

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.11392 OF 2024**

Anusaya Ananda Mamulkar,
Age: 52 years, Occu: Household,
R/at: Salwadi, Taluka Panhala,
Dist.: Kolhapur.

..Petitioner

Versus

1. Parvati Vasu Patil,
Age: 82 years, Occu: Agriculture,
R/at: Panhala, Taluka Panhala,
Dist.: Kolhapur.
2. Rajaram Aaba Patil
Since Deceased through Legal Heirs.
 - a. Anandi Rajaram Patil,
Age: 73 years, Occu: Household,
R/at: Panhala, Taluka Panhala,
Dist.: Kolhapur.
 - b. Rohit Rajaram Patil
Age: 33 years, Occu: Agriculture,
R/at: Panhala, Taluka Panhala,
Dist.: Kolhapur.
 - c. Vinaya Santosh Desai
Age: 31 years, Occu: Household,
R/at: Kale, Taluka Panhala,
Dist.: Kolhapur.
3. Shahaji Aaba Patil,
Age: 47 years, Occu: Agriculture,
R/at: Panhala, Taluka Panhala,
Dist.: Kolhapur.
4. Sharada Kondiba Patil,
Age: 52 years, Occu: Agriculture,
R/at: Ghotawade, Taluka Panhala,
Dist.: Kolhapur.
5. Sushma Nivas Patil
Age: 42 years, Occu: Agriculture,
R/at: Vakare, Taluka Karveer,
Dist.: Kolhapur.
6. Nirmala Balkrishna Patil,
Age: 72 years, Occu: Household,
R/at: Plot No.19, Shriram Colony,

Datta Mandir, E Ward, Temblaiwadi,
Dist.: Kolhapur.

7. Jaywant Dattu Chougule,
Age: 47 years, Occu: Service,
R/at: Parkhandale, Chougulewadi,
Taluka Panhala, Dist.: Kolhapur. ..Respondents

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Mr. Drupad Sopan Patil, Advocate for Petitioner.
Mr. Chetan G. Patil a/w Mr. Bhushan Jadhav a/w Ms. Siddheshwari R.
Chawan a/w Mr. Prathamesh Magadam, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 12th SEPTEMBER, 2025.

PRONOUNCED ON : 16th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioner/original Judgment Debtor impugns order dated 04.07.2024 passed below Exhibit-127 by Civil Judge Junior Division, Kale-Kharewade in Regular Darkhast No.12/2017.
3. Brief facts giving rise to present writ petition can be stated as under:

One Babu filed Regular Civil Suit No.70/1992 against his brother Aaba seeking decree of partition and separate possession in respect of suit property before Civil Judge Junior Division at Panhala. On 17.03.2002, they arrived at amicable settlement. The defendant Aaba admitted one half share of plaintiff-Babu in suit land. Similarly, plaintiff-Babu agreed to sale his share to defendant-Aaba for consideration of Rs.1,50,000/-. The amount was to be paid by

31.05.2002 and sale was to be executed by plaintiff in favour of defendant. In pursuance to compromise pursis, matter came to be disposed in Lok Adalat on 17.03.2002. Accordingly, defendant deposited amount of Rs.1,50,000/- in Court and same was withdrawn by plaintiff. The plaintiff had executed undertaking below Exhibit-86 and also executed separate Bond dated 23.07.2002 acknowledging receipt of amount.

In the year 2003, plaintiff-Babu died leaving behind daughters namely Nirmala and Anusaya, whose names were mutated in record of rights.

