

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
WRIT PETITION NO.6136 OF 2025**

Sou. Surekha Lakhamagouda Patil  
Age: 60 years, Occ. Homemaker  
R/o. House No. 511, Near Panchayat  
Shedbal, Tal. Kagwad, Dist. Belgavi

....Petitioner  
(Orig. Defendant No. 4)

Versus

1. Signia Developers & Builders  
Through its partner and POA  
Shri Yugandhar Pravin Chandanshive  
Age: 28 years, Occ. Business  
R/o. Plot No. 11, Laxmi Nagar,  
Galli No. 18, Jaysingpur,  
Tal. Shirol, Dist. Kolhapur
2. Shri Sudhir Shetty  
Age: 40 years, Occ. Business  
R/o. Survey No. 293, Unity Heights,  
Vakharbhag, Sangli, Tal. Miraj (Respondent Nos.1 and  
2/Orig. Appellants in RCA)
3. Shri Suresh Appasaheb Patil  
Age: 65 years, Occ. Agriculture  
R/o. Malilkwad, Tal. Chikodi,  
Dist. Belgavi, Karnataka (Respondent no.3/Orig. Plaintiff)
4. Shri Appasaheb Anna Patil  
Age: 86 years, Occ. Agriculture  
R/o. Malilkwad, Tal. Chikodi,  
Dist. Belgavi, Karnataka
5. Shri Rajendra Appasaheb Patil  
Age: 55 years, Occ. Agriculture  
R/o. Malilkwad, Tal. Chikodi,  
Dist. Belgavi, Karnataka
6. Sou. Ruchira Balasaheb Birnale  
Age: 62 years, Occ. Homemaker  
R/o. Plot No. 4349, Biraj Plot,  
Near house of Sagar Shirhatti,  
Sadalgga, Tal. Chikkodi,  
Tal. Belgavi, Karnataka (Respondent Nos.4 to 6/  
Orig. Defendant Nos.1 to 3)

7. Shri Aditya Suresh Patil  
Age: 25 years, Occ. Service  
R/o. Galli No. 1, Jaysingpur, Tal. Shirol
8. Shri Abhishek Rajendra Patil  
Age: 21 years, Occ. Student  
R/o. Malikwad, Tal. Chikkodi,  
Dist. Belgavi, Karnataka  
(Respondent Nos.7 and 8/  
Orig. Defendant Nos.5 and 6)

**AND  
WRIT PETITION NO.9874 OF 2025**

1. Shri. Suresh Appasaheb Patil  
Age: 65 years, Occ. Agriculture  
(Orig. Plaintiff)
2. Shri. Aditya Suresh Patil  
Age: 25 years, Occ. Service  
both R/o. Galli No. 1, Jaysingpur,  
Tal.Shirol, Dist-Kolhapur – 416101  
(Orig. Defendant No. 5)

Versus

1. Sygmia Developers & Builders  
Through its Partner and POA Holder  
Shri Yugandhar Pravin Chandanshive  
Age: 28 years, Occ. Business  
R/o. Plot No. 11, Laxmi Nagar,  
Galli No. 18, Jaysingpur.  
Tal. Shirol, Dist. Kolhapur
2. Shri. Sudhir Shetty  
Age: 40 years, Occ. Business  
R/o. Survey No. 293, Unity Heights,  
Vakharbhag, Sangli, Tal. Miraj  
(Orig. Appellants in RCA)
3. Shri. Appasaheb Anna Patil  
Age: 86 years, Occ. Agriculture  
Rio. Malilkwad, Tal. Chikodi,  
Dist. Belgavi, Karnataka
4. Shri. Rajendra Appasaheb Patil  
Age: 55 years, Occ. Agriculture  
R/o. Malilkwad, Tal. Chikodi,  
Dist. Belgavi, Karnataka
5. Sou. Ruchira Balasaheb Birnale

