

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13986 OF 2024**

Smt. Jankidevi Ranjitsinh Nimbalkar,
Age 63 years, occu : Household,
R/o: C. S. No.680, E Ward, 3rd Lane,
Shahupuri, Kolhapur.

2. Shri. Vikram Subhash Nimbalkar,
Age: 45 years, Occu: Agriculture, R/o:
C. S. No. 680, E ward, 3rd Lane,
Shahupuri, Kolhapur.

3. Smt. Sunitadevi Dilipsinh Nimbalkar,
Age: 75 years, Occu: Agriculture, R/o:
C. S. No. 680, E ward, 3rd Lane,
Shahupuri, Kolhapur.

... Petitioners

V/s.

1. Shri. Jamandas Veljibhai Patel,
Age: 78 years, Occu: Buisness, R/o:
Krishnakunj, 287/3, Market Yard Road,
Kolhapur.

2. Shri. Kantilal Veljibhai Patel,
Age: 66 years, Occu: Buisness, R/o:
Krishnakunj, 287/3, Market Yard Road,
Kolhapur.

3. The City Survey Officer, City Survey
Office, Near Shaniwar Post Office,
Kolhapur.

... Respondents

Adv. Ketaki Patil i/b. Adv. Abhijit Algale, Advocate for
Petitioners.

Adv. Bhooshan R. Mandlik, Advocate for Respondent.

J. P. Patil, AGP for State.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : DECEMBER 9, 2025

P.C.:

1. Petitioners/original defendants impugn order dated 22nd July 2024 passed by Civil Judge, Senior Division, Kolhapur below Exhibit-44 in Regular Civil Suit No.1107 of 2018 by which application filed by petitioners seeking to frame additional issues has been rejected.

2. Respondents/Plaintiffs instituted Regular Civil Suit No.1107 of 2018 seeking relief of perpetual injunction against defendants. Defendants filed written statement and raised challenge to title of plaintiffs over suit property. Particularly, contending that owner never executed sale deed in favour of Vijay Gajanan Naik or Jaisingrao Baburao Adnaik was never power of attorney holder for original owner. Consequently, sale deed of 1990 is invalid and plaintiff has not acquired ownership on basis of sale deed dated 5th February 1993. In light of aforesaid pleadings, defendants filed application below exhibit-44 and proposed to frame following additional issues :-

1अ) Whether Plaintiff No.1 prove that the sale deed dated 27-12-1990 in favour of Vijay Gajanan Naik is legal and valid.

2अ) Whether Plaintiff No.1 prove that the sale deed dated 05-02-1993 executed by Vijay Gajanan Naik in favour of Plaintiff No.1 is legal and valid.

3. Trial Court rejected plaintiffs' application observing that suit is simpliciter for perpetual injunction and since defendants have taken plea of adverse possession, they have indirectly accepted title of plaintiffs.

4. Ms. Ketki Patil, learned Advocate appearing for petitioners, vehemently submits that defendants have strenuously raised challenge to title of plaintiffs over suit property and have taken specific plea that sale deed dated 27th December 1997 in favour of Vijay Gajanan Naik and sale deed dated 5th February 1993 executed by Vijay Gajanan Naik in favour of plaintiff no. 1 are invalid. As such, plaintiffs do not acquire title over suit property. She further submits that defendants have taken an alternate plea of adverse possession, which cannot be stretched to infer that defendants have admitted title of plaintiffs.

5. Mr. Bhooshan Mandlik, learned Advocate appearing for respondents, supports impugned order.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that suit is instituted seeking relief of perpetual injunction in respect of

suit property. Defendants have raised challenge to plaintiffs' title and, relying upon law laid down by Supreme Court in case of *Anathula Sudhakar vs. P. Buchi Reddy (dead) by L.Rs. & Ors.*, reported in *AIR 2008 SC 2033*, it is contended that in absence of claim for declaration, suit would not be maintainable and therefore plaintiffs will have to establish title. In that eventuality, aforesaid issues are necessary.

7. Apparently, defendants are mixing two issues in their submissions. Whether plaintiffs' suit would be maintainable without seeking relief of declaration when plaintiffs' title is under cloud of doubt would be governed by legal principles enunciated by Supreme Court in *Anathula Sudhakar* (supra). However, plaintiffs can still claim relief of perpetual injunction without seeking declaration if they can demonstrate that there is no reason to raise doubt as to their title. In every case, where defendants dispute title of plaintiff, it is not necessary for plaintiff to claim relief of declaration of title. If plaintiff has sufficient material to demonstrate his settled title, he can proceed with simpliciter suit for decree of perpetual injunction.

8. In present case, plaintiff seeks to maintain claim for

perpetual injunction and proceed accordingly. In that view of matter, it is not necessary for Court to frame issues as to validity of sale deed of plaintiff or his predecessor in title. However, that does not mean that defendant cannot raise plea regarding maintainability of suit for want of relief of declaration. Trial Court would decide maintainability of suit after considering relevant aspects of matter. In that view of matter, Trial Court did not find it necessary to frame issue as proposed. However, during trial defendants would be entitled to press into service their plea as to maintainability of suit without seeking declaration in light of law laid down by Supreme Court in case of *Anathula Sudhakar* (supra).

9. Ms. Ketki Patil, learned Advocate appearing for petitioner, criticises observations made by Trial Court in paragraph no. 6 of impugned order contending that filing of counter-claim or raising of plea of adverse possession would amount to admission of title. However, careful reading of paragraph no. 6 would show that Trial Court is not oblivious of legal position that plea of adverse possession can be taken as an alternate plea. Taking of such plea would not necessarily be treated as an admission of title of

plaintiff.

10. In that view of matter, Writ Petition sans merit and hence dismissed

(S. G. CHAPALGAONKAR, J.)