IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
APPEAL FROM ORDER NO.522 OF 2024
WITH
INTERIM APPLICATION NO.10376 OF 2024

Shir. Parth Rajendra Kavade,
Age: 24 years, Occ.- Business,
R/o. R.S. No. 2823/55,
B. Ward, Mahalaxmi Nagar, Kolhapur. ..Appellant

Versus

1. The Karad Urban Co-op Bank Limited,
(Scheduled bank_ Branch Shahapuri,
Kolhapur,
Through Branch Manager.

2. Smt. Uma Rajendra Kavade,
A.A.54, Occ:- Housewife,
R/o.: R. S. No.2823/55,
B Ward, Mahalaxmi Nagar, Kolhapur.

3. Shri. Rohan Rajendra kavade,
A.A.31, Occ:- Housewife,
R/o.: R. S. No.2823/55,
B Ward, Mahalaxmi Nagar, Kolhapur. ..Respondents.

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Mr. Yuvraj Narvankar a/w Mr. Rahul Patil, Advocate for Appellant.
Mr. Prithviraj Sanjay Gole, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 10th SEPTEMBER, 2025.
PRONOUNCED ON : 14th OCTOBER, 2025.

<u>FINAL ORDER:-</u>

1. The appellant impugns order dated 30.11.2023 passed by Civil Judge Senior Division, Kolhapur below Exhibit-5 in Special Civil Suit No.345/2023.

2. Brief facts giving rise to present Appeal are as under:

On 20.02.2009 agriculture land bearing Survey No.1043/1 admeasuring 1.65 H.R. was purchased under registered sale deed bearing No.932/2009 dated 20.02.2009 by plaintiff, his parents and brother from Shri Datta Developers. According to plaintiff, he is joint owner of suit property having $1/4^{th}$ undivided share. The plaintiff contends that his father passed away on 20.07.2020. As such, plaintiff has now $5/16^{th}$ undivided share in suit property. The suit property has been mortgaged under Mortgage Deed dated 09.03.2011 by father, mother and brother of plaintiff against loan of Rs.6 crores. The loan was advanced by Bank in name of Shri Swami Dayanand Spinners Private Limited. The mother of plaintiff is one of Director of Company. According to plaintiff, he is unconcerned with Shri Swami Dayanand Spinners Private Limited and not party to Mortgage Deed dated 09.03.2011. Therefore, mortgage is only in respect of share of his father and defendant nos.2 and 3. Such mortgage is *void-ab-initio*, illegal and not binding on share of plaintiff. The plaintiff further pleads that mortgage was not in the interest of family needs or for benefit of estate. The transaction can no way be treated for legal necessity.

According to plaintiff, defendant no.1 has served notice dated 21.07.2022 upon plaintiff giving reference to loan of Rs.6 crores raised by Shri Swami Dayanand Spinners Private Limited, its default in repayment of loan and proposed legal actions in pursuance of recovery of loan. The plaintiff replied notice and called upon to furnish documents relating to alleged loan. Thereafter, plaintiff obtained certified copy of Mortgage Deed dated 09.03.2011 and instituted suit seeking declaration that registered Mortgage Deed dated 09.03.2011 is *void-ab-initio* and illegal or does not bind on share of plaintiff with further relief seeking injunction against defendant-Bank from taking any steps for possession, attachment or sale of suit property based on Mortgage Deed dated 09.03.2011. The plaintiff has further filed an application below Exhibit-5 seeking relief of temporary injunction against defendant-Bank.

The defendant no.1 contested suit as well as application by filing written statement and say contending that Rajendra Kavade i.e. father of plaintiff was Karta of family. He had purchased suit property in name of his family members including wife and two sons. Both were minors. Hence, they were represented through their mother-Uma Rajendra Kavade. The loan of Rs.6 crores was advanced to Shri Swami Dayanand Spinners Private Limited in year 2011. The Directors of Company had accepted liability to repay loan. The plaintiff's mother was Director. She executed Mortgage Deed for herself and on behalf of minors towards security of loan. The defendant-Bank has charged over property. Therefore, they are entitled to take appropriate legal action for recovery of loan against property. The suit is collusive to evade liability towards loan.

