

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 92 OF 2026
WITH
INTERIM APPLICATION (ST) NO. 2999 OF 2026
IN
SECOND APPEAL NO. 92 OF 2026**

1. Shri. Shaha-ajij Balaso Shaikh
Age; 75 years. Occu. Advocate,
R/o. Shivaji peth, Jath, Tal. Jath,
Dist. Sangli. ... Appellant

Versus.

1. Shri. Sudhirkumar Gurappa Jamage
Age : 61 years Occu: Agriculturist,
R/o.: Near S. T Stand, Jath, Tal.: Jath
Dist.: Sangli
2. Mrs. Rashida Mahamed Iqbal Shaikh
Age : 76 years Occu: Household
R/o.: 1507/1508, Lokhandwala
Complex,
Kandiwali (East), Mumbai.
3. Mr. Mihar Babalal Soudagar
(Since Deceased Through Legal heirs)
- 3(a) Mr. Babalal Balaso Soudagar,
Age – 94 yrs., Occ. Nil
R/o. Bilur, Jath Tal. Jath Dist. Sangli.
- 3(b) Mr. Abdulrauf Babalal Soudagar

Age – 67 yrs., Occ. Business
R/o. Bilur, Jath Tal. Jath Dist. Sangli.

3(c) Mr. Imtiyaj Babalal Soudagar
Age – 64 yrs., Occ. Doctor
R/o. Bilur, Jath Tal. Jath Dist. Sangli.

3(d) Mr. Sajid Babalal Soudagar
Age – 68 yrs., Occ. Advocate
R/o. Bilur, Jath Tal. Jath Dist. Sangli.

3(e) Mrs. Jiya Latif Patel
Age – 61 yrs., Occ. Service
R/o. Bilur, Jath Tal. Jath Dist. Sangli.

3(f) Mr. Kanojbanu Jabardast Mulla
Age – 69 yrs., Occ. Household
R/o. C/o. Jabardast Bapusaheb Mulla
Nadaf Galli, Jath Tal. Jath, Dist. Sangli.

3(g) Mrs. Nilam Rafik Algur
Age – 66 yrs., Occ. Household
R/o. C/o. Rafik Hasansaheb Algur
Makandar Galli, Jath Tal. Jath. Dist.
Sangli.

3(h) Nassim Dadapasha Patel
Age – 71 yrs., Occ. Household
R/o. Before Mangal Talkie,
Darga road, Miraj Tal. Miraj, Dist. Sangli.

4. Mrs. Safiyabegam Mahomadirfan

Janvekar

(Since Deceased Through legal heirs)

- 4(a) Mrs. Gazal Abdulvahid Aabadar
Age – 67 yrs., Occ. Household
- 4(b) Mr. Asif Mahamadirfan Janvekar
Age – 64 yrs., Occ. Service
- 4(c) Mr. Abu Talim
Age – 60 yrs., Occ. Service
- 4(d) Mrs. Sabiya Duman Bedarekar
Age – 55 yrs., Occ. Household
- 4(e) Mr. Mohamadhasan Mahamadirfan
Janvekar
Age – 51 yrs., Occ. Service
- 4(f) Mohamadhusen Mahamadirfan Janvekar
Age – 51 yrs., Occ. Service
Nos. 4(a) to 4(f) R/o. F-6, A/S “B” Vihar,
“A” Wing, Survase Mitranagar ... Respondents
Hotagi road, Solapur
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Mr. Prajakt Arjunwadkar a/w Dhananjay Utture, C. Sankpal and Ritesh Raut, for the Appellant.

CORAM : ASHWIN D. BHOBE, J.

DATE : 20th August, 2026.

