



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO. 2218 OF 2026

Kavita D/o Ashokrao Taynath
Age : 30 years, Occu. Service
R/o. Trimurti Nagar, Parbhani
Tq. and Dist. Parbhani

....Petitioner

VERSUS

1. Punjaram S/o Daulatrao Gondage
Age : 51 years, Occu. Agri
R/o. Building No.2, Flat No.67,
Chunchale Shivar, XLO Point, Nashik,
Tq. and Dist. Nashik.
2. Shashikala W/o Ravsaheb Fate
Age : 75 years, Occu. Household,
R/o. Girgaon, Tq. Sailu, Dist. Parbhani
3. Shushila @ Kavubai W/o Dnyaneshwar
Thamke
Age : 72 years, Occu. Household,
R/o. Girgaon, Tq. Sailu, Dist. Parbhani
4. Rukmin W/o Nagorao Taynath
Age : 70 years, Occu. Household,
R/o. Ekhrukha Tarfe Pedgaon,
Tq. and Dist. Parbhani
5. Dwarkabai W/o Sarjerao Taur
Age : 65 years, Occu. Household,
R/o. Ridhori, Tq. Majalgaon, Dist. Beed.

....Respondents

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Mr.Santosh N. Pawde And Adv. M.K. Bhosale for the Petitioner.
Mr.Sudhir K. Chavan a/w Mr.Someshwar S. Birajdar & Ms.Ranjita R.
Mahajan for Respondent No.1.

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CORAM : MANJUSHA DESHPANDE, J.
RESERVED ON : 04.09.2026
PRONOUNCED ON : 29.09.2026

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. The Petitioner is taking exception to the order dated 13th January, 2026, passed by the Civil Judge Senior Division, Parbhani below Exhibit-1 in R.C.S. No.55 of 2024.
3. The learned Advocate for the Petitioner, Mr. Pawde, submits that Respondent No.1 herein had instituted a suit, being R.C.S. No.55 of 2024, against the Petitioner and Respondent Nos.2 to 5, seeking declaration of ownership, decree of perpetual injunction, and declaration that the Sale Deed executed by them on 24th May, 2021, is null and void and not binding upon him.
4. It is submitted that Respondent No.1 has challenged the said Sale Deed primarily on the ground that, at the time of its execution, he was suffering from mental illness and was, therefore, not in a fit state of mind to execute the said document. According to Respondent No.1, the Sale Deed executed by him on 24th May, 2021, is not binding upon him. The Petitioner who is the Defendant No.5 in the suit, while opposing the suit, filed an application under Order 32, Rule 2 read with Rule 15 of the Code of Civil Procedure, 1908 ('CPC') contending that the suit instituted by the General Power of Attorney ('GPA') is not maintainable hence, the plaint may be taken off the file. Though application was opposed by Respondent No.1, an order came to be passed by the Civil Judge Senior

Division, Parbhani taking the plaint of the file, vide order dated 18th April, 2024.

5. It is submitted that in view of the order dated 18th April, 2024, the Respondent No.1 filed a fresh application below Exhibit-32 praying for appointment of his son-in-law as his next friend. Even this application was opposed by the Petitioner. This application has been opposed by the present Petitioner by filing the 'say' to the application contending that, although the plaint has been taken off the file by the Court by invoking Order 32, Rule 15 of the CPC, keeping the matter for taking further steps by the Respondent No.1. The Respondent No.1 has thereafter filed an application for appointment of next friend, on the ground that he himself is a person of unsound mind hence, he may be allowed to be represented through his next friend, i.e., his son-in-law. This application was opposed on the ground that, the medical prescription relied upon by the Respondent No.1 is not sufficient to adjudge the Respondent No.1 to be a person of unsound mind. Unless he is adjudged to be a person of unsound mind, the question of appointing next friend to represent him would not arise. It was stated that an inquiry is required to be conducted, to verify whether the Respondent No.1 is actually a person of unsound mind. Only upon obtaining permission to sue through next friend, the next friend can represent the Respondent No.1. Since no such procedure has been followed in the present case and same deserves to be dismissed.

6. This application was decided by the learned Judge by holding that the inquiry that is contemplated under Order 32, Rule 15 of the CPC includes calling upon the person who is required to be adjudged of unsound mind and to assess his mental capacity and soundness of mind. While doing so it is open for the Court to take assistance in the form of medical examination and the evidence of the doctor who is treating the Respondent No.1. The Respondent No.1 who is alleged to be of unsound mind should have been invariably called for being questioned, when the case falls under the second part of Order 32, Rule 15 of the CPC. It is held that even though the earlier application was filed through GPA on the ground that the Respondent No.1 is of unsound mind, the pleadings of the Respondent No.1 were found to be not sufficient and no inquiry was undertaken in the matter.