3. The Trial Court after considering rival submissions, rejected application filed below Exhibit-5 vide impugned order dated 30.11.2023. Hence this Appeal from Order.

4. Mr. Yuvraj Narvankar, learned Advocate appearing for appellant submits that suit property was purchased under registered sale deed dated 20.02.2009. The plaintiff is one of purchaser alongwith his parents and brother. The plaintiff is not party to Mortgage Deed between Bank and his family members. No permission under Section 8 of Hindu Minority and Guardianship Act was obtained to mortgage property of which plaintiff is joint owner. Even plaintiff is unconcerned with loan transaction. He would urge that even assuming that suit property is joint family property and parents being natural guardian were entitled to exercise powers to deal with joint family property, transaction which is not in benefit and interest of minors or for legal necessity, cannot bind plaintiff's share. In support of his contentions he relies on observations of Supreme Court of India in case of ***Anup Singh and Others Vs. Janeshar Das and Others***[1] and ***Pooja W/o Ganesh Popalghat Vs. The State of Maharashtra***[2].

1 **(1953) 1 SCC 245.**
2 **2025 (2) All M.R. 683.**

5. Per contra, Mr. Prithviraj Gole, learned Advocate appearing for respondent-Bank submits that property was mortgaged against loan advanced to Company of which plaintiff's family members are Directors. The Mortgage Deed is executed by plaintiff's father, mother and brother. Since plaintiff was minor at the time of execution of mortgage, he has not shown mortgagor. The learned Advocate appearing for defendant submits that plaintiff attained majority on 04.03.2017. The present suit is instituted in the year 2023, which is hopelessly barred by limitation. The present suit is collusive by family members to avoid liability to repay loan. He would, therefore, urge to dismiss Appeal. The learned Advocate appearing for respondent relies upon observations of this Court in case of ***Shobhabai w/o Navinchandra Patni Vs. Kundlik s/o Jayant Ukirde and Others***[3].

6. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of record tendered into service, it can be observed that plaintiff has instituted suit seeking declaration that registered deed of mortgage at serial no.1284/2011 dated 09.03.2011 with Registrar, Class-II, Karveer, Kolhapur executed in favour of defendant-Bank is *void ab initio*, so far as it concerns suit property. Alternatively seeks declaration that it is not binding on his share. The plaintiff further seeks decree of prohibitory injunction against Bank from taking steps for possession, attachment etc. on the basis of mortgage deed dated 09.03.2011. Pertinently, plaintiff has not

3 **2014 (6) Mh.L.J. 292.**

claimed partition and separate possession of his share from suit property, although he contends that he has 1/4th undivided share in suit property being one of the purchaser alongwith parents and brother.

7. So far as prayer seeking declaration is concerned, it is material to note that suit property was purchased in year 2009 by father in name of his family members including minor plaintiff, his brother and mother. The plaintiff's father, his mother and brother executed registered mortgage deed dated 09.03.2011 in favour of defendant-Bank against loan of Rs.6,00,00,000/- drawn by Shri Swami Dayanand Spinners Private Limited, in which appellant's mother is Director. The appellant attained age of majority on 04.03.2017. According to appellant, when he came to know about mutation entry dated 01.08.2019 regarding mortgage, he had initiated RTS proceeding bearing No.13/2020 raising challenge to mutation. The present suit is instituted on 10.07.2023. Apparently, present suit is filed under apprehension that taking advantage of registered mortgage deed, defendant-Bank may attach property in pursuance of recovery of loan. Admittedly, huge loan amount is not repaid, guarantors of loan are absconding and Bank is bound to take action.

8. *Prima facie*, looking to sequence of events, one can visualize that plaintiff was aware about mortgage of property by his family members against loan atleast from date when he raised challenge to mutation entry, which has been rejected on 17.06.2021. The suit is instituted

after three years. *Prima facie*, plaintiff failed to file suit seeking declaration against mortgage within period of three years from date of knowledge regarding mortgage.

