

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

CIVIL REVISION APPLICATION NO. 143 OF 2025

Pandurang Laxman Satav and ors. ...Applicants

Versus

Kailash Laxman Satav and ors. ...Respondents

Mr. Atul Damle, Senior Advocate, a/w Rupesh Lanjekar and
Dhananjay Dhondavkar, for the Applicants.

Mr. G. S. Godbole, i/b S. C. Wakankar, for Respondent Nos.1
to 5.

CORAM: N. J. JAMADAR, J.

DATED: 26th MARCH, 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to two orders passed by the District Judge.
3. The respondents herein had preferred an application purportedly under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 in Misc. Civil Application No.789 of 2024, which was taken out by the respondents for contempt of the decree passed by the Civil Court in Special Civil Suit No.82 of 2011 and the judgment and order passed by the learned District Judge in Regular Civil Appeal No.644 of 2017.
4. The respondent No.1 had instituted a suit for partition and separate possession of the suit premises. By the

judgment and order dated 14th September, 2017 the said suit came to be decreed. It was *inter alia* declared that the plaintiff is entitled to have partition and separate possession of his 1/7 share in the suit property. The defendants were also restrained by an order of injunction from transferring, alienating, disposing of the suit property and creating any third party interest in the suit property till partition by metes and bounds takes place.

5. RCA/644/2017 preferred by the petitioners came to be dismissed by the judgment and order dated 10th January, 2024. Second Appeal was also dismissed by this Court by an order dated 21st March, 2024.

6. Asserting that the defendants have committed deliberate breach of the orders of the trial court, an application to initiate an action for the contempt of the orders of the Court came to be filed. In the said application, instant application for attachment of the property under Order XXXVII Rule 5 of the Code was preferred.

7. By the impugned order dated 22nd October, 2024, the learned District Judge was persuaded to attach the suit properties under Order XXXIX Rule 5 of the Code. The

application preferred by the petitioners to recall the said order was dismissed by an order dated 13th December, 2024.

8. Mr. Damle, the learned Senior Advocate for the applicants, submitted that recourse to the provisions contained in Order XXXVIII Rule 5 was not warranted as the suit has already been decreed.

9. Having regard to the nature of the dispute and the proceeding in which the orders have been passed by the learned District Judge, Mr. Godbole, the learned Senior Advocate for the respondents – plaintiffs, on instructions of Mr. Zirpe, and without prejudice to the rights and contentions of the plaintiffs, submits that the plaintiffs will file a execution proceeding or an application in the pending execution proceeding, filed by the petitioners – defendants, for execution of the decree passed in Special Civil Suit No.82 of 2011, and seek attachment of the properties in the execution of the decree. In the meanwhile, the order passed by the learned District Judge of attachment of the suit properties be continued for a period of five weeks.

10. The aforesaid course appears to be the correct procedure for execution of the decree passed in Special Civil Suit No.82 of 2011.

11. Since it is alleged that the defendants have alienated the properties in breach of the decree passed by the trial court and upheld by the first Appellate Court and Second Appellate Court, it may be expedient to continue the order of attachment for a period of five weeks to facilitate the respondents – plaintiffs to take out appropriate application in the execution proceeding.

12. In the event such execution proceeding or an application for attachment of the property in the pending execution proceeding is filed, within one week from the date of uploading of this order, the learned Judge shall decide the same in accordance with law, within a period of four weeks thereafter.

13. In the meanwhile, the order of attachment shall continue to operate for a period of five weeks, from the date of uploading of this order.

14. The learned Judge shall not be influenced by any of the observations in the impugned orders.

15. Petition stands disposed.

[N. J. JAMADAR, J.]