

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

**WRIT PETITION NO. 987 OF 2026**

|                                  |                 |
|----------------------------------|-----------------|
| Ketan Rajaram More And Anr.      | ....Petitioners |
| <u>VERSUS</u>                    |                 |
| Indubai Sanjay Ghorpade And Ors. | ....Respondents |

...

Mr. Ajit Kenjale (through VC) a/w Mr. Sai Rajendra Kadam, Advocate  
for Petitioners

Mr. D. D. Rananaware for respondents

...

**CORAM       :       SACHIN S. DESHMUKH, J.**

**DATE         :       7<sup>th</sup> MARCH 2026.**

**P.C.**

1.        Heard. Rule. Rule made returnable forthwith. By consent of the parties, petition is heard finally at the admission stage.
2.        Petitioner raises an exception to the Judgment and Order dated 18/12/2025 rendered by Extra Joint District Judge, Vaduj, in Misc. Civil Appeal No. 32/2024, allowing the appeal presented by the respondents.
3.        The petitioner purchased the suit properties by way of registered sale deed on 24/03/2024 accordingly put in possession of the same by the vendor of the suit property, who is the real brother of respondent defendants. Realising the same, the respondents/plaintiffs presented R.C.S. No. 130 of 2024 for partition, declaration and

injunction with an assertion that the vendor of the petitioner, without their being partition among the co-parceners had executed the sale deed in excess of the share which falls to his share. In response to the suit summons which was accompanied with an application for injunction under Order XXXIX, Rule (1)(2) of the Code of Civil Procedure, 1908 ('CPC').

4. The petitioner presented its written statement refuting all the contentions raised in the plaint. It was also submitted that the petitioner, pursuant to the registered sale deed, has purchased the property and put in possession of the suit property.

5. The Trial Court, after hearing the litigating sides, rejected the application presented by the plaintiffs holding that the present petitioners are put in physical and actual possession over the suit property. Till the decision on legality of the sale deed, the possession of the petitioners cannot be disturbed. Resultantly, rejected the application presented by the respondent under Order XXXIX Rule (1) (2) of the CPC.

6. Aggrieved by the same, respondents presented Misc. Civil Appeal before the Extra Joint District Judge, Vaduj has been allowed. Learned counsel for the petitioner submits that the Appellate Court has erred in allowing the appeal and it was not open for the Appellate Court to re-assess the material and reverse a conclusion of the Trial

Court. In the process, the learned counsel for the petitioner relied upon the case of ***Wander Limited Vs. Antox India Private Limited (1990 Supp SCC 727)*** and urged to restore the order of the Trial Court.

7. *Per contra*, learned counsel for the respondents has supported the judgment submitting that the view taken by the First Appellate Court is reasonable and plausible one and has corrected the error committed by the Trial Court while allowing the appeal. As such, no interference is warranted. In the process. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of ***Ramdas Vs. Sitabai and ors (2009) 7 Supreme Court Cases 444*** and decision of the coordinate bench of this Court in the case of ***Amoda Properties LLP Vs. Joy Mrinalkani Basu and Ors (2022 SCC OnLine Bom 399)***.

8. Upon considering the rival submissions and perusal of the material on record, it is evident that the petitioner is the purchaser of the suit property pursuant to the registered sale deed which unequivocally indicate and establishes the fact that the petitioner has been put in possession by his vendor. Once the fact of possession is established, the Trial Court has exercised discretion on the settled principles of law as has been held by the Hon'ble Apex Court, in the case of ***Dalpat Kumar and Anr Vs. Prahlad Singh and Ors (AIR 1993 SC 276)*** which lays down the following factors:

*“i) There is serious disputed question to be tried in the Court and that an Act, all the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiffs and defendants.*

*ii) The Court's interference is necessary to protect the party from the species of injury. The other words, irreparable injury or dangerous would ensue before the legal right would be established and tried.*

*iii) The comparative hardship, mischief or inconvenience which is likely to occur from withhold the injunction will be greater than that would be likely to acted from granting it.”*

9. Defendant No. 1 has executed sale deed in relation to undivided share in favour of the petitioner, which further culminated into effecting mutation Entry No. 429 by virtue of same, the name of the petitioners have been effected in the revenue record indicating and establishing his possession. Thus, the Trial Court applying the principles laid down by the Hon'ble Apex Court in the case of ***Dalpat Kumar (Supra)*** and taking into account the fact that the petitioner was put in possession and his name is effected in the revenue record. As such, exercised the discretion in favour of the present petitioners.

10. Once discretion is exercised by the Trial Court, applying the settled principles governing grant of discretion of such exercise, it was not open for the first Appellate Court to substitute the same in an

appeal preferred against discretionary order as has been held by the Hon'ble Apex Court in the case of *Wander Limited (Supra)*. Thus, the first Appellate Court misdirected itself while placing reliance on the judgment of *Ramdas (Supra)* wherein the entitlement of the litigating side was determined by the Trial Court and further endorsed by High Court in a second appeal. As such, the reliance placed by the learned counsel for the respondents does not lend any support. Therefore, I am of the considered view that the first Appellate Court ought not to have upset the well reasoned order rendered by the Trial Court while exercising discretion in favour of the petitioners, applying the settled principles laid down in the case of *Dalpat Kumar (Supra)* and Appellate Court ought to be loath while exercising its appellate jurisdiction against the discretionary order in absence any perversity.

11. As such, the order dated 18/12/2025 rendered by Extra Joint District Judge, Vaduj in Misc. Civil Appeal No. 32/2024 deserves to be quashed and set aside and, accordingly, the same is quashed and set aside the order rendered by trial Court is restored.

12. Rule is made absolute in aforesaid terms.

(SACHIN S. DESHMUKH, J.)