

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17400 OF 2025

Santosh Vinayak Joshi and Ors.

.. Petitioners

Versus

State of Maharashtra and Ors.

Respondents

.....

- Mr. Kishor Patil a/w. Mr. Amol Mhatre and Ms. Sonal Dabholkar, Advocates for Petitioners.
- Ms. V. S. Nimbalkar, AGP for Respondent Nos.1 and 2.
- Mr. Ambadas Chatuphale a/w. Ms. Regina Correia, Advocates for Respondent No.3.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 10, 2026

P.C.:

- 1.** Mentioned out of turn.
- 2.** Heard Mr. Patil, learned Advocate for Petitioners, Ms. Nimbalkar, learned AGP for Respondent Nos.1 and 2 and Mr. Chatuphale, learned Advocates for Respondent No.3.
- 3.** After hearing the Petitioners and the State on 18.11.2025 following order was passed:-

"1. Not on Board. Mentioned by way of filing praecipe dated 18.11.2025. Perused the praecipe.

2. Heard Mr. Patil, learned Advocate for Petitioner and Ms. Srivastava, learned AGP for Respondent Nos.1 and 2.

3. At the outset Mr. Patil requested the Court for leave to amend the Petition and change the nomenclature of Respondent – statutory Officer who is arrayed as Respondent in the present Petition. Leave to amend and correct the correct cause title to substitute the name of Deputy Director of Land Record and insert the name of Superintendent of Land Record is granted by the Court. Necessary amendment is permitted to be carried out within a period of one week from today in the record of the Court. Reverification stands dispensed with.

4. Further leave to amend is also granted to annex the copy of Application made by Petitioner before Respondent No.2 as Exhibit to the Petition. Petitioner is permitted to annex it as Exhibit and Department shall allow the said amendment to be

carried out within a period of one week from today. Reverification stands dispensed with.

5. *Prima facie, on reading the impugned order dated 27.10.2025 appended at page No.252, there appear to be inter se dispute of demarcation / sub-division of the subject property between the parties.*

6. *One of the submission advanced by Mr. Patil is that he is not averse to private Respondents taking / demarcating / sub-dividing their share rather to the extent of their share in the subject Gat No.71 in which parties are claiming sub-division qua their respective holdings on the basis of their sale deeds.*

7. *Private Respondents shall consider the submissions recorded hereinabove on behalf of Petitioners and accordingly apprise the Court on the next adjourned date.*

8. *Hence, issue notice to Respondents. Learned AGP enters appearance on behalf of Respondent Nos.1 and 2 and waives service on behalf of Respondent Nos.1 and 2.*

9. *Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondents a copy of this order and copy of Writ Petition and inform about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof.*

10. *Respondents are directed to file Affidavit-in-Reply on or before the next adjourned date.*

11. *In view of reasons given in the impugned order, private Respondents are directed to remain present.*

12. *Stand over to 02nd December, 2025.*

13. *Praecipe is disposed."*

4. In response to the said order the private Respondents namely namely contesting Respondent No.3 has filed Affidavit-in-Reply dated 05.03.2026. Paragraph Nos.9 and 10 of the said Affidavit read thus:-

"9. I say that the oral proposal made by the Petitioners through their Counsel "that he is not averse to private Respondents taking / demarcating / sub-dividing their share rather to the extent of their share in the subject Gat No.71 in which are parties are claiming sub division qua their respective holdings on the basis of their sale deeds" is concerned, if the Petitioners are ready and willing to demarcate the area adm. 0 H-5 R-76 P in favour of these Respondents i.e. Opal Builders as purchased by them in the year 2012, in that event the matter can be remitted back to the Deputy Superintendent of Land Record for passing appropriate Orders.

10. I say that if the Petitioners are not agreeable to the above proposal, the Petitioners are bound by the provisions of Section 85 of the Code, 1966, which reads as under.

"85. Partition: (1) Subject to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, a holding may be partitioned on the decree of a civil court or an application of coholders in the manner hereinafter provided.

(2) If in any holding there are more than one coholder, any such coholder may apply to the Collector for a partition of his share in the holding:

Provided that, where any question as to title is raised, no such partition shall be made until such question has been decided by a civil suit."

In view of the above provisions the Ld. Dy Superintendent of Land Records, Vasai had directed both the parties to approach the Competent Court and as such the Impugned Order is in accordance with law. Therefore, I respectfully submit that no interference of any nature whatsoever is required if the Petitioners are not agreeable to the proposal made by me as set out hereinabove."

5. In view of the above Mr. Patil on instructions submits that Petitioners are ready and willing to abide by the directions contained in paragraph No.6 of the order dated 18.11.2025 and agreeable to the proposal for remanding the matter back to the Deputy Superintendent of Land Record for survey, demarcation, measurement and sub-division of respective holdings including boundaries of Petitioners and private Respondent No.3 in respect of their holding in Gat Nos.71/1, 71/12, 71/3A and 71/3B.

6. In that view of the matter, following order is passed:-

- (i) The impugned order dated 27.10.2025 stands set aside by consent of both the parties;
- (ii) The Deputy Superintendent of Land Record / Superintendent of Land Record / Talathi whoever is the concerned statutory in-charge officer is directed to carry out exercise of survey, demarcation, measurement and sub-division of the subject properties belonging to the parties in accordance with law and the provisions and Rules of Maharashtra Land Revenue Code, 1966 (for

short ‘**the said Code**’);

- (iii) The charges for carrying out the aforesaid exercise shall be deposited by the parties equally;
- (iv) The statutory Officers shall employ the latest technique for survey, demarcation, measurement and sub-division and ensure that the said exercise is completed as expeditiously and in any event within a period of four weeks from today in accordance with law;
- (v) Both parties shall cooperate with the statutory officer and their staff at the time of survey without entering into any arguments with them and point out their respective documentary evidence and / or boundaries as stated therein and leave the exercise of survey, measurement and sub-division to be done by statutory Officers in accordance with the provisions of the said Code;
- (vi) If any party apart from Petitioners and / or private Respondent is required to be given notice, the same shall be done by the concerned statutory Authorities in accordance with law.

7. Both parties shall appear before the Deputy Superintendent

of Land Record, Vasai on 12.03.2026 at 11:00 a.m. with a copy of this order.

- 8.** All parties are directed to act on server copy of this order.
- 9.** All contentions of both the parties are expressly kept open.
- 10.** With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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