

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.6850 OF 2023**

Sriranjan Anil Lambe,
Age: 32 Years, Occ.: Service,
R/o: 346 Guruvar Peth, Satara,
Tal & District: Satara-411042. ..Petitioner

Versus

1. The Gujrathi Urban Co-op. Credit
Society Ltd. Satara, Through its Manager,
Add: Sharda Apartment, Rajpath,
Devi Chowk, Shaniwar Peth, Satara (Ori. Deft. No.5.)
2. Anil Ganpatrao Lambe,
Age: 32 Years, Occ.: Service (Ori. Deft. No.1)
3. Pushplata Anil Lambe,
Age: 68 years, Occ.: Household (Ori. Deft. No.2)
4. Niranjan Anil Lambe,
Age: 68 years, Occ.: Service (Ori. Deft. No.3)
5. Dilip Ganpat Lambe,
Age: 68 years, Occ.: Nil,
All are r/o. 387, Somwar Peth,
Satara. (Ori. Deft. No.4)

...

Mr. Vikrant Shinde, Advocate for Petitioner.
Mr. Ajit J. Kenjale, Advocate for Respondents.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 22nd SEPTEMBER, 2025.
PRONOUNCED ON : 15th OCTOBER, 2025.

JUDGMENT:-

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

2. The present Writ Petition takes exception to order dated 11.01.2023 passed below Exhibit-15 in Miscellaneous Civil Appeal No.28/2015 by District Judge, Satara, thereby Appeal filed by respondent no.1/defendant no.5 assailing order passed below Exhibit-5 in Regular Civil Suit No.322/2015 by Civil Judge Junior Division is allowed and order of temporary injunction granted in favour of petitioner has been set aside.

3. The petitioner/plaintiff instituted Regular Civil Suit No.322/2015 against respondent nos.1 to 5 seeking decree of partition and separate possession in respect of suit property. It is contention of petitioner that property bearing CTS No.387 admeasuring 78.6 sq. mtr. is ancestral property of plaintiff and defendant nos.2 to 5. It was originally owned by late Ganpati Lambe. After his demise, in year 1967 suit property was mutated in name of his three sons. In year 1998, there was partition of suit property and it was allotted to share of defendant nos.1 and 4 i.e. father and uncle of petitioner. The defendant nos.1 and 3 i.e. petitioner's father and brother obtained loan of Rs.30,00,000/- from respondent no.1-Credit Society. Upon their failure to repay loan, proceeding under provisions of MCS Act, 1960 was initiated and suit property has been attached in pursuance to order passed under Rule 107 of MCS Act, 1960.

4. In this background, plaintiff filed present suit contending that suit property is ancestral joint family property and plaintiff has birth right. He came to know about mortgage of property on or about 15.05.2015. On enquiry with respondent nos.1 to 3, they informed that they obtained loan for repairing house, but no expenditure is made for repairing of house. According to plaintiff, loan obtained is not utilized for legal necessity. Therefore, he seeks decree of partition and separate possession of his 1/8th share.

4. The petitioner filed application below Exhibit-5 seeking temporary injunction against defendants from creating third party right or interest in suit property or disturbance to his joint possession. The Trial Court was pleased to allow application vide his order dated 19.12.2017, however, District Judge set aside order of temporary injunction while allowing Appeal file by respondent no.1. Hence, this Writ Petition.

5. Mr. Vikrant Shinde, learned Advocate appearing for petitioner submits that suit property is joint family property. The plaintiff has birth right in suit property. If property is sold or third party interest is created in pursuance to action initiated by respondent-Bank, his right would be frustrated. The Trial Court rightly considered relevant aspects of matter and passed order of temporary injunction. However, Appellate Court erroneously set aside impugned order.

6. Per contra, Mr. Ajit Kenjale, learned Advocate appearing for respondent-Bank submits that petitioner has filed collusive suit with intention to stall or create hindrance in recovery proceeding initiated by respondent-Bank. There is no denial as to loan availed by father and brother of petitioner and mortgage of suit property towards security of such loan. The petitioner as well as defendant nos.2 to 5 are residing in suit property. All of them were aware about loan obtained by petitioner's father and brother. The Appellate Court has rightly vacated temporary injunction, which was erroneously clamped by Trial Court.

7. Having considered submissions advanced by learned Advocate appearing for respective parties and on perusal of reasoning adopted by Courts below, it cannot be disputed that suit property is ancestral property of petitioner and respondent nos.2 to 5. It is apparent that suit house property was mortgaged by petitioner's father and brother towards security of loan obtained by them from respondent no.1-Credit Society. In absence of partition of suit property, father of petitioner was Manager of joint family property. From contents of plaint it is discernible that loan was obtained for repairing house.

8. It is trite that, father or Manager of joint family possesses power to alienate, mortgage or create third party interest over joint family property with fetter that such transaction must be for benefit of family or for legal necessity. In this case, if father has created mortgage of joint family property against loan obtained for repairing of house,

prima facie, there is reason to believe that father acted within his powers as Manager of joint family. From statement in plaint it is not discernible that loan obtained from Bank was utilized for immoral object or for vices by father. Single line statement is incorporated in plaint that loan was not obtained for legal necessity of family or amount was not spent in pursuance of such need.

9. In light of aforesaid circumstances, when it is admitted that petitioner's father and brother had obtained loan from Bank and created registered mortgage towards security of loan, Bank cannot be prevented from taking recourse of law for recovery of loan amount and sell out mortgage property. The Supreme Court in case of ***Sunil Kumar Vs. Ram Prakash***¹ observed as under:

"It is well settled that in a Joint Hindu Mitakshara Family, a son acquires by birth an interest equal to that of the father in ancestral property. The father by reason of his paternal relation and his position as the head of the family is its Manager and he is entitled to alienate joint family property so as to bind the interests of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity or for the benefit of the estate or for meeting an antecedent debt."

10. Similarly, in case of ***Ramesh Damodhar Deshmukh Vs. Damodhar Domaji Deshmukh***² 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

¹ (1988) 2 SCC 77.

² (1999) 1 Mh.L.J. 153.

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 light of aforesaid observations of Supreme Court and this Court it is clear that Manager of joint family has every right to deal with joint family property and coparceners cannot prevent him from exercising his power as Manager. The remedy available to coparceners is to challenge transaction if it is without legal necessity or not for benefit of family. In present case, plaintiff is claiming his 1/8th share in suit property. His uncle, brother, father and mother are also having their share in suit property. The mortgage is created by father and brother of petitioner. Therefore, at this stage it cannot be presumed that mortgage was not for legal necessity.

12. In that view of matter, no infirmity can be found in impugned order. Hence, Writ Petition stands rejected.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE