



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 67 OF 2025
WITH
CIVIL APPLICATION NO. 9763 OF 2023 IN AO/67/2025

Sow. Kamal Raosaheb Shipalkar,
Age: 76 Years, Occu. Agri.,
R/o.: Kotha, Tq. Shrigonda,
Dist. Ahmednagar.

... **APPELLANT**
(Orig. Plaintiff)

VERSUS

1. Shivaji Laxman Palaskar,
Age: 66 Years, Occu. Agri.,
2. Sow. Suman Shivaji Palaskar,
Age: 62 Years, Occu. Agri.,
3. Jagannath Shivaji Palaskar,
Age: 40 Years, Occu. Agri.,
4. Paraji Raosaheb Palaskar,
(Note: Expired during pendency of
Appeal on 22/02/2021),
Through Leal Heirs,
 - 4-A. Kamal Paraji Palaskar,
Age: 65 Years, Occu.: Agri.,
R/o.: Palawe (Bk.), Tq. Parner,
Dist. Ahmednagar.
 - 4-B. Amol Paraji Palaskar,
Age: 32 Years, Occu.: Agri.,
R/o.: Palawe (Bk.), Tq. Parner,
Dist. Ahmednagar.
 - 4-C. Vandana Arjun Gaikwad,
Age: 50 Years, Occu.: Agri.,
R/o. Kondhapuri, Tq. Shirur,
Dist. Pune.

- 4-D. Manda Balasaheb Kale,
Age: 48 Years, Occu.: Agri.,
R/o. Astgaon, Tq. Parner,
Dist. Ahmednagar.
- 4-E. Suvarna Dattatraya Nimbalkar,
Age: 46 Years, Occu.: Agri.,
R/o.: Ganji Bhoyare, Tq. Parner,
Dist. Ahmednagar.
- 4-F. Rani Bhanudas Veer,
Age: 44 Years, Occu.: Agri.,
R/o.: Bhambarde, Tq. Shirur,
Dist. Pune.
- 4-G. Seema Sandip Taware,
Age: 42 Years, Occu.: Agri.,
R/o. Moregaon, Tq. Baramati,
Dist. Pune.
- 4-H. Vidya Bansi Bhoite,
Age: 40 Years, Occu.: Agri.,
R/o.: Palawe (Bk.), Tq. Parner,
Dist. Ahmednagar.
5. Ananda Raosaheb Palaskar,
Age: 68 Years, Occu. Agri.,
6. Balasaheb Raosaheb Palaskar,
Age: 48 Years, Occu. Agri.,
Respondent Nos.1 to 3, 5 & 6
All are Resident of At Palawe (Bk.),
Tq. Parner, Dist. Ahmednagar.
7. Sow. Nirmala Shamrao Nawale,
Age: 62 Years, Occu. Agri.,
R/o.: At Karegaon, Tq. Shirur, Dist. Pune.
8. Bharati Jaysingh Sonawane,
Age: 55 Years, Occu. Agri.,
R/o.: At Nirvi, Tq. Shirur, Dist. Pune.
9. Sow. Saraswati Bapurao Palaskar,
Age: 65 Years, Occu. Agri.,

10. Bapurao Bhausahab Palaskar,
Age 70 years, Occu. Agri.,
11. Arjun Bhimaji Aapate,
(Died) Through Legal Heirs,
 - 11-A. Sunil S/o Arjun Aapate,
Age: 40 years, Occu: Agri.,
R/o At Palawe (BK), Tq: Parner,
Dist: Ahmednagar-434301.
 - 11-B. Avinash S/o Arjun Aapate,
Age: 38 years, Occu: Agri.,
R/o At Palawe (BK)., Tq : Parner,
Dist: Ahmednagar-434301.
 - 11-C. Rajendra S/o Arjun Aapate,
Age: 35 years, Occu: Agri.,
R/o At Palawe (BK), Tq: Parner,
Dist: Ahmednagar-434301.
 - 11-D. Rajendra S/o Arjun Aapate,
Age: 33 years, Occu: Agri.,
R/o At Palawe (BK), Tq: Parner,
Dist: Ahmednagar-434301.
 - 11-E. Lalitabai W/o Ashok Borge,
Age: Major, Occu: Agri.,
R/o Padegaon Rode, Behind SHELM Church,
Shelarwadi, Belapur (BK),
Ahmednagar-431715,
Tq & Dist. Ahmednagar. ... **Respondents.**
(Orig.Defendants)

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Advocate for Appellant/Applicant : Mr. Amol Karbhari Gawali.

Advocate for Respondent Nos.1 to 3, 4A to 4H, 6 & 7 : Mr.

Yuvraj V. Kaked.

Advocate for Respondent Nos.5, 11A to 11D : S. H. Tripathi.

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CORAM : SHAILESH P BRAHME, J.