On 23.08.2012 heirs of defendant i.e. Aaba filed Regular Darkhast No.61/2012 (new Regular Darkhast No.12/2017) for execution of Award passed by Lok Adalat seeking direction against legal heirs of Babu to execute sale deed in pursuance to Award passed in Lok Adalat. The Judgment Debtor No.3-Anusaya Ananda Mamulkar filed objection to execution of decree under Section 47 r/w Section 151 of Code of Civil Procedure on ground that plaintiff-Babu had no right to enter into compromise or sale out suit property to defendant without consent of his daughters, who acquired right in property being coparceners in view of amendment in Section 6 of Hindu Succession Act, particularly exposition of law by Supreme Court of India in case of ***Vineeta Sharma Vs. Rakesh Sharma***¹, upholding rights of daughters, even when father is expired prior to date of amendment. The learned

¹ 2020 (9) SCC 1.

Trial Court dismissed objection filed below Exhibit-127 on ground that Executing Court cannot go behind decree.

4. Heard Mr. Drupad Patil, learned Advocate appearing for petitioner and Mr. Chetan Patil, learned Advocate appearing for respondents.

5. It can be observed that previously Judgment Debtor has raised objection to execution of Award by filing application below Exhibits-23 and 51 in Regular Darkhast No.61/2012. Both these applications were rejected by Executing Court. The orders of Executing Court were assailed before this Court in Writ Petition No.1611/2018, wherein this Court observed that Award passed on basis of compromise terms is executable. It is further observed that in pursuance to compromise decree in Regular Civil Suit No.70/1992, decree holder has deposited amount on 10.06.2002 and same has been withdrawn by Judgment Debtor. Therefore, Judgment Debtors are not entitled to raise objection to the prayers in Regular Darkhast seeking direction against Judgment Debtor to execute sale deed in terms of Award passed in Lok Adalat.

6. Mr. Drupad Patil, learned Advocate appearing for petitioner submits that Judgment Debtors were major at the time of execution of consent terms and their consent were not obtained by father while entering into compromise in suit. Therefore, in light of law laid down by Supreme Court in case of **Vineeta Sharma** (supra), petitioners being daughters are entitled to object consent terms and consequential

Award of Lok Adalat. Perusal of impugned order depicts that Executing Court has rightly observed that Executing Court cannot go behind decree, particularly passed by Lok Adalat in year 2002. It is evident that, Award passed is in Lok Adalat prior to amendment in Hindu Succession Act. The father of Judgment Debtors i.e. original plaintiff was exclusive owner of property at the time of execution of compromise and passing of award.

7. At this stage, reference can be given to Proviso to Section 6 of Hindu Succession Act, 1956, which stipulates that nothing contained in sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had been taken place before 20th day of December, 2004. Therefore, disposition of property by father of petitioner by compromise recorded in Lok Adalat and consequential Award cannot be affected by Amendment of 2004.

8. Mr. Drupad Patil, learned Advocate appearing for petitioners relying upon exposition of law in case of ***Ganduri Koteshwaramma and Another Vs. Chakiri Yanadi and Another***² endeavours to contend that right accrued to petitioners/daughters in property of joint Hindu family by virtue of 2005 Amendment Act is absolute and except circumstances provided in Proviso appended to sub-section (1) of Section 6, such right cannot be deprived. Apparently, observations made in case of ***Ganduri Koteshwaramma and Another*** (supra) are in pursuance to ² (2011) 9 SCC 788.

preliminary decree passed in partition suit, which was not culminated into final decree on or before 20.12.2004. In present case, decree/Lok Adalat Award had attained finality in year 2002, whereby plaintiff i.e. father of petitioner had agreed to execute sale deed in favour of defendants and in pursuance to Lok Adalat Award accepted consideration amount. The present execution is filed seeking executing sale deed in pursuance to decree, by which rights are crystalised. In that view of the matter, no fault can be found in impugned order passed by Executing Court.

9. It is informed that, Regular Civil Suit No.244/2017 filed before Civil Judge Junior Division at Panhala by petitioner seeking decree of partition and separate possession is pending. Mr. Chetan Patil, learned Advocate appearing for respondents submits that such suit would not be maintainable. This Court need not go into aforesaid aspects. Parties are at liberty to raise respective contentions in suit.

10. In light of aforesaid observations, Writ Petition stands dismissed.

11. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE