

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11651 OF 2025

Kallappa Ningappa Tarale

Age: 60 years, Occ.: Agriculturist

R/o- Galgale, Tal.: Kagal,

Dist.: Kolhapur

... Petitioner

V/s.

2. Shivling Virupaksh Tarale

Age : 70 years, Occ.: Agriculturist

Gatgale, Tal.: Kagal, Dist.: Kolhapur

2. Sanjay Ishwara Tarale

Age: 53 years, Occ.: Agriculturist

R/o-Galgale, Tal.: Kagal, Dist.: Kolhapur

3. Santosh Ishwara Tarale

Age: 38 years, Occ.:Agriculturist/Service

R/o- Galgale, Tal.: Kagal,

Dist.: Kolhapur

4. Smt. Malutai Ishwara Tarale,

Age: 65 years, Occ.: Agriculturist

R/o- Galgale, Tal.: Kagal,Dist.: Kolhapur

5. Smt. Sangeeta Uttam Kapse

Age: 45 years, Oce.: Agriculturist

R/o- Kameri, Tal.: Walwa, Dist.: Sangli

6. Mahadev Nagappa Tarale

Age: 57 years, Occ.: Agriculturist

R/o- Galgale, Tal.: Kagal, Dist.:

Kolhapur

7. Smt. Parubai Nagappa Tarale

Age: 87 years, Occ.: Agriculturist
R/o- Galgale, Tal.: Kagal, Dist.: Kolhapur

8. Smt. Sudhatai Kiran Lamb
Age: 57 years, Occ.: Agriculturist
R/o- Galgale, Tal.: Kagal, Dist.: Kolhapur

9. Kakaso Ningappa Tarale
Age: 55 years, Occ.: Agriculturist
R/o- Galgale, Tal.: Kagal, Dist.: Kolhapur

10. Smt. Nilabai Baburao Khandare
Age: 64 years, Occ.: Agriculturist
R/o- Near Deccan Mill, Jawahar Nagar,
Ichalkaranji, Tal.: Hatkanangale,
Dist.: Kolhapur.

11. Smt. Malubai Jaywant Mahajan
Age: 63 years, Occ.: Agriculturist
R/o- Pimplegaon, Tal. Bhudargad.
Dist.: Kolhapur

...Respondents

Adv. Manoj Patil a/w. Adv. Shubham Dhenge, Advocate for
Petitioner.

Adv. Sandeep Koregave, Advocate for Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : DECEMBER 10, 2025

P.C.:

1. Petitioner impugns order dated 19th August 2023 passed by Civil Judge, Junior Division Kagal below exhibit-5 in Regular Civil Suit no.118 of 2021.

2. Respondent nos.1 to 5 instituted Regular Civil Suit No.118 of

2021 seeking relief of declaration and perpetual injunction. They have also sought declaration that compromise decree dated 5th January 2001 passed in Regular Civil Suit No.110 of 2000 is illegal and bad in law, as it has been obtained by impersonation and fraud upon Court. In that suit plaintiffs filed an application under Order 21 Rule 29 of Code of Civil Procedure, 1908 (for short 'CPC') seeking stay to execution of decree passed Regular Civil Suit No.110 of 2000. Trial Court allowed said application vide impugned order and stayed execution of decree.

3. Mr. Manoj Patil, learned Advocate appearing for petitioner, submits that Order 21 Rule 29 of CPC could not have been invoked in present suit and Trial Court could not have entertained application seeking stay of execution of decree passed in Regular Civil Suit No.110 of 2000. Contention of Mr. Patil is that Order 21 Rule 29 of CPC deals with power of Executing Court to stay execution proceedings till decision of suit pending against holder of decree. He would, therefore, urge that impugned order is unsustainable.

4. Per contra, Mr. Sandeep Koregave, learned Advocate appearing for respondents, would endeavor to invite attention of

this Court to merits of matter. He submits that compromise decree, which is subject matter of challenge in present suit, did not see light of day for years together. There is nothing to show that it was acted upon. Decree has been objected to in present suit being fraudulent; therefore, till decision of present suit, stay of execution of fraudulent decree is imperative. Trial Court has rightly stayed execution of fraudulent decree. He would further submit that even if it is accepted, for sake of argument that, Order 21 Rule 29 of CPC has no application to facts of present case, inherent powers under Section 151 can be invoked to achieve ends of justice.

5. Having considered submissions advanced by learned Advocates appearing for respective parties, only issue arises for consideration is whether powers under Order 21 Rule 29 of CPC can be exercised by Trial Court before whom issue as to validity of compromise decree passed in previous suit is raised. Apparently, Order 21 of CPC deals with execution of decrees and orders. It provides mode and manner of execution of decree and stipulates powers of Executing Court for giving effect to decree passed in suit. Rules 26 to 29 of Order 21 of CPC deal with stay of execution of decree. Order 21 Rule 29 of CPC reads as under :

"Stay of execution pending suit between decree-holder and Judgment Debtor:- Where a suit is pending in any Court against the holder of a decree of such Court (or of a decree which is being executed by such Court), on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided."

6. Aforesaid chronology and placement of provisions in code would suggest that powers under Rule 29 of Order 21 are specifically made available for stay of execution proceedings by Court before whom such execution is pending, on ground that a suit is pending against decree holder. In light of corollary of aforesaid provision, it is difficult to countenance that execution of decree passed in previous suit can be stayed by Court before whom suit is instituted challenging validity of such decree. This Court finds that in such cases even inherent powers under Section 151 of CPC would not be available, as person who seeks stay of execution of decree can approach executing court for stay of proceeding giving reason that validity of decree is challenged in suit instituted by him and there are reasonable chances of his success. Executing Court in such cases can exercise powers under Rule 29 of Order 21 of CPC and stay the execution of decree in its hands till disposal of suit instituted by judgment debtor against decree holder.

7. In view of aforesaid discussion, following order is passed :

ORDER

(i) Writ Petition is allowed.

(ii) Impugned order is quashed and set aside, with liberty in favour of respondents to file application before Executing Court under Order 21 Rule 29 of CPC.

(S. G. CHAPALGAONKAR, J.)