DATE : 11.09.2025

ORAL JUDGMENT :-

1. Heard both sides finally at the admission stage.
2. Being aggrieved by judgment and order dated 04.01.2023 passed by learned District Judge in Regular Civil Appeal No.74 of 2019 remanding the matter to the Trial Court for deciding it afresh present appeal is preferred. Respondent Nos.1 to 3 are original defendants, who are contesting parties in the suit. Appellant is the original plaintiff. Remaining respondent Nos.5 to 11 are formal parties.
3. Appellant had filed Regular Civil Suit No.273 of 2013 for partition, possession and injunction. It was contested by respondent Nos.1 to 3. The evidence was led by the parties. Finally, the suit was partly decreed on 10.01.2019 awarding half share to the appellant in the suit properties mentioned in plaint paragraph Nos.1A and 1B. Simultaneously, respondent Nos.1 to 3 were restrained from alienating the suit property. Being aggrieved, respondent Nos.1 to 3 preferred Regular Civil Appeal No.74 of 2019. Pending appeal, application Exh.21 was filed for amendment to written statement by respondent Nos.1 to 3 which was allowed. Application Exh.27 was filed

under Order 41 Rule 27 by respondents. Application Exh.36 was filed for amendment to plaint by the present appellant.

4. Lower Appellate Court had allowed application Exh.21 on 17.09.2021 and application Exh.27 was kept pending and directed to be decided at the time of final hearing of the appeal. Being aggrieved, Writ Petition No.11528 of 2021 was filed by present appellant/plaintiff in this Court. In writ petition, appellant submitted affidavit which was marked at Exh.X. In pursuance of the affidavit, the following observations were made by the Co-ordinate Bench.

“4. The petitioner, on 13th August, 2022, has filed affidavit, wherein it is stated that the petitioner is accepting the theory put forth by respondent No1, which is sought to be introduced by virtue of para 9A, in respect of lands bearing Gut Nos. 645/1 and 645/2. She has admitted the contents of sale deeds dated 3rd July, 1961 and 4th June, 1963, which respondent No.1 has sought to prove by virtue of additional evidence. It is categorically stated that the petitioner has no right, title or interest in respect of lands Gut No. 645/1 and 645/2, described in Item 7 of para 9A of the plaint. It is further stated in the affidavit that the petitioner is not interested in claiming any share or right, title and interest in the house property bearing House No. 452/1, described in para 1-B (2) of the plaint and she has relinquished her right, title or interest in respect of said house property.

5. As far as amendment as per 9 B is concerned, the petitioner has averred that she has not sought share in Gram

Panchayat House No. 207, situated at Mauje Palve, and she has declared that she does not have any right, title or interest in the Gram Panchayat House No. 207 and she has relinquished her right, title or interest, if any, in the said Gram Panchayat House No. 207. The petitioner has further averred in the affidavit that since the petitioner has relinquished her rights in the properties mentioned in the amendment, it is not necessary to prove documents, which are sought to be produced on record by respondent No.1, which are filed along with Exhibit-21. It is further averred that as the petitioner has relinquished her right in the properties mentioned in para 9A and 9B of the plant, it is not necessary for respondent No.1 to lead additional evidence. For the purpose of identification, the affidavit is marked "X".

6. In the light of the affidavit Exhibit-X, filed by the petitioner, thereby relinquishing her rights in the properties mentioned in the amendment, it is not necessary for respondent No.1 to lead additional evidence in respect of the amendment. In that view of the matter, the Appellate Court is directed to decide the appeal on its own merits expeditiously by taking into consideration the additional affidavit Exhibit-X, filed by the petitioner in this Court."

5. In view of the candid statement/stand taken by the appellant, writ petition was disposed of with a direction to decide appeal expeditiously. It is pertinent to note that in view of the observations in paragraph No.6 it was held that additional evidence was not required and Appellate Court was directed to decide the appeal on merits.

6. Application Exh.36 was filed for amendment to the plaint by appellant. The application Exh.27 for additional evidence was pressed into service. Considering the submissions of the parties by impugned order, both applications were allowed and matter was remitted to the Trial Court giving opportunity to the parties for adducing additional evidence. The matter was relegated to the Trial Court for de novo trial.

7. Learned counsel for the appellant submits that the impugned judgment is exactly contrary to order passed by Co-ordinate Bench in Writ Petition No.11528 of 2021 and liable to be quashed. It is submitted that the Lower Appellate Court misinterpreted order passed by High Court in Writ Petition No.11528 of 2021. It is further submitted that in view of affidavit which was tendered at Exh.X, there was no requirement of adducing any further evidence. It is further submitted that the impugned order is *ex facie* illegal because no controversy exists in respect of land Gut No.645/1, 645/2 and house property Nos.452/1 and 207. The appellant/plaintiff has given up her claim in respect of those properties and there was no need to try the issues any further.

8. Learned counsel for the appellant submits on instructions of his client that his client is giving up claim to the

extent of Gut No.644 and for that purpose he undertakes to file affidavit of his client in this Court within a period of one week. It is submitted that in view of the solemn statement, there is no controversy about the amended pleadings of the parties and the remand is absolutely unwarranted.