ORAL JUDGEMENT :

1. Heard Mr. Prajakt Arjunwadkar, learned Advocate for the Appellant.
2. By this Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, the Appellant assails the Judgment and Decree dated 12.01.2026 passed by the District Judge-3, Sangli ("Appellate Court") in Regular Civil Appeal No. 278 of 2017 ("impugned Judgement"), which reversed the Judgment and Decree dated 07.09.2017 passed by the Civil Judge, Junior Division, Jath ("Trial Court"), in Regular Civil Suit No. 44 of 2009.
3. The Appellant is the Plaintiff, whereas the Respondents are the Defendants in Regular Civil Suit No. 44 of 2009.
4. In brief, the case of the Appellant, an advocate by profession, is that the Appellant had ancestral properties bearing Survey Nos. 28 and 29 at Rampur, Taluka Jath, District Sangli. The suit property, i.e. Survey No. 28/1, was owned by the Appellant's three (3) sisters. The Appellant owns Survey No. 29, strips 7, 6 and 5. The Appellant is an adjacent owner of the suit property and a co-sharer. The Appellant's three sisters sold the suit property to the Respondent No. 1 by Sale Deed dated

17.04.2008. The Appellant learnt on 17.04.2008 that Respondent No. 1 had purchased the suit property. He therefore approached Respondent No. 1 and claimed a right of pre-emption under Mohammedan Law. Appellant again made a demand on 18.04.2008 for his right of pre-emption, which Respondent No. 1 refused. Thereafter, Appellant issued a notice dated 24.10.2008 to the Respondent No.1 (Sudhirkumar Gurappa Jamage), offering Rs.1,00,000/- for the property, but received no reply. Consequently, on 05.01.2009, Appellant filed Regular Civil Suit No. 44 of 2009 before the Trial Court, seeking to enforce his right of pre-emption.

5. The Trial Court, by Judgment and Decree dated 07.09.2017, decreed Regular Civil Suit No. 44 of 2009 in favour of the Appellant.

6. Being aggrieved and dissatisfied with the Judgment and Decree dated 07.09.2017, Respondent No. 1 filed Regular Civil Appeal No. 278 of 2017 before the Appellate Court.

7. By the impugned Judgment, the Regular Civil Appeal No. 278 of 2017 was allowed, the Judgment and Decree dated 07.09.2017, passed in Regular Civil Suit No. 44 of 2009 was quashed and the suit was dismissed, leading to the present Second Appeal.

8. Mr. Prajakt Arjunwadkar, learned Advocate for the Appellant, by referring to Section 231 of the Mohammedan Law, submits that the Appellant falls within the category of 231(3) of the Mohammedan Law. He submits that the Appellant has made the demand to exercise his right as required under Section 236 of the Mohammedan Law. He submits that the first demand for pre-emption was made on 17.04.2008, whereas the second demand for pre-emption was made on 18.04.2008, accordingly, there was compliance with both demands. He submits that the Trial Court, after considering the material on record, which includes oral as well as documentary evidence, came to a categorical finding that the Appellant had complied with the requirements of both demands under Section 236 of the Mohammedan Law and therefore decreed the Suit. He submits that the Appellate Court has incorrectly appreciated the evidence, resulting in the passing of the impugned Judgment. To clarify, he submits that the Appellate Court has given unnecessary stress to the legal notice at Exhibit – 66 issued by the Appellant to the Respondent No.1. He submits that there is no requirement in law to issue a legal notice, accordingly, even in the absence of notice, the two requirements of Section 236 of the Mohammedan Law would be established. He submits that the evidence of the witnesses examined by the Appellant indicates compliance with the two demands, i.e., on 17.04.2008 and 18.04.2008, therefore, there was no occasion for the

Appellate Court to reverse the Decree. He submits that the findings of the Appellate Court on the issue of co-sharer - co-owner are illegal. He has proposed the following two substantial questions of law at ground Nos. (d) and (e), which are reproduced verbatim:-

“(d) Whether the Id. Judge of Appellate Court erred in holding that, the Plaintiff failed to prove first and second Talab/demand merely on the ground that the notice dt. 24.10.2008 did not specifically refer to the said demands, despite the fact that the Plaintiff and his witnesses have categorically deposed on oath regarding the performance of both Talabs/demands thereby adopting a hyper technical approach by Id. Appellate Judge and completely disregarding the substantive oral evidence on record;

(e) Whether the Id. Judge of Appellate Court seriously erred in not appreciating that, the appellant is claiming is right of pre-emption as an owner of adjoining immovable property which is specifically covered under Sub-Section (3) Section 231 of Mulla's Mohammedan Law and plea of co-sharer was merely an addition or alternative plea;”

9. Perused the records with the assistance of Mr. Prajakt Arjunwadkar, learned Advocate for the Appellant.

10. The core issue in this proceeding is whether the requirement to enforce the right of pre-emption under Section 236 of the Mohammedan law has been met.