7. It is observed that the procedure contemplated under Order 32 of the CPC provides for a person under disability to be represented through a next friend and not through a GPA. In view thereof, the suit instituted through a GPA, was taken off the file.

8. Relying on the Judgment in case of ***Somnath V/s. Tripanna Ramchandra Jannu, 1972 CJ (Bom) 76***, the learned Judge has held that before allowing or rejecting any application under Order 32 of the CPC, an inquiry is necessarily required to be conducted for appointment of a next friend, and the application was rejected. However, while passing the order, the learned Civil Judge Senior Division, Parbhani has framed a

preliminary issue as to the unsoundness of mind of the Respondent No.1 at Exhibit-1 which was to be heard and decided on its own merits.

9. On the said injunction application an order has been passed on 21st June, 2025, recording that although the Respondent No.1 was directed to keep himself present for examination before the Court on the next date, i.e., 27th August, 2024, he has neither caused his appearance nor filed evidence before the Court. Even the adjournment application is filed by Respondent No.1 on 21st June, 2025, it did not contain sufficient reason, for his absence before the Court on the day fixed for causing his appearance, therefore, the order came to be passed directing Respondent No.1 to remain present before the Court on 1st July, 2025, failing which, the suit would be dismissed as per Order 39, Rule 11 of the CPC. Upon such order being passed on 21st June, 2025, a common order came to be passed below Exhibits-1 and 32, on 13th January, 2026. In the impugned order the learned Judge has observed that he has gone through the medical documents and records, which reflected that Respondent No.1 was suffering from mental disease, i.e., schizophrenia and has been taking treatment since long. Based on the documents placed on record about the treatment of the plaintiff, the learned Judge has come to the conclusion that the plaintiff is suffering from mental disease and, therefore, he can be permitted to appoint next friend. It is also recorded that the learned Judge has personally interacted with the Respondent

No.1 and, based on the interaction, he was of the opinion that the Plaintiff was not in a fit state of mind.

10. In view thereof, he has answered the preliminary issue framed on 27th August, 2024 in affirmative and has proceeded to pass the order declaring the Respondent No.1 to be of unsound mind and permission is granted to appoint next friend on his behalf and proceed with the suit.

11. The learned Advocate for the Petitioner submits that the learned Judge has come to a conclusion about the incapacity of the plaintiff to conduct the suit by interacting with him and on the basis of the documents placed on record, which is not permissible. According, to him an inquiry is required to be conducted before declaring any person to be a unsound mind. He submits that the learned Judge is not an expert to arrive at a conclusion whether the plaintiff is of a unsound mind to such an extent that he is not in a position to protect his own interest ably. Due to absence of inquiry before declaring the plaintiff of unsound mind, the order passed by the learned Civil Judge Senior Division, Parbhani suffers from jurisdictional error and as such, becomes unsustainable. In support of his submissions, he has relied on the decision of the Hon'ble Supreme Court in case of *Kasturibai and others V/s. Anguri Chaudhary, (2003) 3 SCC 225* ; *Shushma w/o Umesh Kanpathak V/s. Umesh s/o Vijayrao Kanpatha, 2017 SCC OnLine Bom 4387*, *Somnath V/s. Tipanna Ramchandra Jannu, AIR 1973 BOMBAY 276* and a decision of Kerala

High Court at Ernakulam in CRP NO.110 of 2017 dated 21st August, 2023 (*Gopkumar s/o Krishnan Nair V/s. Madhusoodanan Nair s/o Krishna Pillai*), where the learned Judge of the Kerla High Court has recorded a finding that mere questioning of the Petitioner/Plaintiff by the Court and recording of answers alone is not sufficient to comply with the requirement of an inquiry as mandated under the second limb of Rule 15 of the Order 32 of the CPC. The inquiry as contemplated under Order 32, Rule 15 of the CPC, is to be conducted either by the Medical Board or by calling an expert without jumping to the conclusion on examination of the Petitioner himself by the Court, which does not amount to protecting the interest of the person who, is not capable to defend his case.

