

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

WRIT PETITION NO. 621 OF 2026

Vasant Balu Kumbhar
VERSUS
Sangita Dattatray Kumbhar And Anr.

...
Mr. Rishikesh Ajit Mohite, Advocate for Petitioner.
...

CORAM : SACHIN S. DESHMUKH, J.
DATE : 2nd APRIL, 2026

P. C. :

1. The Petitioner takes an exception to the order dated 05.01.2026 passed by the Civil Judge Senior Division Kolhapur in Special Civil Suit No.159 of 2022 below Exhibits-51 and 39.
2. The plaintiffs instituted a Special Civil Suit No.159 of 2022 before the Joint Civil Judge Senior Division, Kolhapur seeking partition, possession and injunction. Accordingly, the defendants contested the suit and filed their written statement.
3. In the interregnum, the plaintiffs preferred applications below Exhibits 39 and 51 under Order XXXII Rule 15 of the Code of Civil Procedure contending that the defendant No.2 is her husband, who is mentally unstable. The defendant No.1 by taking undue

advantage executed and prepared forged documents. Further prayed that given the deteriorating condition of defendant No.1, sought direction that her husband/defendant No.1 be produced before the Court and be referred for due medical examination.

4. In response, defendants opposed the application presented by the plaintiff. It is further pointed out that earlier also the plaintiff No.1 had filed similar application before the Court in Criminal Misc. Application No.56 of 2022 and the same was allowed. As such, the medical examination of defendant No.1 was already carried out and no further examination was required.

5. The trial Court allowed the application and directed the defendant No.1/Petitioner herein to produce defendant No.2 before the trial Court and further referred him to concerned Hospitals at Kolhapur for medical examination. Being aggrieved by the same, the defendant No.2 is before this Court under Article 227 of the Constitution of India.

6. Learned counsel for the Petitioner/defendant No.2 submits that the order under challenge is unsustainable in law. Although the previous medical examination and its report pursuant to the order of Criminal Court is available in the present proceedings ought not

to have directed fresh re-examination of the defendant No.1. The application and the orders under challenge are aimed to protract the trial. Thus, prayed to allow the Petition.

7. Learned counsel for the respondent/plaintiff No.1 has supported the order under challenge.

8. Having heard the submissions from both the sides and upon perusal of the record indicates that the Defendant No.1 and defendant No.2 are brothers while plaintiff No.1 is wife of defendant No.1. Admittedly, the defendant No.1 is residing with defendant No.2 and considering that the suit is for partition, the plaintiff may have reasonable fear or apprehension about the condition of her husband.

9. The medical examination of the defendant No.1 is carried out pursuant to the order in a criminal proceedings. After which considerable time has lapsed and in any case prior report may not serve the purpose effectively. However, the civil Court has its own independent jurisdiction and can rightly exercise its powers to meet the ends of justice.

10. Apart from the aforesaid aspects, pertinently no prejudice would be caused to the Petitioner in the event of examination of the

defendant No.2. Thus, in absence of same, in my considered opinion, the trial Court has rightly exercised its discretion while passing the order under challenge.

11. The petition sans merit and accordingly stands dismissed.

12. There shall be no order as to costs.

[SACHIN S. DESHMUKH, J.]