

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.496 OF 2025
WITH
INTERIM APPLICATION NO.1671 OF 2025**

Appa Dadu Taral [Deceased]

a. Smt. Fulabai Appa Taral [Koli]
Deceased

b. Sou. Sushila Balu Suryavanshi
Age: 66 years, Occ.: Household
R/o- Inam Dhamani,
Tal.: Miraj, Dist.: Sangli

c. Sou. Rajakka Shrikant Koli
Age: 61 years, Occ.: Household
R/o- Shirti, Tal.: Shirol, Dist.: Kolhapur

d. Sou. Rukmini Tanaji Koli]
Age: 51 years, Occ.: Household
R/o- Kanwad, Tal.: Shirol,
Dist.: Kolhapur]

e. Krishna Appa Taral [Koli]
Age: 56 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

f. Prakash Appa Taral
Age: 55 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur]

2. Ganpati Dadu Taral [Deceased]

a. Smt. Parvati Ganpati Taral [Deceased]

b. Suresh Ganpati Taral [Deceased]
Through Legal Heirs/Representatives

b-a. Ananja Suresh Koli
Age: 62 years, Occ.: Household

R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

b-b. Avinash Suresh Koli
Age: 45 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

b-c. Annapurna Suresh Koli
Age: 43 years, Occ.: Household
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur]

b-d. Raviraj Suresh Koli
Age: 41 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

C. Sanjay Ganpati Taral]
Age: 41 years, Occ.: Agriculturist
R/o - Terwad, Tal.: Shirol,
Dist.: Kolhapur

...Appellants

V/s.

1. Smt. Champabai Pundlik Taral
Age: 82 years, Occ.: Agriculturist
R/o- Shirol, Tal.: Shirol,
Dist.: Kolhapur.

2. Hari Pundlik Taral
Age: 51 years, Occ.: Agriculturist
R/o- Shirol, Tal.: Shirol,
Dist.: Kolhapur

3. Sampat Pundlik Taral
Age: 43 years, Occ.: Agriculturist
R/o- Shirol, Tal.: Shirol, Dist.: Kolhapur

4. Sou. Malu Baburao Koli
Age: 46 years, Occ.: Household
R/o- Shirol, Tal.: Shirol,
Dist.: Kolhapur

5. Sou. Shalan Shankar Bogade
Age: 44 years, Occ.: Household

R/o- Battis Shirala, Tal.: Shirala,
Dist.: Sangli.

6. Kallu Balu Taral [Deceased]]
Through legal heirs/representatives

a. Smt. Parvati Kallu Taral
Age: 88 years, Occ.: Nil,
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

b. Balu Kallu Taral
Age: 66 years, Occ.: Retired
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

c. Annaso Kallu Taral
Age: 64 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

d. Bhauso Kallu Taral [Deceased]
Through legal heirs/representatives

d/1. Smt. Shantabai Bhauso Taral
Age: 56 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

d/2. Sou. Shakuntala Sunil Koli
Age: 27 years, Occ.: Household
R/o- June Danwad, Tal.: Shirol,
Dist.: Kolhapur]

d/3. Bharat Bhauso Taral
Age: 36 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

d/4. Sushant Bhauso Taral
Age: 29 years, Occ.: Agriculturist

R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur.

d/5. Bhagyashri Bhauso Taral
Age: 26 years, Occ.: Household
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur]

e. Sou. Surekha Krishna Koli
Age: 51 years, Occ.: Household
R/o- Ghalwad, Tal.: Shirol,
Dist.: Kolhapur

f. Sou. Shantabai Balkrishna Bedkyale
Age: 81 years, Occ.: Household
R/o- Shirol, Tal.: Shirol, Dist.: Kolhapur

g. Mahadev Kallu Taral [Deceased]
Through legal heirs/representatives

a. Smt. Chabutai Mahadev Taral
Age: 78 years, Occ.: Household
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

b. Malhari Mahadev Taral
Age: 58 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

c. Dhondiram Mahadev Taral
Age: 55 years, Occ.: Agriculturist]
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur]

d. Pandurang Mahadev Taral
Age: 48 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

7. Kallu Balu Taral [Deceased]]

Through legal heirs/representatives
Shankar Kallu Taral
Age: 58 years, Occ.: Agriculturist
R/o- Terwad, Tal.: Shirol,
Dist.: Kolhapur

8. Appa Dattu Taral [Deceased]]
Through legal heirs/representatives]

a. Champabai Appa Taral [Deceased]

b. Suvarna Raosaheb Vaswade
Age: 66 years, Occ.: Household
R/o- Borgaon, Tal.: Nipani,
Dist.: Belgaum]

c. Ranjana Suresh Koli
Age: 63 years, Occ.: Household
R/o- Rukdi, Tal.: Hatkanangale,
Dist.: Kolhapur

d. Nandu Appa Taral
Age: 50 years, Occ.: Agriculturist
R/o- Kurundwad, Tal.: Shirol,
Dist.: Kolhapur]

9. Bapu Dattu Taral
Age: 61 years, Occ.: Agriculturist
R/o- Kurundwad, Tal.: Shirol,
Dist.: Kolhapur

...Respondents

Adv. Manoj Patil a/w. Adv. Shubham Dhange, Advocate for
Appellant

Adv. Prajakt M. Arjunwadkar, a/w. Adv. Dhananjay U Utture,
Advocate for respondent nos. 2 to 5.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : DECEMBER 11, 2025

FINAL ORDER:

1. Appellants/original defendants impugn judgment and decree dated 5th July 2024 passed by District Judge, Jaysingpur in Regular Civil Appeal No.58 of 2011, thereby upholding judgment and decree dated 16th August 2011 passed by Joint Civil Judge, Senior Division, Jaysingpur in Regular Civil Suit No.11 of 2003, by which suit instituted by respondents/plaintiffs for partition and separate possession has been decreed.

2. Respondent nos. 1 to 5, original plaintiffs, instituted Regular Civil Suit No.11 of 2003 seeking decree of partition and separate possession of landed property Gat No.146, which is northern portion of original Survey No.52/4 situated at village Terwad, Taluka Shirol, District Kolhapur, and house property bearing Gram Panchayat No.16. It is contention of plaintiffs that suit properties are ancestral joint family properties. Plaintiffs are claiming through Mallu and his son Pundlik. Defendants represent branch of Dadu and his son Appa. Dadu and Mallu had one more brother, namely Kallu. Balu was original owner of suit property.

3. It is contention of plaintiffs that they had instituted Regular

Civil Suit No.61 of 1990 against defendants seeking relief of perpetual injunction in respect of land Gat No.146. In that suit defendants took a stand that suit properties are joint family properties. Eventually, suit was decreed holding that Survey No.52/4 is joint family property. Decision of Trial Court was upheld in Regular Civil Appeal No.122 of 1998. With reference to aforesaid findings, plaintiffs filed Regular Civil Suit No.11 of 2003 (present suit) seeking partition and separate possession.

4. Defendants appeared in suit and refuted plaintiffs' claim, contending that suit properties were neither joint family properties nor have plaintiffs any share in it. Defendants contend that joint family property was partitioned and Pundlik had received his share and disposed of his individual share.

5. The Trial Court framed issues, recorded evidence of parties and decreed suit of plaintiffs for 1/3 share in suit property. Aggrieved defendants filed Regular Civil Appeal No.58 of 2011, which has been dismissed, thereby upholding decree passed by Trial Court.

6. Mr. Manoj Patil, learned Advocate appearing for appellants,

raised contentions that Appa, son of Dadu, and his brother Ganpati had filed Regular Civil Suit No.121 of 1989 against their uncle Kallu. Suit was compromised and withdrawn. However, in that suit plaintiffs had filed counterclaim for partition and separate possession. At time of withdrawal of suit, Trial Court had observed that counterclaim filed by plaintiffs (defendant nos. 5 to 7 and 9 in that suit) shall be treated as plaint and it shall be registered as suit. According to Mr. Patil, once plaintiffs had sought relief of partition and separate possession in respect of suit property by filing counterclaim, which was subsequently treated as suit, present suit is barred by Order 2 Rule 2 of Civil Procedure Code.

7. This Court finds that aforesaid contention is fallacious. Firstly, there was no pleading in written statement regarding bar of Order 2 Rule 2 to present suit. Secondly, there is no material on record to show that plaintiffs had filed any counterclaim and that same was treated as suit in Regular Civil Suit No.121 of 1989. Thirdly, cause of action for filing present suit is decree passed in Regular Civil Suit No.61 of 1990 decided on 5th February 1998, which has been confirmed in Regular Civil Appeal No.122 of 1998 decided on 21st August 2002.

8. Appellate Court has rightly relied upon observations of Full Bench of Allahabad High Court in *Nasrat-ullah vs. Mujib-ullah and Ors.*, reported in *(1891) ILR 13 Allahabad*, wherein it has been observed that if previous partition or decree for partition is not given effect and parties continue as joint owners, there is no bar for bringing another suit for declaration of right to partition. It is observed that suit for declaration of right to partition differs from most other suits. So long as property is jointly held, so long does a right to partition continue, and suit can be maintained for such right.

9. So far as status of suit property is concerned, decree in Regular Civil Suit No.61 of 1990 has attained finality and clearly stipulates that suit property is ancestral property of plaintiffs and defendants and that plaintiffs are entitled to 1/3 share. In result, 1/3 share is allotted to descendants of Mallu.

10. Except aforesaid aspects, no other question of law is raised into service. In that view of matter, no substantial question of law arises for consideration in this Second Appeal and same stands dismissed.

11. In view of dismissal of Second Appeal, pending Interim

Application also stands disposed of.

(S. G. CHAPALGAONKAR, J.)