



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.62 OF 2025

SUNIL CHANGDEO GALHE AND OTHERS
VERSUS
SATISH SUDHAKAR DESHPANDE AND OTHERS

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Advocate for Applicants : Mr. Jiwan J. Patil h/f Mr. Kasar
Rajendra Sudam.

Advocate for Respondent Nos.2 to 4 : Ms. Deshmukh Charuta
Sunil.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 13.03.2026

PRONOUNCED ON : 18.03.2026

FINAL ORDER :

1. Heard finally with the consent of the parties.
2. An order dated 26.11.2024 passed below Exhibit 18 refusing to reject the plaint in Special Civil Suit No.74 of 2025 (Old No.95 of 2024) under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the "C. P. C.") is questioned by the applicants who are defendant Nos.18 to 24.

3. The respondent Nos.1 to 4 are the original plaintiffs, who have instituted Special Civil Suit No.74 of 2025 for exercising right of pre-emption, declaration, mandatory and perpetual injunction. The respondent Nos.5 to 21 are defendant Nos. 1 to 17. Applicants are the purchasers vide sale deed dated 12.02.2024 executed by respondent Nos.5 to 21. The parties are referred to by their original status in the Trial Court.

4. Plaintiffs have filed suit in respect of gut No.696, which is contended to be undivided joint Hindu family property of plaintiffs and the defendant Nos.1 to 17. It is further contended that it was agreed between them that the defendant Nos.1 to 17 would sell their undivided share to the plaintiffs. Dodging this right of pre-emption, their undivided share is stated to have been alienated to the defendant Nos.18 to 24 vide registered sale deed dated 12.02.2024. The plaintiff have asserted their right of U/Sec.22 of the Hindu Succession Act (hereinafter referred as to the 'Act').

5. The defendant Nos. 18 to 24 contested the suit by filing written statement justifying the alienation and on various

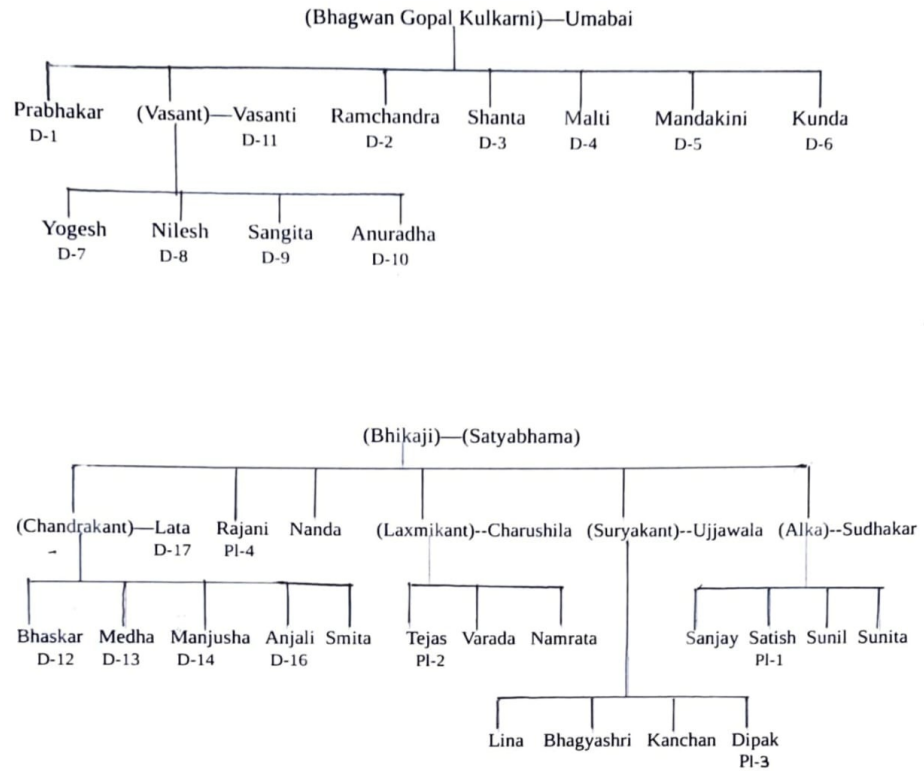
pleas. They submitted application Exhibit 18 U/O VII Rule 11 of the C. P. C. seeking rejection of plaint on specific plea that right to sue did not exist because the defendant Nos. 1 to 17 are not Class-I heirs under the Act. Application is contested and it came to be rejected by the impugned order.

