

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

WRIT PETITION NO.11935 OF 2024

1. Kuber Sopan Kadam,
Age-55 years, Occ-Agriculture,
R/o. Surli, Tal-Madha, Dis. Solapur. ... Petitioner

V/s.

1. Smt. Anita Sandipan Raut,
Age-47, Occ-Agriculture,
R/o. Surli Road, Tembhurni,
Tal-Madha, Dis-Solapur.

2. Mahesh Sandipan Raut,
Age-21, Occ-Agriculture,
R/o. Surli Road, Tembhurni,
Tal-Madha, Dis-Solapur. ... Respondents

Mr. Surel Shah a/w. Saakshat Relekar, Advocate for Petitioner.

Adv. Amit Sale a/w. Adv. Manoj Bagal & Adv. Shreyas Karajgar, Advocate
for Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : DECEMBER 12, 2025

PRONOUNCED ON DECEMBER 19, 2025

JUDGMENT:

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

2. Petitioner takes exception to order dated 9th July 2024 passed by
District Judge-1, Barshi in Miscellaneous Civil Appeal No.71 of 2023,

thereby rejecting application filed below Exhibit-5 in Regular Civil Suit No.984 of 2022 pending before Joint Civil Judge, Junior Division, Madha.

3. Petitioner filed Regular Civil Suit No.984 of 2022 before Joint Civil Judge, Junior Division at Madha seeking relief of perpetual injunction against Respondents/defendants. It is contention of petitioner that he has purchased suit property under four different registered sale deeds executed during period from 2016 to 2021. Vendor Sandipan Raut was Karta of joint family property and he executed sale deeds in favour of petitioner in pursuance of legal necessity of joint family. Petitioner was put in possession of suit property in pursuance of sale deeds, eventually mutation entries were certified in his name. After death of Sandipan Raut in year 2021, defendants started obstructing peaceful possession of petitioner. Hence, present suit came to be filed seeking reliefs claimed.

4. Petitioner also filed application below Exhibit-5 seeking temporary injunction against defendants. Defendants refuted petitioner's claim contending that they have already filed suit for cancellation of registered sale deeds executed in favour of petitioner by Sandipan Raut and that suit property continues to be in their possession. According to respondents, suit property is undivided coparcenary property and Sandipan Raut had no right to transfer same.

Trial Court, after considering rival contentions and material on record, allowed application exhibit-5 filed by petitioner and restrained respondents from interfering with his possession. Aggrieved respondents filed Civil Miscellaneous Appeal No.71 of 2023 before District Judge-1, Barshi, who allowed appeal by setting aside order passed by Trial Court, eventually dismissed application below Exhibit-5 filed by petitioner.

5. Having considered submissions advanced by learned Advocates appearing for respective parties.

6. Mr. Surel Shah, Senior Advocate appearing for petitioner, submits that Sandipan Raut was Karta of joint family. He transferred suit land under four different sale deeds in favour of petitioner and put him in possession. Mutation entries were effected in pursuance of said sale deeds. Contents of sale deeds and mutation records clearly suggest sufficient material to hold that petitioner is in lawful possession. Trial Court rightly appreciated aforesaid factual aspects and passed order of temporary injunction in favour of petitioner. However, Appellate Court, on erroneous appreciation of factual aspects and misapplication of law, reversed findings recorded on *prima facie* consideration of material on record and rejected petitioner's application.

7. Per contra, Mr. Amit Sale, learned Advocate for respondent,

supports order passed by Appellate Court. In support of his contentions, he relies upon law laid down by Supreme Court in case of *Ramdas Vs. Sitabai & Ors.*, reported in *(2009) 7 SCC 444* and judgment passed by this Court in *Suresh Babu Patil Vs. State of Maharashtra & Ors.* in *Writ Petition No.4232 of 2015*. He submits that land Gat No.637/3 was joint family property and Sandipan Raut was Karta of family consisting of wife and son. In absence of partition between coparceners and without legal necessity, Sandipan Raut could not have alienated suit property. Further, he could not have put petitioner in possession of specified share in joint family property. Suit for cancellation of sale deeds has already been filed by respondents. Petitioner ought to have filed suit for partition and separate possession of undivided share; a simpliciter suit for injunction would not be maintainable.

