



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15140 OF 2025

Dagadu Chindu Dhangar

VERSUS

Kesharsing Devram Patil And Others

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Advocate for the Petitioner : Mr. G.V. Wani

Advocate for Respondent-1 : Mr. A.P Bhandari h/f Mr. J V Patil

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 16, 2026

FINAL ORDER :-

1. The petitioner impugns the judgment and order dated 19.11.2025 passed by learned Adhoc District Judge-1, Jalgaon in MCA No.64 of 2023, reversing the judgment and order dated 11.7.2023 passed by the learned Civil Judge Senior Division, Jalgaon thereby allowing the application for temporary injunction filed by respondents/plaintiffs in Special Civil Suit No.95 of 2023.

2. The petitioner filed Special Civil Suit No.95 of 2023 seeking relief of declaration of right of pre-emption over the suit property by setting aside the sale-deed dated 26.4.2023 executed by respondent nos.2 to 6 in favour of respondent no.1. The petitioner also filed an application below Exhibit-6

seeking temporary injunction against respondent no.1 to not to disturb his peaceful possession over the suit property.

3. In short, it is case of petitioner/plaintiff that suit property is joint family property of petitioner and respondent nos.2 to 6. Although, there is no partition by metes and bounds, respondent nos.2 to 6 executed sale-deed in favour of Respondent no.1/defendant no.1. He is disturbing petitioner's joint possession. Petitioner further claims his right of pre-emption.

4. The defendants/respondents put up case that as per oral partition between petitioner and respondent nos.2 to 6 they were put in the possession of 87.33 R i.e. 1/3rd share in the property. They were cultivating same since long and sold it to Respondent no.1 under the registered sale-deed and put him in possession thereof. Now, petitioner and other defendants are acting in collusion and trying to defeat interest of respondent no.1.

5. The Trial Court considered and allowed application Exhibit-5 in Special Civil Suit no.95 of 2023 and restrained respondent no.1 temporarily from causing obstruction to the possession of petitioner over the suit property. The aggrieved

respondent no.1 filed Misc. Civil Appeal no.64 of 2023 before the learned District Judge, Jalgaon, who allowed the appeal by setting aside temporary injunction order dated 11.7.2023 passed by the Trial Court in Special Civil Suit No.95 of 2023.

6. Mr. G.V. Wani, learned advocate appearing for the petitioner would submit that undisputedly, there was no partition by metes and bounds between petitioner and defendant nos.2 to 6. In absence of separation of shares by metes and bounds, respondent nos.2 to 6 could not have put respondent no.1 in possession of specific share of joint family property. Such a sale-deed would not create any right in favour of respondent no.1. Although, undivided share of coparcener can be sold or transferred, the possession cannot be handed over to vendee in absence of the partition by metes and bounds. Therefore, respondent no.1 cannot hold any right to interfere in joint possession of the plaintiff over the suit property.

7. Per contra, Mr. Bhandari h/f Mr. Patil, learned advocate appearing for respondent no.1 would submit that as per the oral partition, plaintiff and defendant nos.2 to 6 were enjoying separate cultivation of the land. After ascertaining that

respondent nos.2 to 6 were in possession of the particular share, respondent no.1 purchased the property under registered sale-deed and he has been put into possession. He stepped into shoes of his vendor and entitled to continue enjoyment of the property. He would, therefore, urge that Appellate Court has rightly considered relevant aspects of the matter and reversed the order granting temporary injunction against respondent no.1.

8. Having considered submissions advanced by learned advocates appearing for respective parties, it can be observed that respondent no.1 had tendered certain documents before Appellate Court contending that there is suppression of material facts as regards to the partition decree passed in R.C.S. No.149 of 2008, wherein petitioner was defendant no.1. The Trial Court decreed said suit on 6.7.2018, wherein petitioner is held entitled for 1/3rd share in suit property. The said decree is now subject matter of execution. Precept under section 54 of the CPC has been made over to the District Collector, Jalgaon and shares have been carved out by Tahsildar, Dharangaon. Present suit is instituted without disclosing aforesaid facts.

9. None of the party disputed aforesaid facts before this Court. Although, preliminary decree passed in R.C.S. no.149 of 2008 has attained finality, fact remains yet, actual partition has not been effected and final decree proceedings are in progress. Therefore, nature of the suit property would continue to be a joint family property till passing of final decree and distribution of the shares. Respondent no.1 being purchaser of joint family property, he cannot claim exclusive right over particular part of suit land. Even otherwise, bare look to sale-deed dated 26.04.2023 executed by respondent nos.2 to 6 in favour of respondent no.1 depicts that he has purchased undivided share of 87.33R out of gat no.361/1 which admeasures 2H 62R. Thus, it would be difficult to accept that respondent no.1 was put into possession of specific share as claimed by him. As rightly pointed out by Mr. Wani, learned advocate appearing for the petitioner, legal position has been crystallized by the Hon'ble Supreme Court of India in case of **Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble and others reported in 2009 (10) SCC 654**. In paragraph no.11 it is observed as under :-

“11. Thus, in view of the above, the law emerges to the effect that in a given case an undivided share of a coparcener can be a subject matter of sale/transfer, but possession cannot be handed over to the

vendee unless the property is partitioned by metes and bounds, either by the decree of a Court in a partition suit, or by settlement among the co-sharers.”

10. Mr. Bhandari, learned advocate appearing for respondent no.1 would submit that even assuming that partition by metes and bounds has not taken place, the purchaser would have right to claim equitable partition and maintain his possession on the area put in his possession by his predecessor-in-title. There cannot be two views on the aforesaid proposition of law. Right of pendent-lite purchaser is also approved for equitable partition, thus respondent no.1 would be free to exercise his right in terms of law laid down by the Hon’ble Supreme Court of India in case of **Khemchand Shankar Choudhary and another Vs. Vishnu Hari Patil and others reported in AIR 1983 SC 124**. However, that does not mean that until partition is effected in pursuance the decree passed in R.C.S. No.149 of 2008, defendant no.1 has right to disturb joint possession of plaintiff over suit property.

11. In that view of the matter, observations of Appellate Court that petitioner failed to prove that he and respondent nos.2 to 6 are enjoying possession of the suit property cannot be countenanced. It appears that Appellate Court was more

impressed by suppression of fact regarding the decree passed in R.C.S. No.149 of 2008. Observations of the appellate Court that respondent no.1 was in possession of specific share in property as property lost status of joint family property cannot be countenanced for the simple reason that till this date, actual partition and delivery of possession is not effected and yet final decree proceeding is concluded in pursuance to the preliminary decree passed in R.C.S. no.149 of 2008.

12. In result writ petition is **allowed** in terms of prayer clause “**B**”. The order dated 11.7.2023 passed by the Trial Court below Exhibit-6 in Special Civil Suit No.95 of 2023 stands **restored**. Needless to state here that aforesaid order shall not be an impediment for execution of the partition decree passed in R.C.S. no.149 of 2008 and exercise of limited right by respondent no.1 to claim equitable partition in terms of law laid down in case of **Khemchand Choudhary and another (supra)**. Writ Petition stands **disposed of**. No costs.

(S. G. CHAPALGAONKAR, J.)

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