12. Per-contra, the learned Advocate for contesting Respondent No.1 submits that the Petitioner is blowing hot and cold at the same time. After filing of the suit by Respondent No.1, the Petitioner himself has filed an application under Order 32, Rule 2 of the CPC, contending that considering the Respondent No.1 himself claims that he is a mentally ill person, a suit filed through GPA would not be permissible. The plaint needs to be taken off the file under order 32, Rule 2 of the CPC. In view of the application filed by the Petitioner, order below Exhibit-20 has been passed by the Civil Judge Senior Division, Parbhani directing the plaint R.C.S. No.55 of 2024, shall be taken off the file. Thus, according to him the Petitioner himself has admitted that, the Respondent No.1 is a person of unsound mind, who cannot be represented through GPA but needs to

be represented through next friend. However, when the Respondent No.1 has filed an application seeking permission to be represented through the next friend, the same is again objected by the Petitioner.

13. After framing of preliminary issue as to unsoundness of mind of the Respondent No.1 on the application below Exhibit-32, the Respondent No.1 remained present before the Court pursuant to the order dated 21st June, 2025. He has also produced the medical records about his mental illness in support of his claim that he is suffering from schizophrenia since long. After perusing the documents as well as interacting with Respondent No.1, the learned Judge has come to a conclusion that Respondent No.1 is not in a fit state of mind and has adjudged him to be a person of unsound mind. Based on such declaration about unsoundness of mind, permission was granted to appoint next friend on behalf of Respondent No.1 and proceed with the suit vide order dated 13th January, 2026.

14. The learned Advocate for the Respondent relies on the documents supporting the medical treatment given to him. The certificate of mental illness issued by Dr. Nagapurkar on 4th September, 2024, which certifies that the Respondent No.1 had been under the treatment of the said doctor for schizophrenia since May, 2017. Therefore, in view of the sufficient material being available to the learned Judge, he has rightly passed the order after conducting inquiry himself about the mental state of Respondent No.1. The learned Advocate, Mr.Chavan, relies on a

decisions in the case of *Sharda V/s. Dharmpal (supra)* as well as *Kasturibai and others (supra)*, to contend that in fact the aforementioned two case laws that have been referred consistently in the decisions relied upon by the Petitioner are misplaced and are given in the peculiar facts situation.

15. In the Judgment of this Court *Shushma w/o Umesh Kanpathak (supra)* and *Sharda (supra)*, even in the aforementioned decisions, according to the learned Advocate, the issue before the Hon'ble Supreme Court was about the right of personal liberty, when there is a conflict between the fundamental rights of two parties and the Court has to balance the competing rights. One of the issue before the Hon'ble Supreme Court was the extent and nature of mental illness, required for grant of divorce on the ground of mental illness, in context with the Mental Health Act, 1987. Therefore, the scope and applicability of mental illness in the proceedings initiated under the Hindu Marriage Act, 1955 is totally different from the context of the application under order 32, Rule 15 of the CPC. He, therefore, submits that the case law relied upon by the Petitioner is not applicable to the facts of the present case.

16. After hearing the parties and perusing the documents placed on record, a short issue that arises before this Court is whether the Trial Court on its own can declare a party before it to be of unsound mind, without conducting any formal inquiry or calling for any evidence of an expert to arrive at a conclusion about the unsoundness of mind of a party.

It is undisputed that the Respondent No.1 was called upon to personally remain present before the Court, vide order dated 21st June, 2025, when he was personally present before the Court, the learned Judge has perused his medical record, which supported his claim that he was suffering from a mental illness, i.e., schizophrenia, and was under treatment since 2017. Apart from the documents placed on record, the learned Judge has also personally interacted with Respondent No.1 and has arrived at a conclusion that he does not seem to be in a fit state of mind, and competent to ably conduct his own case.

17. Order 32, Rule 15 Order of the CPC governs the cases of a party to the suit who is suffering from mental infirmity, rendering him incapable of protecting his interest ably, which is reproduced hereunder, which reads thus :

“[15. Rules 1 to 14 (except rule 2-A) to apply to persons of unsound mind – Rules 1 to 14 (except rule 2-A) shall , so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.]”

18. Rule 15 of the CPC is divided into two parts. The first part provides that the provisions on in Rules 1 to 14 that are applicable to the minors shall apply to the persons who are adjudged to be person of unsound mind before or during pendency of the suit. Similarly, it shall also apply to the persons who although are not adjudged, but on inquiry

by the Court, are found to be incapable by reason of any mental infirmity of protecting their interest when suing or being sued.