8. Indisputably, petitioner acquired title to suit property on basis of registered sale deeds. Perusal of each sale deed would clearly show that petitioner was put in possession of specified share as per boundaries mentioned in sale deeds. Name of petitioner has been entered in revenue record as owner and possessor during lifetime of Sandipan Raut. Respondents had not raised any objection to sale deeds during his lifetime. After death of Sandipan Raut, they have filed suit for cancellation of sale deeds. In that suit, their application for grant of temporary injunction has been rejected.

9. Trial Court, after considering aforesaid factual aspects, granted application for temporary injunction filed by petitioner. Appellate Court reversed said order on premise that contents of sale deeds and pleadings in plaint do not suggest that possession of specified share was delivered to plaintiff. Aforesaid observation of Appellate Court is fallacious. Contents of sale deeds, as well as specific pleadings in plaint, clearly indicate delivery of possession.

10. It is true that there was no family partition between Sandipan Raut, his wife and son. However, Sandipan Raut was Karta of joint family property. He transferred suit property with specific stipulation that transfer was effected to satisfy requirements of joint family. Right of Karta of joint family to transfer property cannot be fettered. Transfer made by Karta can be declared invalid only at instance of coparceners if it is shown that such transfer was not for legal necessity. However, in present case, defendants have sought cancellation of sale deeds in separate suit without seeking relief of partition and separate possession.

11. Appellate Court was clearly in error in observing that petitioner ought to have filed suit for partition and separate possession. When petitioner has come with specific case that Sandipan Raut transferred property in his capacity as Karta and put petitioner in possession of specified share as per boundaries mentioned in sale deeds, it was not necessary for him to seek relief of partition. Such requirement can be

pressed into service only when transfer is of undivided share of joint family property by a coparcener, who is not by Karta.

12. Although Mr. Amit Sale, learned Advocate for respondent, relies upon observations of Supreme Court in case of *Ramdas Vs. Sitabai & Ors.* (supra), present case is clearly distinguishable on facts. In that case, Sudam and Sitabai succeeded to property owned by their father, Sukha. After death of Sukha, Sitabai and Sudam acquired joint ownership and possession. In absence of partition, Sudam, who was brother of Sitabai, sold entire land in favour of defendant Ramdas. In this factual background, it was held that Sitabai was owner of one-half undivided share and Sudam could not have sold entire property by registered sale deed nor could he have delivered possession of entire property in absence of partition with Sitabai.

13. In present case, admittedly Sandipan Raut was Karta of joint family. He effected transfers in favour of petitioner in his capacity as Karta and put petitioner in possession of respective shares. Pertinently, respondents/defendants could not bring any material on record to show that even after execution of sale deeds they continued in possession of suit property.

14. In that view of matter, petitioner has established a *prima facie* case and balance of convenience lies in his favour. Non-grant of

injunction and disturbance of petitioner's possession would put him to irreparable loss. In result, following order is passed :-

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned order dated 9th July 2024 passed by District Judge- 1, Barshi in Miscellaneous Civil Appeal No.71 of 2023 is hereby quashed and set aside.
- (iii) Order dated 7th September 2023 passed by Joint Civil Judge, Junior Division, Madha below Exhibit-5 in Regular Civil Suit No.984 of 2022 granting temporary injunction in favour of petitioner is restored.
- (iv) Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR, J.)

15. At this stage, learned counsel appearing for Respondent, request to stay operation and effect of this order so that Respondent may take his chance before Supreme Court.

16. In light of submissions advanced, operation and effect of this order shall be kept in abeyance for a period of four week from today.

(S. G. CHAPALGAONKAR, J.)