# IN THE HIGH COURT OF MADHYA PRADESH
# A T J A B A L P U R

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK JAIN**
**ON THE 30th OF APRIL, 2026**

**MISC. PETITION No. 2688 of 2026**

***MUKESH KUMAR KEWAT AND OTHERS***
***Versus***
***GAYA PRASAD KEWAT AND OTHERS***

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**Appearance:**

*Shri Girish Shrivastava – Advocate for petitioners.*

*Shri Naveen Ahuja – Panel Lawyer for respondent No.4/State.*

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**WITH**

**MISC. PETITION No. 2744 of 2026**

***JAI KUMAR KEWAT***
***Versus***
***GAYA PRASAD KEWAT AND OTHERS***

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**Appearance:**

*Shri Akhilesh Kumar Choubey and Shri Balram Yadav – Advocates for petitioner.*

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## ORDER

Since both these petitions have been filed challenging the same order but by different parties i.e. one filed by plaintiff and the other filed by defendant No.2, therefore, they are being heard together and decided by this common order.

2. The challenge in the present petitions is made to the order passed by the appellate Court dated 02.04.2026, whereby the appellate Court has partly vacated the temporary injunction granted by the trial Court vide order dated 04.05.2024 and against such partial modification of the temporary injunction order, the plaintiff as well as the defendant No.2 are before this Court.

3. A Civil Suit has been filed by the plaintiff Jai Kumar on the assertions that the defendant No.1 is his father and defendant Nos.2, 3, 4 and 5 are his brothers and sisters. Suit is for partition of property held by the defendant No.1 father, and filed in his lifetime on the assertion that the defendant No.1 father holds the property which in fact belongs to coparcenary of the defendant No.1 and his children and the suit has been filed projecting existence of coparcenary. It is contended in the suit that the defendant No.1, though he is recorded owner of the properties, but since he has inherited the properties from his ancestors, therefore, he cannot deal with the properties in the manner he likes, except his own share in the properties. All his children are having birthright in the property.

4. The trial Court had granted temporary injunction for all the four properties in the matter of possession, construction as well as alienation. The appellate Court has restricted the said temporary injunction order to two properties in place of the originally four properties for which temporary injunction was granted.

5. The suit has been filed for properties in Survey Nos.288/1, 71/1, 277/5 and 446. The trial Court granted temporary injunction for all the four properties, but the appellate Court has restricted the temporary injunction only for two lands and for remaining two parcels of land i.e. the Survey No.288/1 and 71/1, the appellate Court has vacated the order of temporary injunction, holding that these properties *prima facie* do not adhere to the coparcenary properties.

6. The learned counsel for the petitioner had vehemently argued that the appellate Court having held that the properties in Survey Nos.288/1 and 71/1 having held not to be coparcenary properties, in fact amounts to adjudication of the suit itself and this could not have been done at preliminary and interlocutory stage by the appellate Court. Therefore, the order of the appellate Court needs to be set aside and temporary injunction needs to be granted to the petitioners. It is argued that the

grievance of all the other parties are against the defendants No.1 and 5 because the defendant No.1 who is the father is highly in favour of the defendant No.5 who is one of his children and brother of the other parties and anyhow father wants to give maximum benefit to defendant No.5 by alienating the properties in favour of defendant No.5, which should not be permitted.

7. Upon considering the aforesaid assertions, it is seen that the appellate Court has held that the defendant No.1 father is an old man around 90 years of age and at such an age lightly no restraint for enjoyment of property should be put in place so as to prevent a person in old age for enjoyment of his property.

8. This Court is in agreement with the aforesaid logic and reasoning of the lower appellate Court because to prevent the father from enjoyment of property at the instance of his own children, a very strong *prima facie* case has to be made out by the children to project their birthright and existence of coparcenary in the family. At the drop of a hat, the children cannot come up to Court and prevent their old aged parents from alienating and enjoying the property because it would be travesty of justice to the senior citizens and denial of their basic human

rights in the evening of their life, if in such a casual manner the senior citizens are prevented from enjoying the property, though it may be inherited by them from their ancestors.

9. The lower appellate Court has considered the judgment of the Hon'ble Supreme Court in **Yudhishter vs Ashok Kumar** reported in **AIR 1987 SC 558** in holding that after enforcement of Hindu Succession Act, 1956, the theory of birthright does not exist.

10. With the enactment of Hindu Succession Act, 1956, succession of property would take place as per Schedule of the said Act read with Section 8 of the said Act in cases of Hindu males dying intestate.

11. If the father of defendant No.1 died intestate after 1956, then the succession of properties would be in terms of Section 8 of the Hindu Succession Act read with Schedule thereof and there cannot be any inference of existence of coparcenary for the properties succeeded after enactment of Hindu Succession Act in 1956.

12. The plaintiffs are yet to prove existence of coparcenary and on the basis of bare pleadings of the plaintiffs, there cannot be any inference of existence of coparcenary.

13. The appellate Court has duly considered the position that so far as Survey No.288/1 is concerned, the father of defendant No.1 acquired the property in the year 1961 and, therefore, there cannot be any inference of existence of coparcenary so far as land in Survey No.288/1 is concerned. For the other parcel of land which is in Survey No.71/1 is concerned, the lower appellate Court has held that no source of title of the said land could be established so as to make a *prima facie* case of existence of coparcenary.

14. This Court is in complete agreement with the aforesaid logic and justification adopted by the lower appellate Court, which is not found to suffer from any error of reasoning or jurisdiction.

15. Consequently, finding no reason to interfere in the well-reasoned order passed by the lower appellate Court, the petitions fail and are **dismissed**.

**(VIVEK JAIN)**
**JUDGE**

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