19. In this regard, we may profitably refer to a decision of this Court in the case of *Somnath (supra)*. While considering the scope of Rule 15 of the CPC, the Division Bench has made following observation :

“17. The above discussion clearly leads to the the logical conclusion that when the plaint is being examined for the purpose of admission, if it contains a statement as required by clause (d) of Rule 1 of Order 7 that the plaintiff is a person of unsound mind and that a next friend is suing on his behalf, the court must at once hold an inquiry. It is the duty of the court to do so, and it is not necessary for the next friend to make a separate application for that purpose. This inquiry should ordinarily include the calling of the plaintiff himself and questioning him in Court. If the Court entertains doubt about the mental capacity or the soundness of his mind, it is open to the Court to take further assistance in the form of medical examination and the evidence of the doctor under whose observations the plaintiff may be kept. The quantum and extent of inquiries must be left in each case to the circumstances prevailing. There may be a plaintiff who on immediate view may appear to be a person of unsound mind, and the Court may not need much evidence beyond recording of the questions put to and the answers given by the person concerned. There can be other cases which are not so clear and more evidence may be necessary. However, apart from the total extent of the evidence that might be led, we would suggest that as a matter of strong commonsense approach, the plaintiff who is alleged to be of unsound mind should be invariably called for being questioned when the case falls under the second part of Rule 15 of Order 32. This inquiry is made for the purpose of recording a finding by the court that the plaintiff is a person of unsound mind, or a person mentally so infirm as to be incapable of protecting his own interests. The provisions of Rule 15 of Order 32 make it possible for a next friend to sue on behalf of an adult person as a next friend only when the person is either so adjudged by a court of competent jurisdiction, or if not so adjudged, is found by the court on inquiry to be so. That is

the foundation, prima facie, for a next friend to avail and proceed with the suit. Such inquiry is obviously an ex parte inquiry for the court to give a finding and to admit the plaint and issue the process to the other side.”

20. In the aforementioned decision, this Court has elaborately considered the procedure required to be adopted by the Courts. It is held that the Court should ordinarily call the plaintiff himself and question him, if the Court entertains doubt about his mental capacity or unsoundness of mind, it is open for the Court to take further assistance, in the form of medical examination and evidence of the Doctor. It is further held that the quantum and extent of inquiries depend on circumstances of each case. A person of unsound mind can be immediately assessed by the Court, where the Court has a doubt, it may call for further evidence like opinion of the Doctor.

21. In view of the aforementioned observations of this Court, on going through the procedure adopted by the learned Judge of the Trial Court, there does not appear any error in the procedure adopted by him. Although the Petitioner has relied on various case laws to support his contention that the inquiry cannot be conducted by the learned Judge himself, but it has to be conducted by leading expert evidence of the doctor under whose observations, the plaintiff is taking his treatment or in the form of medical examination. In view of the Judgment of the Division Bench of this Court in the case of *Somnath (supra)*, as compared to the other decisions relied upon by the Petitioner, in case of *Kasturibai*

and others (supra) and *Sharda (Supra)*, upon going through the ratio of both the Judgments, they do not appear to be applicable to the facts of the present case. The context and circumstances in which the said two judgments were rendered are entirely different.

22. In the case of *Kasturibai and others (supra)*, the plaintiff had filed a suit against the Respondent for partition of certain immovable properties. The Respondent, who was aged 87 had filed an application with a prayer that, she be summoned before the Court so as to enable the Court to inquire about her state of mind and, if necessary, guardian be appointed for defending her in the suit. The said application was dismissed by the learned Judge of the Trial Court, which was subject matter of challenge in the Revision Application in terms of Section 115 of the CPC before the High Court. The High Court by a reasoned order allowed the Revision Application, holding that the Application under Order 32, Rule 15 of the CPC, for appointment of a guardian, for defending her in the suit would not cause any prejudice to the either parties. It was held that Trial Court acted with material irregularity in rejecting the application filed under Order 32, Rule 15 of the CPC, and the impugned order was set aside. The aggrieved party filed an application for recalling the order. This application instead of being placed before the Single Judge, who decided of the Civil Revision Application, was placed before the Division Bench and the same came to be dismissed by a reasoned order.

23. Therefore, the question before the Court was whether the Division Bench has committed an error in treating the application for recalling of order as an appeal against the order passed by the Single Judge. After considering the Order 32, Rule 15 of the CPC, the Hon'ble Supreme Court while setting aside the impugned order held that the only order that could have passed is, issuing directions to the Trial Judge to hold an inquiry, so as to enable him to arrive at a conclusion, whether the Respondent was incapable protecting her interest, by reason of any mental infirmity. Since no such inquiry was held, therefore, it is held that the learned Single Judge has committed a Jurisdictional error, in passing the impugned Judgment.

24. Upon noticing, the error it has been set aside by the Division Bench. By making the aforementioned observations, the matter was remanded back to the Trial Judge for consideration of the matter afresh in terms of Order 32, Rule 15 of the CPC. Therefore, there is no finding about the manner in which the powers are to be exercised under Order 32, Rule 15 of the CPC. It does not in any manner hold that it is necessary to conduct an inquiry through an independent agency or through medical examination.

25. Even in the case of *Sharda (supra)*, the issue before the Court was about the nature and extent of mental disorder necessary to justify a decree of divorce in a case of incurable unsoundness of mind of such a kind that the other spouse cannot reasonably be expected to live

with him or her. While considering the relevance of the medical examination and the onus of proof about unsoundness of mind, it was held that onus of proof is on the Applicant who pleads that the non-applicant is of unsound mind. The Hon'ble Supreme Court had formulated questions as to whether matrimonial Court has the power to direct a party to undergo medical examination ? and whether passing of such an order would be violative of Article 21 of the Constitution of India.

26. The aforementioned questions, which were the subject matter of challenge before the Hon'ble Supreme Court, are not in issue in the present case. The issue in the present case is different from those arising in the cases of *Kasturibai and Others (supra)* and *Sharda (supra)*.

27. The issue in the present case is somewhat similar to the issue that had fallen for consideration of this Court in the case of *Somnath V/s. Tipanna Ramchandra Jannu (supra)*, where this Court has categorically held that second part of the provision of Rule 15 of the CPC provides that, in case of a person who is not already adjudged to be of unsound mind, the Court on inquiry has to find out, whether by reason of unsoundness of mind or infirmity, the person concerned is incapable of protecting his/her interest, when suing or being sued. While deciding the scope of inquiry under the later part of Order 32, Rule 15 of the CPC, this Court has observed that inquiry should invariably include calling of the plaintiff himself and questioning him in Court. If Court entertains doubts

about the mental capacity or the soundness of his mind, it is open to the Court to take further assistance in the form of medical examination and evidence of doctor under whose observation, the plaintiff may be kept. The quantum and extent of inquiry must be left in each case to the circumstances prevailing. There may be a plaintiff who on immediate view may appear to be a person of unsound mind and Court may not need further evidence beyond recording of questions, and answers given by the person concerned. While in some other cases, which are not so clear more evidence may be necessary. It is held that the plaintiff who is alleged to be unsound mind should be invariably called for being questioned when case falls under second part of Order 32, Rule 15 of the CPC. The inquiry is made for the purpose of recording a finding by the Court that the plaintiff is a person of unsound mind or person is mentally so infirm that he is incapable for protecting his own interest. Thus, in view of the express observations made by this Court, there remains no doubt that at the first instance, the Judge of the Trial Court before whom the suit is filed is empowered to call a person, who is alleged to be of unsound mind to satisfy himself about the substance in the issue raised before him. Upon questioning such person, *prima facie*, if he is of the opinion that the concerned persons is not in a position to defend his case. In such case, no further inquiry is necessary. However, in case he harbours doubts about the allegations of unsoundness of mind, he can very well refer the matter to an expert or call upon the Doctor under

whose guidance, the concerned person is supposed to be under treatment.

28. In the present case admittedly, the Respondent No.1 himself had pleaded that he is of unsound mind, therefore, he may be permitted to file the suit through his next friend. Even, previously the suit was filed by him through GPA for the same reason, however pursuant to the order passed by the Civil Judge Senior Division, Parbhani invoking Order 32, Rule 2 of the CPC, the plaint in RCS No.55 of the 2024 was taken off from the file, vide order dated 18th April, 2024. Therefore, the Respondent No.1 has thereafter filed an application below Exhibit-32, praying for appointment of his son-in-law as his next friend, since he is not in a fit mental state to defend his case.

29. The learned Judge has framed an issue as to unsoundness of mind of the Respondent No.1 to be decided on its own merits. While passing an order below Exhibits-1 and 32 on the preliminary issue, the learned Judge has recorded his finding that he has personally interacted with the Respondent No.1 and found that he is not in a fit state of mind, and he seems to be a person of unsound mind. After interacting with him, he has arrived at conclusion that the Respondent No.1 is not in a fit state of mind and cannot ably protect his interest, which is also supported by the medical record produced before the learned Judge, after which he has permitted the suit to be proceeded by appointing next friend. The learned Judge has rightly exercised his powers under Order 32, Rule 15 of the

CPC. Therefore, no interference is warranted in the order passed by the learned Civil Judge Senior Division, Parbhani.

30. As such, the Writ Petition is dismissed.

31. Rule is discharged.

[MANJUSHA DESHPANDE, J.]