

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7853 OF 2025

1. Satish Shivaji Mali,
r/o. Peth, Tq. Walwa, Dist. Sangali
2. Popat Shivaji Mali,
R/o. Peth Tq. Walwa, Dist. Sangali.

... **Petitioners**
(Orig. Plaintiffs)

VERSUS

1. Vikram Vilas Deshmukh,
R/o. Shirala Tq. Shirala, Dist. Sangali.
2. Satyajeet Sarjerao Patil
R/o. Ozarde, Tq. Walwa, Dist. Sangali
3. Arun Pandurang Hasabnis,
R/o. Shirala, Tq. Shirala, Dist. Sangali.
4. Asha Jayant Tonape,
r/o. Somwar Peth, Karad, Tq. Karad,
Dist. Satara.
5. Unmesh Uday Hasabnis,
R/o. Flat No. C 403, Vyankatesh Sharvil,
S.No. 26/4/2, Near Pari Company, Dhayri,
Vadgaon Budruk, Pune.
6. Janaki Dhondiram Kulkarni,
r/o. Near Parvati Garden Mangal Karyalaya,
33/5, Rajesh Somraj Complex, Nale Colony,
Kolhapur.
7. Supriya Uday Hasabnis,
r/o. Shirala Tq. Shirala, Dist. Sangali,
8. Maruti Bapu Mali,
R/o. Kapuskhed Naka, Mal Galli, Islampur,
Tq. Walwa, Dist. Sangali.
9. Shamrao Bapu Mali,
R/o. Peth Golewadi, Tq. Walwa, Dist.

Islampur.

10. Deepak Raghunath Mali,
r/o. Sharavati Building, Flat No. 7,
Third Floor, Worli Sea Face, Khan Abdul Gafar Khan
Road, Worli, Mumbai.

... Respondents
(Orig. Defts.)

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Advocate for Petitioners : Mr. Prajakt M. Arjunwadkar a/w Adv. Dhananjay
A. Utture, a/w Adv. Ritesh R. Raut and a/w Adv. Anway M. Mane.

Advocate for Respondent nos. 1 to 7 : Mr. K. K. Sasavade a/w Adv.

Rajwardhan K. Sasavade a/w Adv. Anees Mulla a/w Adv. Satyajit S. Patil

Advocate for Respondent nos. 8 & 9 : Mr. Umesh Pawar

...

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 18.08.2026

PRONOUNCED ON : 20.08.2026

JUDGMENT :

Heard both sides finally.

2. The petitioners are taking exception to the judgment and order dated 20.05.2025, passed in Misc. Civil Appeal No. 19/2025, reversing the order of injunction passed below Exh. 5 in Regular Civil Suit No. 557/2024. The respondents are defendants in suit filed by the petitioners for declaration and injunction. The Trial Court granted temporary injunction restraining respondent nos. 1 and 2 from obstructing peaceful possession of the petitioners over the suit land. By impugned order it was reversed by the lower Appellate Court.

3. Learned counsel Mr. Arjunwadkar for the petitioners submits that the predecessor in title of the petitioners was the tenants on the tillers day. In the proceedings No. 152/1960, preferred under Section 32(G) of the

Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter B.T.A.L. Act) price was fixed and he was declared to be tenant purchaser vide order dated 03.03.1961. Accordingly, mutation entry No. 25330 was effected. No convincing material is produced on record to challenge title and possession of the petitioners. A copy of order revoking earlier order passed on 03.10.1961 has not been produced on record. Mutation Entry No. 27418 is inconsequential. It is submitted that the plea of the respondents that earlier order was revoked is imaginary and should have been discarded by the Appellate Court. It is further submitted that inference drawn by the Appellate Court on the basis of release deed and mortgage deed is uncalled for. It is further submitted that the theory of the respondent nos. 1 and 2 that order passed in 1961 was against dead person and nullity, has been pressed into service for the first time in the High Court. It is contended that no case is made out showing handing over of possession by the petitioners to respondents.

4. Per contra, learned counsel for respondents submits that petitioners suppressed material facts and order dated 03.10.1961 is nullity. Jankibai Kulkarni and Jankibai Hasabnis were not alive at that time. It is vehemently submitted that Case No. 162/1968 was filed by Pandurang Hasabnis and earlier order dated 30.10.1962 in Case No. 162/1960 was revoked. The mutation entry No. 27418 was not challenged by the petitioners. It is further submitted that the petitioners failed to produce certificate under Section 32(M) or failed to produce the payment receipts of the purchase price.

5. It is submitted that the release deed and mortgage deed show that the petitioners are not owners of the suit land. It is submitted that respondent nos. 1 and 2 purchased the land from respondent nos. 3 to 7 for Rs. 32,00,000/- vide registered sale-deed executed on 29.01.2024. It is further contended that in the consolidation proceedings also the petitioners' name are not disclosed. It is prayed that the writ petition is liable to be dismissed.

6. There are conflicting findings on facts recorded by the Courts below. The petitioners have placed on record the order passed in Tenancy Case No. 162/1960 by Additional Mamlatdar and A.L.T. under Section 32(G) of B.T.A.L. Act in favour of Bapu Mahadu Mali, predecessor in title of the petitioners fixing the price at Rs. 4973/-. The landlords are stated to be Pandurang Raghunath Hasabnis and Jankibai Ramchandra Kulkarni in that order. The mutation entry No. 25330 was effected pursuant to the order passed by the Mamlatdar in Tenancy Case No. 162/1960 decided on 30.03.1961. The 7x12 extract would indicate tenants name in cultivation column since 1965-1966. The material on record would prima facie indicate that original tenant was conferred with title.

7. While contesting the application Exh. 5 only plea of the respondents was that Tenancy Case No. 162/1968 was decided and earlier order dated 30.10.1962 passed in Tenancy Case No. 162/1968 was revoked. In pursuance of that mutation entry No. 27418 was recorded showing name of the respondents no. 3 to 7. It was not pleaded that the original landlords

Jankibai Hasabnis and Jankibai Kulkarni were not alive when the matter was decided by Mamlatdar in Case No. 162/1960. Such a plea has been raised for the first time in the High Court which cannot be countenanced. It would be open for the respondents to make out such plea during the course of trial.

8. Interestingly, the decision in case of 160/1960 rendered under Section 32(G) of B.T.A.L. Act fixing price of Rs. 4973/- and the consequential mutation entry No. 25330 have not been disputed by the respondents. The copy of order passed in Tenancy Case No. 162/1968 has not been placed on record. A bold stand has been taken that orders passed in Case No. 162/1960 stood revoked by subsequently passed orders in Case No. 162/1968. In the absence of any tangible copy of the order, it is difficult to fathom plea of the respondents. The lower Appellate Court committed error of jurisdiction in accepting the theory. The reliance upon the mutation entry No. 27418 in the absence of any tangible material is perversity. No court would adopt such course.

9. The respondents relied upon the release deed and the mortgage deed disclosing that only $\frac{1}{2}$ of the land from Gat No. 20 was vested with father of the petitioners Shivaji. The documents are not consistent with the claim of the petitioners but those would not enure to the respondent nos. 1 to 3, at this juncture. They will have to stand on their own legs, which they miserably failed. The objective scrutiny is required to examine the purport

of the documents. The lower Appellate Court reappreciated the material and arrived at contrary conclusion. The power exercised by the Court would not fall within the realm of Order XLIII of the Code of Civil Procedure.

10. The respondent nos. 1 and 2 heavily relied upon the sale-deed executed in their favour on 29.01.2024 on payment of Rs. 32,00,000/-, but that itself would not be the ground to reverse the order of temporary injunction. The title of the vendor of respondent nos. 1 and 2 is in dispute. The intricate facts can be gone into after a full fledged trial.

11. It needs to be taken into account that respondent nos. 1 to 7 are banking upon order of Revenue Officer passed in Case No. 162/1968, albeit its copy is not placed on record. By that decision earlier order is alleged to have been revoked. If that is the case, then the respondents have to explain as to how and when possession was secured from the petitioners or their predecessor in title. There is no reference of any proceedings under Section 32(P) or 32(O) of the B.T.A.L. Act. The claim of the respondents for possession is unfounded. The petitioners have placed on record receipts of sugarcane supplied to the sugar factory. Their claim stands on better footings than the respondents. I find that the impugned judgment of the Appellate Court is unsustainable.

12. The petitioners have made out prima facie case and showed possession over the suit land. They may not be successful to show that they are the exclusive owners of the suit land. There is a room to infer that

respondent nos. 2 to 8 can be the co-sharers. The Trial Court, therefore, rightly did not grant injunction to the petitioners against respondent nos. 8 to 10.

13. The learned counsel for the respondents has placed on record judgment of **Mulji Umershi Shah Vs. Paradisia Builders Pvt. Ltd. and others; (1997) 3 Mah LJ 532**. I have gone through paragraph no. 11 of the judgment. The facts of that case are distinguishable. I have already observed that the petitioners have made out a case of prima facie title to the suit land. This judgment will not help the respondents.

14. Further reliance is placed on **Yashwant Hari Parit (since deceased) through his Legal Heir Sandip Balkrishna Parit and others Vs. Sunita Ashok Bhandare and others; (2020) 2 Mah L.J. 191**, as well as judgment of Supreme Court in case **Vikram Bhalchandra Ghongade Vs. State of Maharashtra and others; 2025 SCC OnLine SC 2360** to buttress that order passed in favour or against the dead persons would be nullity. The proposition cannot be disputed. But in the case at hand, such a plea was not pressed into service when the matter was before the Courts below. Such a plea needs to be tested during the course of trial, so that the petitioners would also get opportunity to deal with it. The judgments cannot be made applicable to the present case.

15. I find that applying the principles laid down by the Supreme Court in the case of **Wander Ltd. Vs. Antox India Pvt. Ltd. 1990 (Supp) SCC 727**, the

impugned judgment is unsustainable and interference is called for. I, therefore, pass following order.

ORDER

- A) The Writ Petition is allowed.
- B) The judgment and order dated 20.05.2025 passed by District Judge-2 Islampur, District Sangali in Misc. Civil Appeal No. 19/2025 is quashed and set aside and order dated 17.04.2025 passed below Exh. 5 in Regular Civil Suit No. 557/2024, shall stand restored.
- C) There shall be no order as to costs.

(SHAILESH P BRAHME, J.)

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