Age: 62 years, Occ. Homemaker  
 R/o. Plot No. 4349, Biraj Plot,  
 Near house of Sagar Shirhatti,  
 Sadalga, Tal. Chikkodi,  
 Tal. Belgavi, Karnataka

6. Sou. Surekha Lakamgonda Patil  
 Age: 60 years, Occ. Homemaker  
 R/o. House No. 511, Near Panchayat  
 Shedbal, Tal. Kagwad, Dist. Belgavi (Respondent Nos.3 to  
 6/Orig. Defendant Nos.1 to 4)
7. Shri. Abhishek Rajendra Patil  
 Age: 21 years, Occ. Student  
 R/o. Malikwad, Tal. Chikkodi,  
 Dist. Belgavi, Karnataka (Respondent No.7/  
 Orig. Defendant No.6)

...

Mr. Manoj A. Patil a/w Mr. Shubham Dhenge, Advocate for Petitioner in  
 WP/6136/2025,

Mr. Yashodeep P. Deshmukh i/by Ms. Vaidehi Pradeep, Advocate for  
 Petitioner in WP/9874/2025.

Mr. Umesh Mankapure a/w Mr. Parth Pitambare, Mr. Om Mangave Mr.  
 Siyal Magdum, Advocate for Respondent Nos.1 and 2.

Mr. Amit Sale A/W Mr. Shreyas Karanjgar, Advocate for Respondent  
 No.3.

Mr. Ishaan Kapse, Advocate for Respondent No.6 in WP/6136/2025  
 and Respondent No.5 in WP/9874/2025.

...

**CORAM : S. G. CHAPALGAONKAR, J.**

**RESERVED ON : 07<sup>th</sup> OCTOBER, 2025.**

**PRONOUNCED ON : 15<sup>th</sup> OCTOBER, 2025.**

**JUDGMENT:-**

1. Rule. Rule made returnable forthwith. With consent of parties,  
 matters are taken up for final hearing at admission stage.

2. The present writ petitions take exception to order dated  
 07.03.2025 passed by District Judge-I, Jaysingpur in Miscellaneous  
 Civil Appeal Nos.33/2023 and 37/2023, whereby order dated  
 07.07.2023 passed by Civil Judge Senior Division, Jaysingpur below

Exhibits-5, 60, 52 and 53 in Special Civil Suit No.12/2022 has been set aside and application filed by defendant no.1 in counter claim at Exhibit-60 is allowed. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

3. The petitioner no.1 in Writ Petition No.9874/2025 (original plaintiff) instituted Special Civil Suit No.12/2022 before Civil Judge Senior Division, Jaysingpur claiming relief of partition and separate possession in suit properties, specifically described in Claim Clause No.1, which includes open plot bearing CTS No.72 situated at Jaysingpur and agriculture lands situated at Jaysingpur and Malikwad. It is contention of plaintiff that suit properties are purchased in name of Appasaheb/defendant no.1 out of common nucleus of joint family. The plaintiff and defendants are members of joint family. The defendant nos.1 and 2 are acting against interest of plaintiff. It is contention of plaintiff that defendant nos.1 and 2 have purchased house property and suit lands out of income of joint family. The plaintiff and defendant nos.1 and 2 had no independent income source except from ancestral land at Malikwad. The defendant nos.1 and 2 are intending to sell out house property at serial no.1 without effecting partition and giving share to all member of joint family. The defendant no.1 has instituted Regular Civil Suit No.151/2020 claiming absolute right in house property. Therefore, he claimed for partition and

separate possession of his 1/5<sup>th</sup> share in suit properties and consequential relief of perpetual injunction.

4. The plaintiff has further filed application seeking temporary injunction under Order 39 Rules 1 and 2 of Code of Civil Procedure against defendant no.1 for restraining him from alienating or changing nature of suit property. The notices were issued to defendants. Even public notices were issued in view of apprehension of possibility of creating third party interest in suit property. In wake of this background, during pendency of suit defendant no.1 executed registered sale deed dated 19.04.2022 in favour of defendant no.7, who has been impleaded as party under Order I Rule 10(2) of Code of Civil Procedure during pendency of suit.

5. The defendant no.7 filed written statement alongwith counter claim and asserted his ownership over suit property. He pleaded that defendant no.1 had compromised with plaintiff. The terms of compromise are notarized on 02.06.2022. The defendant no.7 in his counter claim sought relief of perpetual injunction against plaintiff and defendant no.6 to restrain them from disturbing his peaceful possession over property. Similarly, defendant no.7 filed application at Exhibit-60 for temporary injunction against plaintiff and others. The defendant no.7 filed one more application at Exhibit-52 for vacating *status quo* order passed below Exhibit-31 in suit by Trial Court. The Trial Court after considering interim application filed by respective

parties, allowed application Exhibit-5 filed by plaintiff and restrained defendant nos.1 to 7 or anybody acting on their behalf from creating any kind of third party interest over suit properties till decision of suit and counter claim. Eventually, interim applications filed by defendant below Exhibit-52, 53 and 60 were rejected.

6. Aggrieved defendant nos.1 and 7 filed Miscellaneous Civil Appeal Nos.33/2023 and 37/2023 before District Judge, Jaysingpur assailing orders dated 07.07.2023 passed by Trial Court. The Appellate Court by common order dated 07.03.2025 allowed both Appeals, eventually quashed and set aside orders of Trial Court passed below Exhibits-5, 60, 52 and 53 and allowed application Exhibit-60 filed by defendant no.7, thereby restraining plaintiff and defendant no.5 from obstructing possession of defendant no.7 and his right to do legal work over suit property i.e. house property at serial no.1 till disposal of suit on merit. Hence, present Writ Petitions.

7. The learned Advocates appearing for petitioners submits that suit properties are joint family properties of plaintiff and defendant nos.1 to 6. The house property has been purchased in name of defendant no.1 out of joint nucleus, except ancestral agriculture land described at serial no.2 in plaint. There was no source of income to joint family and all other properties are purchased out of income generated from cultivation of ancestral agriculture land. Although defendant no.1 is

asserting his exclusive right over suit properties, there is nothing on record to demonstrate that defendant no.1 had independent income or suit properties were purchased by him out of his personal earning. They submitted that Trial Court had considered aforesaid aspects in great detail and restrained defendant nos.1 to 7 from alienating or creating third party interest in suit property till disposal of suit.

8. Per contra, learned Advocates appearing for defendant nos.1 and 7 supports impugned order passed by District Judge. It is their contentions that house property was purchased by defendant no.1 under registered sale deed dated 14.02.1986. It was his self-acquired property. The defendant no.1 was indebted of loan. The defendant no.7 agreed to purchase property at serial no.1 from defendant no.1. The newspaper publication was made regarding intention of defendant no.1 to transfer property. Accordingly, sale deed dated 19.04.2022 has been executed by defendant no.1 after accepting consideration amount of Rs.1,60,00,000/-. In addition to that, defendant no.1 is given 20% share in partnership of development project over property at serial no.1. It is their contention that plaintiff was consenting party to aforesaid transaction. He has executed consent deed dated 02.06.2022, thereby relinquished his right in house property in favour of defendant no.1 i.e. father. The plaintiff had also agreed to take two flats in proposed construction project and inaugurated construction work. Further, he vacated possession of suit house and shifted to flat at

SP Heritage, for which rent amount is paid by defendant no.7. The plaintiff could show that house property was joint family property, hence, order passed by Appellate Court is just and proper.

9. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiff has instituted suit seeking partition and separate possession of suit properties including agriculture land and house property at serial no.1. It is contention of plaintiff that agriculture land at serial no.2 is ancestral property, whereas other properties are purchased out of joint nucleus. The suit property at serial no.1 is purchased in name of defendant no.1 i.e. father out of joint family funds. The Trial Court is required to decide status of suit properties after full-fledged trial. The Trial Court while deciding applications for interim injunction observed that, *prima facie*, there is reason to believe that suit properties including house property at serial no.1 are joint family properties and purchased out of common nucleus. The Trial Court observed that defendant no.7 purchased house property during pendency of suit with knowledge and notice of pending dispute. However, Appellate Court reversed Trial Court's order, particularly for reason that plaintiff had signed consent term dated 02.06.2022, wherein he had consented for transfer of house property CTS No.72 for development purpose against commitment of giving two flats to him. The plaintiff has shifted in a

flat arranged by defendant no.7 who is also paying rent. As such, plaintiff has acted upon consent terms.

10. The plaintiff has specifically pleaded that suit properties are joint family properties and even house property at serial no.1 is purchased from joint nucleus, but defendant no.1 claims his exclusive ownership. Pertinently, defendant no. 1 has instituted Regular Civil Suit No.151/2020 alongwith application below Exhibit-5 against present plaintiff. His application seeking injunction against plaintiff is rejected by Trial Court vide order dated 28.04.2022 observing that *prima facie* defendant no.1 could not clearly establish that house property is his self-acquired property or it is joint family property. The aforesaid order is not challenged by him in Appeal. On other hand, he executed sale deed of house property in favour of defendant no.7 during pendency of present suit. Pertinently, plaintiff or other member of joint family are not consenting parties to sale deed dated 19.04.2022.

11. *Prima facie*, record indicates that except agriculture land at serial no.2, there was no independent income to defendant no.1 and house property at serial no.2 is joint family property. Even other properties are purchased subsequently.

12. The Appellate Court heavily relied upon notarized compromise dated 02.06.2022 between plaintiff and defendant no.1, which is consented by plaintiff's wife and his sons. However, in said

compromise deed, defendant no.1 has categorically admitted that said suit properties including house property are joint family properties. Although plaintiff appears to have agreed to relinquish his rights in favour of defendant no.1, other members of joint family are not consenting parties. In a suit for partition and separate possession, plaintiff and defendants can be treated as plaintiffs. Therefore, even assuming that plaintiff had agreed to relinquish his rights in favour of defendant no.1, status of properties would remain as joint family properties. Therefore, *prima facie*, defendant no.1 could not have transferred house property to defendant no.7 without consent of other members of joint family. It is trite that, a coparcener of Hindu Joint Family has no right to create third party interest in respect of specific property or share. At the most he can transfer his undivided share and purchaser can at the most seek partition and allotment of share of his vendor. Therefore, purchaser cannot assert his exclusive ownership and possession over particular joint family property on the basis of sale deed executed by coparcener. It is possible that defendant no.1 has acted as manager of Joint hindu family, but disposition made by him can be validated only when it is proved for legal necessity or benefit of family.

13. In light of aforesaid facts, there are triable issues regarding nature of property, right of coparcener to create third party interest etc. Pertinently, defendant no.7 has purchased property for commercial

purpose. He is likely to create interest of prospective purchasers in proposed commercial building or apartment planed to be constructed on house property which is significant asset of family. Apparently, defendant no.1 has not considered right of defendant nos.3 and 4/daughters in suit property alongwith plaintiff and defendant no.2. He entered into transaction ignoring their rights in suit property.

14. In that view of matter, this Court finds that, Appellate Court committed serious error while ignoring rights of daughters in suit property, who are also parties to suit and reversed well reasoned order passed by Trial Court. Hence, following order:

**ORDER**

- a. Writ Petitions are partly allowed.
- b. The impugned orders dated 07.03.2025 passed by District Judge-I, Jaysingpur in Miscellaneous Civil Appeal Nos.33/2023 and 37/2023, are hereby quashed and set aside.
- c. The order dated 07.07.2023 passed by Civil Judge Senior Division, Jaysingpur below Exhibits-5, 60, 52 and 53 in Special Civil Suit No.12/2022 is restored.
- d. Rule is made absolute in above terms.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**