6. Learned counsel Mr. Jivan Patil appearing for the applicants submits that impugned order is unreasoned and cryptic as learned Judge did not examine as to whether plaintiffs and defendant Nos.1 to 17 would fall within the category of Class-I heirs under the Act. It is stated to be perversity to overlook that no right to sue exists. The vendors are not class-I heirs. It is submitted that though various reliefs are claimed in the plaint the fundamental relief is under pre-emption U/Sec. 22(1) of the Act. It is submitted that prayer for specific performance of contract is cleverly drafted so as to project it as an independent relief. It is submitted that no agreement to sell was ever existed. In the absence of terms of consideration, the relief of specific performance is illusory. It is submitted that the learned Judge misguided himself in recording the observations regarding tenability of the claim for want of relief of partition. Impugned order is stated to be

unsustainable and liable to be rejected.

7. Per contra, learned counsel Mrs. Charuta Deshmukh appearing for respondents submits that legal heirs of Bhagwan sold their interest to the purchasers. The vendor and the members of the joint family are Class-I heirs and there exists right to sue for the plaintiffs. It is further submitted that prayer Clause-B pertains to specific performance of contract founded on oral agreement which is independent relief. It is submitted that the cause of action has been specifically stated in the plaint. It is further submitted that the learned Judge has rightly passed the order. The triable issues are raised, which need objective scrutiny.

8. Having considered rival submissions of the parties the undisputed position is the relationship inter-se amongst the plaintiffs and the defendant Nos.1 to 17. A genealogy which is produced in para No. 2 of the plaint is relevant to examine as to whether right of pre-emption exists or not. Following is the undisputed genealogy.



9. It is specifically stated in para No.3 of the plaint that propositus was Gopal. Bhagwan Gopal died on 15.11.1973. Bhikaji Gopal died on 21.07.1982. Chandrakant was one of the sons of Bhikaji, who was alive along with his siblings Suryakant, Laxmikant, Alka, Rajani and Nanda, at the time of death of his father. The family is stated to be undivided.

10. In para No.4 of the plaint it is averred that inclination of purchasing undivided share of defendant Nos.1 to 17 was conveyed by the plaintiffs and assurance was given to that effect on 09.02.2024. Despite the assurance, defendant Nos.1

to 17 sold their share to defendant Nos.18 to 24 on 12.02.2024.

11. The following prayer of the plaint is stated to be independent and in the nature of specific performance of oral contract.

ब. प्रतिवादी नं. १ ते १७ यांनी वादीचा मिळकत खरेदीचा कायदेशीर हक्क डावलून प्रतिवादी नं. १८ ते २४ चे हक्कात दिनांक १२/०२/२०२४ रोजी दस्त क्र. ८५५/२०२३ अन्वये करून दिलेले रक्कम रु. ३५,६०,०००/- चे खरेदीखत हे वादीवर बंधनकारक नाही व ते रद्दबादल आहे असा जाहिर ठराव करून मिळावा. तसेच प्रतिवादी नं.१ ते २४ यांनी वादीचे हक्कात वादीस अग्रहक्काने मिळकत खरेदी करण्याचा अधिकार असल्याने खरेदीखत नोंदवून द्यावे असा आदेश करण्यात यावा.

12. Neither any agreement to sell in writing nor oral with specific terms is spelt out from plaint. Entire plaint is silent as to what were the terms of the agreement to sell. Only assurance of selling them undivided share by defendant Nos.1 to 17 cannot be the basis of claim for specific performance of contract. The interaction between the parties is merely proposal and acceptance. There is no consideration as is contemplated by Section 2(d) of the Contract Act. Hence, it cannot be said to be an agreement as per Section 2(e) of the

Contract Act. The claim for specific performance of contract is thoroughly misconceived.

13. Its not a suit for specific performance of contract founded on any tangible instrument or oral terms between the parties. Rather plaintiffs' claim is founded on their right of pre-emption as envisaged under Section 22(1) of the Act. The prayer itself refers to pre-emptory right of the plaintiffs. The submissions of learned counsel Mrs. Charuta Deshmukh cannot be countenanced in this regard. I find that the above referred prayer is consequential and cannot be treated to be independent prayer having distinct cause of action. This aspect of the matter is lost sight of by the Trial Court.

14. The suit is predominantly for the prayer "A" which unequivocally refers to right of pre-emption under Section 22(1) of the Act. The prayer "C" about perpetual injunction is consequential and dependent upon earlier prayers. Therefore, it is necessary to examine as to whether right to sue exists under Section 22(1) of the Hindu Succession Act.

15. It is relevant to notice the following statutory provision :

“22. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.”