9. Per contra, learned counsel for respondents vehemently submits that land Gut No.644 was not mentioned in affidavit Exh.X but in the application Exh.27 there is a reference to it. It is submitted that Lower Appellate Court has rightly exercised the jurisdiction under Order 41 Rule 27 and 28 of CPC and no interference is called for. It is further submitted that respondent No.5 Ananda Raosaheb Palaskar instituted Regular Civil Suit No.275 of 2013 for partition and possession and couple of properties are common. This facts needs to be addressed and therefore, remand is necessary. It is further submitted that no prejudice would be caused to the appellant if the matter is remanded.

10. I have considered rival submissions of the parties. Following facts are not disputed ;

(i) RCS.No.273 of 2013 was decreed on 10.01.2019 and against that RCA.No.74 of 2019 was preferred by respondent Nos.1 to 3.

(ii) Application Exh.21 for amendment to written statement was allowed.

(iii) Application Exh.27 was initially directed to be decided at the time of final hearing but later on it was allowed by impugned order.

(iv) Application Exh.36 for amendment to plaint is allowed by the impugned order.

(v) Writ Petition No.11528 of 2021 was preferred against order passed below Exhs.21 and 27.

(vi) In affidavit Exh.X there is no reference to land Gut No.644 situated at Mouze Palve Bk.

11. I have gone through impugned order passed by the Lower Appellate Court. Though order dated 30.08.2022 passed by the Co-ordinate Bench in Writ Petition No.11528 of 2021 is reproduced partly in the impugned order, the findings recorded in paragraph No.17 is against the purport of the order. A candid observation is recorded by a Co-ordinate Bench that additional evidence was not required and therefore, appeal

was expedited. In the preceding paragraphs statement of the appellant and her affidavit were referred. She conceded to the claim of the respondents in amended paragraph Nos.9A and 9B. The interpretation drawn by Lower Appellate Court in allowing application Exh.21 is perverse.

12. The entire controversy between the parties is settled to the extent of amended paragraph Nos.9A and 9B. It has been categorically stated that appellant/plaintiff has given up her claim to the extent of Gut No.645/1, 645/2 and house property Nos.452/1 and 207 which are the properties mentioned in paragraph Nos.9A and 9B of the written statement. In view of the above referred facts, nothing is required to be adjudicated in respect of additional pleading in paragraph Nos.9A and 9B.

13. Application Exh.36 was filed for amendment to plaint which is consequential one. As respondents' application Exh.21 was allowed, the said application was moved. It is lost sight of by Lower Appellate Court that the pleadings proposed to be incorporated vide application Exh.36 are in consonance with affidavit Exh.X and order passed by High Court in Writ Petition No.11528 of 2021. In a way, application Exh.36 was formal in nature. The Lower Appellate Court rightly allowed the said application.

14. It is rightly pointed out by learned counsel Mr. Kaked that land Gut No.644 was neither mentioned in affidavit Exh.X nor it was referred in the order. The controversy to that extent subsisted. However, during the course of hearing, learned counsel made solemn statement, on instructions of his client, that she does not want to pursue the relief in respect of land Gut No.644. He has even undertaken to file affidavit. In view of that development, I find that even for that purpose remand is not necessary.

15. It needs to be mentioned that this Court has to be consistent with a view taken by Co-ordinate Bench in Writ Petition No.11528 of 2021. The remand is unwarranted because new facts are pleaded after decision of the Trial Court but those cannot be said to be facts in issue requiring a trial.

16. My attention is also adverted by learned counsel Mr. Gawali to the operative part of the impugned order which would result in De novo trial. The Lower Appellate Court is in position to decide appeal on merits. I am of the considered view that impugned judgment and order is perverse and liable to be quashed and set aside. I, therefore, passed following order :

ORDER

- (i) Appeal from Order is allowed.
- (ii) Impugned judgment and order is quashed and set aside. However, application Exh.36 stands allowed.
- (iii) It is clarified that no remand of the matter for any purpose shall be required.
- (iv) The Appellate Court is directed to decide the appeal within a period of six (6) months from today.
- (v) Civil Application No.9763 of 2023 is disposed of accordingly.
- (vi) It would be open for the appellant to claim the return of the Court fees and it shall be decided as per law.

(SHAILESH P. BRAHME, J.)

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17. After pronouncement of the judgment, learned counsel for respondents prays that operation and execution shall be stayed for the period of eight (8) weeks.

18. The request is opposed by learned counsel for the appellant.

19. I have already observed that Co-ordinate Bench on 30.08.2022 expedited hearing of the appeal. The adjudication is required to be made on merits when the appellant/plaintiff has given up the claim to the extent of properties mentioned in aforesaid order. Impugned order is against order passed in Writ Petition No.11528 of 2021. I am not inclined to accept the request made by the respondents. The prayer is rejected.

(SHAILESH P. BRAHME, J.)

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vmk/-