IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1045 OF 2026

UDAY SHIVAJI JAGTAP
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Date: 2026.11.04 18:59:18 +0530

Altaf Saifan Pirjade … Petitioner

Vs.

Jakir Husen A Sattar Pirjade and Ors. … Respondents

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Mr. Mohammad S. Mulla i/b Qurban Kudle for the Petitioner

Mr. Prasad P. Kulkarni a/w Ravikant Talekar, Amol Deshinge, Arabaz Nadaf, Nakul V. Shukla for Respondent No.1.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 3rd NOVEMBER, 2026.

P. C. :

. Heard both sides finally.

2. The petition is directed against the order of remand passed by the lower Appellate Court in Misc. Civil Appeal No. 66 of 2025.

3. The petitioners are original plaintiffs, who are prosecuting the Regular Civil Suit No. 702 of 2024 for declaration and injunction. Their application Exh.5 was allowed on 23.07.2025 restraining the respondents from obstructing their possession from land Gat No.299. Being aggrieved Misc. Civil Appeal No. 66 of 2025 was filed by the respondent No.1, who is defendant No.3. The appeal is partly allowed and the matter is

remanded to the trial Court for deciding Application Exh.5 afresh, which is under challenge.

4. Learned counsel for the petitioners submits that petitioners are in possession on the strength of Hibanama executed on 07.11.2023. Their ancester's possession is evident from the order passed in Writ Petition No. 4125 of 1995. It is further submitted that agreement executed on 21.09.2021 in favour of respondent No.1 is bad in law and no possession was handed over to him. The findings of the lower appellate Court is perverse as the respondent Nos. 2 and 3 are the contesting parties and no question of hearing them.

5. *Per contra*, learned counsel for the respondents submits that considering the prayers of the plaint, respondent nos. 2 and 3 are the necessary parties and they are required to be heard. The appellate Court is justified in remanding the matter as the revenue record was produced for the first time. It is claimed that respondent No.1 is in actual possession of the suit land in view of agreement executed on 21.09.2021.

6. I have gone through the pleadings of the parties and the impugned order passed on 28.01.2026 remanding the matter to the trial Court to decide application Exh.5 afresh. The remand was thought necessary to extend opportunity of hearing to the respondent nos.2 and 3. It is further

recorded that both parties produced new documents and, therefore, objective scrutiny was required. The revenue record produced by the parties to support the rival claims of possession needs to be dealt with by granting opportunity of hearing. I do not find any perversity or patent illegality in the findings recorded by the Courts below.

7. The parties have rival claim for possession on the basis of Hibanama and agreement. The order passed by the High Court in Writ Petition No. 4125 of 1995 has not been dealt with specifically by the trial Court while allowing application Exh.5. I further noticed that the prayer for injunction in the suit is solicited against all the respondents. The lower appellate Court is justified in holding that respondent Nos. 2 and 3 are the stake holders and they are required to be heard.

8. I find that no case is made out to cause interference in the impugned orders.

9. The Writ Petition is dismissed.

10. After pronouncement of the order, learned counsel for the petitioner prays for continuation of the order passed below Exh.5. The request is opposed by the learned counsel for the respondents.

11. It would be open for the petitioners to claim appropriate relief before the trial Court in case of any exigency which shall be dealt with

on its own merits. I do not find it appropriate to grant the request as prayed for.

(SHAILESH P. BRAHME, J.)