16. The requirement of claiming right of pre-emption is, there has to be immovable property of an intestate or the business carried on by him/her and devolvment upon class-I heir of the schedule. In the present case, suit is filed in respect of agricultural land. Gopal died intestate and his both sons Bhagwan and Bhikaji also died intestate. Their lineal descendants are inheriting the suit land.

17. The suit is brought by descendants of branch of Bhikaji against the descendants of Bhagwan as well as few descendants of Bhikaji. The descendants of Bhagwan cannot be said to be class-I heirs qua the plaintiffs. Defendant Nos.12 to 17 who are also descendants of Bhikaji are also not class-I heirs qua the plaintiffs. The plaintiffs can have no any

preferential right under Section 22(1) of the Act for purchasing the property in question.

18. It is pertinent to note that when Bhikaji died, his one of the sons Chandrakant was alive. Defendant Nos.12 to 17 are heirs of Chandrakant. Chandrakant is not the predeceased son of Bhikaji. Had he been predeceased, defendant Nos.12 to 17 would have become class-I heirs of the plaintiffs. To the extent of defendant Nos.12 to 17 the plaintiff could have asserted the right of pre-emption. But such is not the situation. Defendant Nos.12 to 17 are first degree cousins of plaintiff Nos.1 to 3. Trial Court failed to analyze the matter in this manner to ascertain as to whether there exists any right to sue for relief of pre-emption. I am of the considered view that impugned order is unsustainable.

19. It is not that only heirs of Bhagwan namely defendant Nos.1 to 11 have transferred their undivided share to defendant Nos.18 to 24. Defendant Nos.12 to 17 together with them transferred their undivided share. I find no merit in the submission of learned counsel Mrs. Charuta Deshmukh that heirs of one branch have transferred share.

20. Taking the averments of the plaint as they are and examining claim of pre-emption as per the genealogy provided in paragraph No.2 of the plaint, there is no iota of doubt that right to sue under Section 22(1) does not exist. There is no cause of action and whatever is projected to be, is creation of illusion.

21. I have already observed that prayer "B" of the plaint is alike relief of specific performance of contract but it is consequential one. It is cleverly drafted so as to project independent prayer of specific performance of contract founded on the agreement to sell. Therefore, in the suit illusory relief of specific performance of contract is being claimed. There is no point and purpose in dragging the parties to full-fledged trial. I hold that the suit is vexatious and its plaint is liable to be nipped in the bud.

22. I am being pointed out another flaw in the impugned order. The Trial Court has observed as regards to maintainability of the suit without claiming relief of partition. It was not the claim of defendant Nos.18 to 24 that plaint was

liable to be rejected for want of relief of partition. Therefore, the observations are mis-directed and inconsequential.

23. Learned counsel Mr. Patil appearing for the applicants has relied upon judgment of ***Ramlal Maniram Navdhinge Vs. Maniram Patiram Navdhinge and others ; 2008(1) Mh.L.J. 860.*** My attention is adverted to paragraph Nos.10 and 11 of the judgment. In that case, the plaint was rejected by the Trial Court which was confirmed by the High Court. The suit was founded on right under Section 22 of the Act and this Court examined as to whether the parties would be class-I heirs. In the case at hand, Trial Court failed to conduct the assessment as is done by Courts in the cited judgment.

24. Further reliance is placed on the judgment of Coordinate Bench in ***Abasaheb Khandu Borude Vs. Sheshnarayan Babu Borude and others ; 2019(3) AIR Bom.R 452.*** But in that case right under Section 22(1) of the Act was dealt with after full-fledged trial. It was not a case of rejection of the plaint under Order VII Rule 11. The ratio of the judgment cannot be made applicable to the present case.

25. Upshot of above discussion is that impugned order is liable to be rejected. Hence, I pass following order :

ORDER

- (i) Civil revision application is allowed.
- (ii) Impugned order below Exh.18 in Special Civil Suit No.74 of 2025 is quashed and set aside.
- (iii) The plaint in Special Civil Suit No.74 of 2025 shall stand rejected.
- (iv) Decree be drawn accordingly.

(SHAILESH P. BRAHME, J.)

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26. After pronouncement of the order, learned counsel Mrs. Deshmukh prays for stay to the operation and execution of the order passed today.

27. Learned counsel for the applicants opposes the request.

28. As the respondent/plaintiff desires to approach the Apex Court challenging the order, I find it fit to grant stay for six (6) weeks to the operation and execution of the order passed today. Simultaneously, there shall be stay to the proceeding of Special Civil Suit No.74 of 2025 pending before the learned Civil Judge Senior Division, Rahuri till then. After expiration of the period stipulated above, the stay granted today shall stand vacated automatically.

(SHAILESH P. BRAHME, J.)

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