9. Although Mr. Narvankar, learned Advocate appearing for appellant endeavours to canvas that limitation in present suit would not be governed by residuary clause under Section 113 of Limitation Act, limitation would be governed by Section 58 of Act from date when right to sue first accrued and contend that last cause of action arose on receipt of notice dated 21.07.2022 from defendant-Bank. *Prima facie*, such contention is not acceptable. If plaintiff wants to contend that mortgage itself was invalid, cause of action to seek declaration arose immediately in year 2019. Therefore, *prima facie*, there is reason to believe that suit is instituted to create obstacle in recovery process likely to be initiated by defendant-Bank.

10. The another aspect of matter is that property in question was purchased by appellant's father in year 2009, when appellant was aged about 10 years. In entire plaint there is no averments that property was purchased from joint family funds or otherwise. Even assuming that appellant's father was Manager of joint family and he purchased property, he being father, by reason of his paternal relation and his position as head of family, he is entitled to alienate joint family property so as to bind interest of all coparceners in property, provided that alienation is made for legal necessity or for benefit of estate or

meeting antecedent debt. The power of manager of joint Hindu family to alienate joint Hindu family property is analogous to that of Manager of infant heir. Privy Council in case of ***Hunoomanpersuad Panday Vs. Mussummat Babooee Munraj Koonweree***[4], observed that power of manager for infant heir to charge ancestral estate by loan or mortgage, is, by Hindu Law, a limited and qualified power, which can only be exercised rightly by Manager in case of need, or for benefit of estate. Similarly, in case of ***Ramesh S/O Damodhar Deshmukh Vs. Damodhar S/O Domaji Deshmukh & Others***[5], this Court observed in paragraph no.10 as under:

> *"10. The above referred observations of the Apex Court in no uncertain terms, convey that the coparcener does not have a right to interfere with the act of management of the joint family affairs and, therefore, he cannot move the Court to grant relief of injunction restraining the karta from alienating the coparcenary property. The coparcener only has a right to claim share in the joint family estate free from unnecessary and unwanted encumbrances. In the circumstances of this case, it is not possible to hold at this stage that the applicant has made out a prima facie case for grant of injunction. Similarly, irreparable loss, if any, would be caused to the non-applicant No. 1 if injunction as prayed for is granted. Hence, the findings arrived at by lower Appellate Court are just and proper and same are sustainable in law. Therefore, civil revision application is dismissed. Interim order, if any, stands vacated. No order as to costs. "*

11. In present case, although property was purchased by appellant's father under registered sale deed dated 20.02.2009 in name of all family members. The property was mortgaged against loan borrowed for Company, which *prima facie* owned by appellant's family. His

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4 **(1856) 6 MOOIA 393 (PC).**
5 **(1999) 1 Mh.L.J. 153.**

mother is shown as one of Director. Therefore, mortgage of property under registered mortgage deed to Bank, which is executed by appellant's father, mother and brother while appellant was minor can be treated as mortgage by family and same would bind appellant also, unless it is shown that appellant's father exceeded his power being manager of joint family. Such an issue would not arise unless appellant seeks partition and separate possession of his share asserting his independent right. In absence of prayer for partition and separate possession, declaration as claimed by appellant may not arise for independent consideration.

12. In that view of matter, contention of appellant relying upon exposition of law in case of ***Anup Singh and Others Vs. Janeshar Das and Others***[6] would not sustain. In that case, issue arose for consideration is as to whether sell of joint family property by Kara to pay all debts/liability of business, which is not joint family business can bind other members of joint family. Apparently, it was suit for partition where such an issue was under consideration. In present case, suit is filed simplicitor for declaration that mortgage deed executed by appellant's father, mother and brother is invalid. Since this Court finds that, *prima facie,* mortgage was in pursuance to family business, although in name of registered Company and plaintiff sought declaration without claiming relief of partition and separate possession,

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6 **(1953) 1 SCC 245.**

no, *prima facie*, case is made out to grant temporary injunction as prayed.

13. In result, Appeal from Order being devoid of merit stands dismissed.

14. In view of dismissal of Appeal from Order, pending Interim Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/October-2025