11. Sections 226, 231 and 236 of the Mohammedan law, quoted in the impugned judgment, are reproduced as follows:

226. Pre-emption.- *The right of Shufaa or pre-emption is a right which the owner of an immovable property possesses to acquire by purchase another immovable property which has been sold to another person.*

The policy of the law behind pre-emption is the same as that of Section 4 of the Partition Act namely (I) to prevent the introduction of a stranger into a residential house and (ii) to bring the property under one owner eventually.

231. Who may claim pre-emption.- *The following three classes of persons and no others, are entitled to claim pre-emption, namely:-*

- (1) *a co-sharer in the property (w) (shafi-i-sharik);*
- 2) *a participator in immunities and appendages, such as a right of way or a right to discharge water (y) (shafi-i-khalu);and*
- 3) *owners of adjoining immovable property (shafi-i-jar), but not their tenants (a), nor persons in possession of such property without any lawful title.*

Exception- The right of pre-emption on the third ground, viz., that of vicinage does not extend to estates of large magnitude, such as villages and zamindaris, but is confined to houses, gardens, and small parcels of land(d). The right, however, may be claimed by a co-sharer(e).

236. Demands for pre-emption – *No person is entitled to the right of pre-emption unless -*

- (1) *he has declared his intention to assert the right immediately on receiving information of sale. This formality is called talab-i-mowasibat (literally, demand of jumping, that is, immediate demand): and unless*
- (2). *he has with the least practicable delay affirmed the intention, referring expressly to the fact that the talab-i-mowasibat had already been made, and has made a formal demand -*

- (a). *either in the presence of the buyer, or the seller, or on the premises which are the subject of sale, and*

- (b). *in the presence at least of two witnesses. This formality is called talab-i-ishhad (demand with invocation of witnesses).*

12. The Appellant was required to satisfy the two (2) demands for pre-emption contemplated under Section 236 of the Mohammedan law. The Appellant contends that the demands for pre-emption were made on 17.04.2008 and 18.04.2008. The Appellate Court, while addressing the said issue in paragraph No. 23, observed as follows:

23. To support oral testimony plaintiff produced on record the notice issued by him through his advocate to defendant no.1 at Exh.48 dated 24/10/2008. While perusing the said notice therein it is nowhere mentioned that on 17/04/2008 and 18/04/2008 for two times plaintiff made demand in the presence of two witnesses from defendant no.1 to sale the suit property to him for Rs.1,00,000/- Plaintiff is an advocate by profession. If, plaintiff had really made first demand on 17/04/2008 in the office of Sub-Registrar from defendant no.1 and thereafter on 18/04/2008 made second demand from defendant no.1 in the presence of two witnesses then in that case he could have definitely mentioned these material facts in his notice at Exh.48 issued to defendant no.1. However, these material facts are absent in notice. On the contrary, in notice at Exh.48 dated 24/10/2008 it is mentioned in para no.2 that, "आमच्या अशिलांना नुकत्याच मिळालेल्या माहितीप्रमाणे तुम्ही जमीन खरेदी केली आहे". On the basis of above averments made in notice at Exh.48 and absence of making reference about material facts of two times made demand, it is proved that, plaintiff has not made first time demand to sale suit property from defendant no.1 on 17/04/2008 and on 18/04/2008 for second time plaintiff made demand from defendant no.1 to sale the suit property. Thus, plaintiff failed to prove that, he made two times demand as required under Section 236 of Mohammedan Law.

13. The Appellate Court, on appreciation of the evidence on record, found that the demands for pre-emption of 17.04.2008 and 18.04.2008,

as claimed by the Appellant, were not established, as they, if made, ought to have been reflected in the Notice at Exhibit-66, which pertains to the subject matter of the suit. The observation of the Appellate Court that the Appellant was an advocate by profession is made in the context that had the demands for pre-emption as claimed by the Appellant in the plaint been factually made, details of the factual matrix would have formed part of the notice at Exh-66. The absence of such a vital and relevant aspect of the matter in the notice at Exh-66 that preceded the filing of the suit established that no such demands were made.

