

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8065 OF 2025

1. Fareeda Shabbir Nadaf,
Age: 50, Occu.: Nil,
R/o. Shabbir Tea Stall,
Near City Bus, A/p. Talandage,
Tal. Hatkanangale, Dist.Kolhapur.
2. Hasina Iqbal Nadaf,
Age: 53, Occu.: Nil,
3. Aisha Iqbal Nadar,
Age: 39, Occu: Housewife,
4. Khutija Iqbal Nadaf,
Age: 40, Occu.: Housewife,
5. Yusub Iqbal Nadaf,
Age: 30, Occu.: Nil,
No.2 to 5 R/o.-C.T.S.No..595,
C Ward, Kolhapur.
6. Farukh Umar Nadaf,
Age: 25, Occu.: Business.
7. Shayara Umar Nadaf,
Age: 23, Occu.: Housework.
8. Shaeen Juber Mukadam,
Age: 20, Occu.: Nil,
No.6 to 8 R/o. 595/b/1/2/3,
C Ward, Aram Corner, Kolhapur.
9. Shakira Anjum Jamadar,
Age: 31, Occu.: Nil,
R/o. 1016, C Ward, Ravivar Peth,
Kolhapur.

10. Mohansin Harun Nadaf,
Age: 28, Occu.: Business,
R/o.595, C Ward, Aram Corner,
Kolhapur.
11. Sarfaraz Harun Nadaf,
Age: 26, Occu.: Business,
R/o.595, C ward, Aram Corner,
Kolhapur.
12. Sumayya Niyaz alias Riyaz Nadaf,
Age: 26, Occu.: Nil,
R/o. Korgaokar Colony,
Near Pond, Shirol,
Tal.- Hatkanangale, Kolhapur.Petitioners
Vs.
1. Farzana Husain Sheikh,
Age: 28, Occu.: Housewife,
R/o.542, B Ward, Kolhapur.
2. Musa Isakso Mujawar,
Since Deceased through legal heirs,
2a. Farzana Husain Sheikh,
Age: 28, Occu.: Housewife,
2b. Jaintabi Musa Mujawar,
Age: 75, Occu.: Housewife,
2a and 2b R/o.542, B Ward, Kolhapur.
3. Baburao Ilabaksh Sanglikar,
Since deceased through legal heirs,
3a. Imtiyaz Nuruddin Sanglikar,
Age: 23, Occu.: Service,
3b. Shabbir Nuruddin Sanglikar,
Age: 20, Occu.: Service,
No.3a and 3b R/o.: House No.818,
B Ward, Occo. Commerce College,
Kolhapur.
3c. Shirmati Anwar Babasaheb Momin,
Age: 41, Occu.: Nil,
R/o.House No.2121, Pangul Lane,

Belagao,
3d. Bai Baburao Sanglikar,
Age: 45, Occu.: Housewife,
R/o. C.T.S.No.1325/38, E Ward,
Shivaji Udyamnagar, Kolhapur.

4. Shrimati Alka Baburao Tondkar,
Age: 31, Occu.: Housewife,
R/o. C.T.S.No.515, C Ward,
Aram Corner, Kolhapur.

.....Respondents

Mr. Shantanu Patil with Mr. Kunal Nalawade, for the Petitioners.
Mr. M. N. Bindage with Mr. Padmanabh D. Pise (Through VC), for the
Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 15th SEPTEMBER 2025

PRONOUNCED ON : 19th SEPTEMBER 2025

ORAL JUDGMENT :-

1. Present writ petition takes exception to order dated 11th April 2025 passed by learned Civil Judge, Senior Division, Kolhapur in Regular Civil Suit No.1327 of 2000 below Exhibit 259 thereby rejecting application for setting aside the order dated 20th March 2025 closing evidence of the Petitioners/defendants.

2. Respondent Nos.1 and 2 filed the suit for redemption of mortgage dated 15th July 1965 and 21st July 1966 and possession of suit premises. It is contention of Respondent Nos.1 and 2 that suit premises was originally owned by Respondent No.2. He mortgaged

property to Respondent No.3 (original defendant No.1.). Thereafter, Respondent No.2 executed additional mortgage dated 21st July 1966 in favour of Respondent No.3 and handed over possession of suit premises. According to plaintiffs, by virtue of gift deed dated 8th April 1994, Respondent No.1 acquired ownership in the suit property and also received a constructive possession. Respondent No.1 had issued notice dated 11th April 1994 to Respondent No.3 for redemption of mortgage. However, Respondent No.3 denied to act upon the notice. Hence, present suit is filed in compelling circumstances.

