

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3824 OF 2025

Babasaheb Pandharinath Tribhuvan And Others

VERSUS

Mathurabai Ashok Kopare And Another

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Advocate for the Petitioners : Mr. Kulkarni Sanket S.

AGP for Respondent/State : Mr. S.P. Joshi

Advocate for Respondent Nos.1 & 2 : Ms. Pooja Langhe a/w Mr. V. R.
Langhe

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JUNE 27, 2025

PER COURT :-

1. Heard Mr. Sanket Kulkarni, learned advocate appearing for petitioners.
2. The petitioners herein instituted Regular Civil Suit No.330 of 2009 against defendants i.e. Mathurabai Ashok Kopare and others seeking relief of perpetual injunction in respect of suit property bearing Gat No.113 situated at Bhaggav Shivar, Taluka Vaijapur, District Aurangabad. The suit has been decreed holding that plaintiffs are in possession. Although defendants raised the contention that sale deed relied upon by plaintiffs is by unauthorized person, that issue is not dealt with in suit. The decree of perpetual injunction as passed by Trial Court is confirmed by learned District Judge and now, subject matter is pending in Second Appeal No.145 of 2023 before this Court.

3. In this background, respondents filed Regular Civil Suit No.388 of 2014, wherein they sought declaration that sale deed bearing No.42 of 1990 executed by Jayabai is null and void. Consequential relief of perpetual injunction is sought.

4. Mr. Kulkarni submits that since previous suit i.e. R.C.S. No.330 of 2009 and present suit i.e. R.C.S. No.388 of 2014 is in respect of same suit property, subsequent suit needs to be stayed in terms of Section 10 of Civil Procedure Code.

5. Perusal of prayers in both suits clearly shows that they are distinct. In first suit, the petitioner has claimed his possession over suit property. Accordingly, the issue as to his possession was framed and it was answered in affirmative. Although defendants tried to put contention about invalidity of sale deed executed by Jayabai, no issue was framed in that regard or no finding is recorded by the Court. Therefore, if subsequent suit is specifically filed seeking declaration against validity of sale deed executed by Jayabai, it will have to be independently dealt with. The issues in present suit are different than the issues which are subjudice in earlier suit.

6. In that view of matter, the learned Trial Court is justified in rejecting petitioners application to stay subsequent suit.

7. In that view of matter, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)