14. The statement in the notice at Exh.66, dated 24/10/2008, para no.2, that "आमच्या अशिलांना नुकत्याच मिळालेल्या माहितीप्रमाणे तुम्ही जमीन खरेदी केली आहे", is itself sufficient to conclude that there was no compliance with the demand for pre-emption as required under Section 236 of Mohammedan Law, as rightly held by the Appellate Court.

15. The issue in this case is not whether a legal notice is required under Section 236 of the Mohammedan Law. The question is whether the Appellant has established the mandatory requirement for maintaining a suit for preemption (i.e. demands for pre-emption). On appreciation of the facts, the Appellate Court found no compliance with Section 236 of the Mohammedan Law and reversed the Judgment and

Decree dated 07.09.2017 passed by the Trial Court, thereby dismissing Regular Civil Suit No. 44 of 2009. The findings of the Appellate Court are based on the material on record. There is no perversity in the said findings.

16. A statute conferring the right of pre-emption is to be construed strictly, not liberally. The Appellate Court found no compliance with the requirements under Section 236 of the Mohammedan Law. The Appellant, who was claiming the right of pre-emption under the Mohammedan Law, failed to establish his claim within the four corners of the Mohammedan Law.

17. Useful reference can be made to the enunciation of the Hon'ble Supreme Court in the case of *SIB Nath Chatterjee vs. Tulsidas Chatterjee & Ors*¹, in paragraphs 16 to 19, which reads thus:-

*16. In Bishan Singh v. Khazan Singh*⁴, a four-Judge Bench of this Court approved the decision of Allahabad High Court rendered by Mahmood, J. in *Gobind Dayal v. Inayatullah*⁵ wherein the right of pre-emption was described as under:

"It (right of pre-emption) is simply a right of substitution, entitling the pre-emptor, by means of a legal incident to which sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising

¹ 2026 SCC OnLine SC 665

from the sale, under which he derived his title. It is, in effect, as if in a sale deed the vendee's name were rubbed out and pre-emptor's name inserted in its place."

And thereafter, this Court summarized the law relating to the right of pre-emption as under:

"To summarize : (1) The right of preemption is not a right to the thing sold but a right to the offer of the thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

17. *Following the above decision, in Radhakishan Laxminarayan Toshniwal v. Shridhar Alshi⁶, a five-Judge Bench of this Court held that there are no equities in favor of a pre-emptor, whose sole object is to disturb a valid transaction by virtue of the rights created in him by statute. Therefore, to defeat the right of pre-emption by any legitimate means is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of preemption by all lawful means.*

18. *In Mohd. Noor v. Mohd. Ibrahim⁷, following the decision in Radhakishan (supra), it was observed that right of pre-emption has not been looked upon favorably as it operates as a clog on the right of the owner to alienate his property. Therefore, a person claiming right of pre-emption under a statute must strictly fall within the four corners of the provisions contained therein.*

19. *Upon consideration of various decisions of this Court, in our view, what is settled is that the right of pre-emption is a weak right. There are no equities in favor of the pre-emptor. As a result, such right can be defeated by any lawful means. Besides, it is considered a clog on the right of the owner to alienate his property, therefore, the right, if conferred by a statute, must be exercised strictly in terms of the statute. As a sequitur, the statute conferring the right of pre-emption is to be construed strictly and not liberally.*

18. The Appellant has failed to prove that the demand for pre-emption was made as required under Section 236 of Mohammedan Law and thus failed to exercise the right of pre-emption, if any, strictly in terms of the statute. Accordingly, the contention of Mr. Prajakt Arjunwadkar, learned Advocate for the Appellant, that the Appellate Court erred in not appreciating that the Appellant claims a right of pre-emption as an owner of adjoining immovable property, which is specifically covered under Sub-Section (3) of Section 231 of Mulla's Mohammedan Law and that the plea of co-sharer was merely an addition or alternative plea, would pale into insignificance.

19. In the facts and circumstances of the present case, I do not find any perversity, let alone any error, in the impugned Judgment. No substantial question of law arises for consideration in this Appeal under Section 100 of the Code of Civil Procedure, 1908.

20. Second Appeal No. 92 of 2026 is dismissed. No orders as to costs.

21. As the Second Appeal No. 92 of 2026 is disposed of, nothing survives in the Interim Application (ST) No. 2999 of 2026, which stands disposed of.

(ASHWIN D. BHOBE, J.)

Arjun