3. Defendants filed written statement refuting contentions in the plaint. The trial Court framed issues based on pleadings of the parties. Eventually, Respondent No.1 filed her evidence affidavit. Since defendant failed to cross-examine Respondent No.1, the no-cross order was passed, which was later on set aside vide order dated 15th February 2012. On 20th September 2012, defendants moved an application seeking adjournment for cross-examination. However, it was rejected and no-cross order was passed. Plaintiffs filed evidence closure pursis and matter was posted for evidence of defendants.

Meanwhile, Defendant No.3 expired and his legal representatives were brought on record. On 10th January 2025, the suit was posted for defense evidence. At this stage, defendant moved an application for adjournment vide Exh.246, which was rejected, eventually, matter was posted for arguments. On 7th April 2025, Application below Exhibit 259 was filed on behalf of Petitioners/defendant Nos.2A, 2B, 2E, 3E and 4A to 4C for setting aside no evidence order. However, learned trial Court declined to entertain application vide impugned order dated 11th April 2025 passed below Exhibit 259.

4. Learned counsel appearing for Petitioners submits that the valuable rights of the parties in respect of immovable property, are subject matter of dispute in suit. Learned trial Court passed no evidence order against them on 20th March 2025. Defendants have not intentionally avoided to lead evidence. It is necessary to grant an opportunity to them to establish their case on merits. He would further submit that in pursuance to order dated 28th July 2025 passed by this Court, Petitioners have deposited the cost of Rs.5,000/- in the trial Court. Petitioners are not responsible for protracting the suit. Since 2013, the suit was pending at the stage of

bringing legal representatives of defendant on record. On 10th January 2025, it was posted for evidence of defendants. Meanwhile, defendants were required to change their advocate. Newly appointed Advocate filed application for setting aside no evidence order.

5. Learned Advocate appearing for Respondents vehemently opposed the application and submits that suit is pending since 2000 and defendants adopted all tactics for prolonging the suit. Application submitted by defendants below Exhibit 246 seeking adjournment for producing evidence was rejected and the matter was posted for arguments. At this stage, application below Exhibit 259 was filed for setting aside of order dated 31st January 2025 passed below Exhibit 246. Such application would not be maintainable.

6. Having considered submissions advanced by learned advocates appearing for respective parties, it can be observed that present suit is filed seeking redemption of mortgage. Defendants are in possession of suit property. Valuable rights of the parties are required to be adjudicated in the suit. In that view of the matter, the defendants must get fair chance to put up their defense. Apparently,

no evidence order is passed on 20th March 2025, since defendants failed to lead the evidence. It can be observed that the matter is at the stage of defendants' evidence since 2025. Prior to that, for almost 10 years, the suit was pending for taking steps for bringing legal representatives of defendant and for serving summons to the legal representatives.

7. In this background, this Court finds that the impugned order passed below Exhibit 259 deserves to be quashed and set aside in the interest of justice and application Exhibit 259 deserves to be allowed, however, subject to compensatory cost to the plaintiffs. In result, following order is passed.

ORDER

- i) Writ Petition is allowed in terms of prayer clause (a), subject to condition that Petitioners deposit additional cost of Rs.5,000/- with trial Court within a period of four weeks from date of this order.
- ii) If the cost is deposited within the stipulated period, same be disbursed in favour of plaintiffs.

- iii) In case of failure to deposit cost within stipulated period, Application below Exhibit 259 shall be deemed to be rejected and order dated 11th April 2025 and 20th March 2025 shall govern the proceedings.
- iv) Trial Court shall endeavour for expeditious disposal of the suit and in any case within a period of one year from date of this order.
- v) Parties to cooperate with the trial Court for expeditious disposal of the suit.

(S. G. CHAPALGAONKAR, J.)

Digitally
signed by
RAJU
DATTATRAYA
GAIKWAD
Date:
2025.09.19
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