alleged Will-deed. The Ld. Trial Court has made an error in regards to the question of limitation that, the relief of declaration of alleged Will-deed is barred by the Law of Limitation. In this regards, question of limitation is mixed question of facts and law. Therefore, it is required to give the opportunity to the parties at trial. The second important aspect is, the alleged Will-deed is challenged by the plaintiffs and as per the Indian Succession Act, Magdelin is not the owner of entire landed properties and she is entitled to transfer the said properties to the extent of her right only. Therefore, the

Will-deed is itself from the inception is ineffective and invalid. The consequence of it that, it can be challenged at any time, when right to sue accrues to the plaintiffs. Therefore, in this regards, the observations, reasons, are not as per the settled principle of law, available factual aspects. Therefore, they are required to be interfered.

25. The prima facie case does not require suppose to record a final findings on the disputed facts, issues, rights. At the stage of interlocutory order, the Court is required to determine, whether plaintiffs have disclosed a bonafide substantial question requiring the adjudication at trial. In the present case, plaintiffs have prima facie established that, they are having right, interest in the suit properties mentioned in Schedule-A. The alleged Will-deed is not legally valid. On this background, after considering the relevant documents, contentions, it prima facie indicates that, there is a bonafide arguable facts in favour of plaintiffs. The rival contentions involved in the appeal cannot be conclusively decided without recording the evidence. The plaintiffs have prima facie disclosed a legally enforceable right in the suit properties, requiring the protection until the disposal of the suit. Accordingly, this Court is satisfied that, plaintiffs have established the prima facie case.

Balance of convenience :-

26. After going through the rights of plaintiffs in the suit properties mentioned in Schedule-A, the balance of convenience tilts in favour of plaintiffs. In the present case, on the basis of the alleged Will-deed, which is not legal and valid, the defendant is permitted to alienate the suit properties, altered its nature or create third party interest during the pendency of suit, then, plaintiffs may be compelled to face further proceedings, resulting in multiplicity of proceedings and deprive the

legitimate right in the suit properties. As against this, considering the claim and allegations of defendant, he would not suffer irreparable loss, if he is merely restraint from changing the nature, status of the suit properties, until the suit is finally decided. The preservation of the suit properties would protect the interest of both parties to adjudicate the matter on merit at trial.

The irreparable injury :-

27. Considering the nature of subject matter, right involved in the suit properties, the greater injury is likely to be caused to the plaintiffs, than the defendant, which cannot be adequately compensated in terms of money. The alienation, demolition, construction or creation of the third party right, may render the ultimate decree ineffective or lead to irreversible complications. Therefore, refusal of interim protection would defeat the very object of the pending suit. Therefore, plaintiffs have fully established the case for the irreparable loss in their favour.

28. Now, question arises about the maintainability of the suit. In short, it is the contention of defendant that, plaintiff No. 2 and 3 have withdraw the suit and also not supporting to plaintiff No. 1 in the appeal. Therefore, the appeal and the suit is not maintainable. In this regards, considering this contention, the suit is filed for partition, possession and declaration of alleged Will-deed. Prima facie, plaintiff No. 1 is entitled to pursue the suit and appeal. Plaintiff No. 1 has right, interest in the suit properties. Therefore, on this ground only, it cannot be inferred that, the suit and appeal is liable to be dismissed.

29. Another small point is raised by the Ld. Advocate for defendant that, plaintiff No. 1 was consenting party to the alleged Will-

deed, dated 27/11/1997. After perusal of the said copy of Will-deed it seems that, plaintiff No. 1 has signed on the alleged Will-deed. In this regards, mere signing on the Will-deed, does not amount that, she has relinquished her right of ownership in the suit properties. In this respect, there can be inferred that, she may be estoppel for the legal action and not for the legal right. Therefore, this Court do not find any substance in the contention of the defendant that, signing of plaintiff No. 1 on the alleged Will-deed, adversely affect her right.

30. The fundamental object of granting the temporary injunction is to preserve the subject matter of the litigation, so that, final decree, if passed in favour of successful party, does not become illusory. The judicial discretion under Order 39, Rule 1 and 2 of C.P.C., must therefore be exercised to maintain the status-quo where circumstances so demand. In the present case, refusal of temporary injunction exposes the suit properties to the risk of irreversible change. Hence, interim protection is required and necessary in the interest of justice. Therefore, from this all factual aspects, plaintiffs have made out the prima facie case, balance of convenience lies and irreparable loss in their favour. Therefore, in view of above discussion, the Court answer Point No. 1 to 3 in 'affirmative'.

AS TO POINT NO. 4 AND 5 :-

31. Upon careful examination of impugned order, pleadings of the parties and available documents on record, this Court finds that, the Ld. Trial Court has failed to consider the material proposition of the Indian Succession Act, right of the parties and entitlement of Magdelin to execute the alleged Will-deed. The reasons, observations and inferences given by the Ld. Trial Court is not as per the settled proposition of law and

facts. Therefore, they are perverse, arbitrary and required to be interfered. Therefore, the impugned order passed by the Ld. Trial Court is not correct, legal and proper. Therefore, it is required to be interfered. Consequently, this Court is satisfied that, plaintiffs have established the prima facie case, the balance of convenience lies in favour of maintaining the status-quo and refusal of interim relief is likely to occasion to cause irreparable injury. Thus, impugned order therefore cannot be sustained. Hence, in view of above discussion, the Court answer Point No. 4 in 'negative' and Point No. 5 in 'affirmative'.

AS TO POINT NO. 6 :-

32. In answer to Point No. 6, the Court pass the following order:-

:- ORDER :-

1. Appeal is allowed with costs.
2. The impugned order passed by the Ld. Trial Court rejecting temporary application at Exh. 5, in Special Civil Suit No. 78/2025, is hereby quashed and set aside, as under:-
3. The application at Exh. 5, is allowed.
4. The respondent/defendant is hereby restrained from alienating, encumbering, transferring, creating third party rights or change in the nature of the suit properties, till final disposal of the suit.
5. The respondent/defendant is hereby further restrained from obstructing the joint possession of plaintiffs in the suit properties by himself or any other person acting on his behalf, till final disposal of the suit.

6. The observations made herein are confined to the adjudication of interim application and shall not affect the merit of the suit.
7. Matter stands disposed of accordingly.
8. Decree be drawn up accordingly.
9. All concerned to act upon the digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this Court. In this regard, attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) Shital Krushna Dhake Vs. Krushna Dhake, MANU/MH0285/2018.

(Dictated and pronounced in open Court).

Sindhudurg-Oros,
Date - 01/08/2026

(S. S. Indalkar)
Adhoc District Judge-1,
Sindhudurg-Oros.