

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 39507 OF 2025
WITH
INTERIM APPLICATION NO. 145 OF 2026

Lilabai Madhukar Patil & Ors.

Appellants

•• (Org. Defendant Nos. 3 to 8)

Versus

Shweta Ramchandra Patil & Ors.

.. Respondents

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- Mr. Kishore Patil a/w Mr. Kaustubh Patil & Mr. Roshan Sawant, Advocates for Appellants
- Mr. Kanchanpurkar (appearance not given), Advocates for contesting Respondents
- Mr. Saurabh D. Butala, Advocate for Respondent No. 3
- Mr. Priyansh R. Jain a/w Mr. Akshay Naik i/by Mr. Sagar Shetty, Advocates for Respondent Nos. 5 to 8 - CIDCO and its functionaries

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 05, 2026

P. C.:

1. Heard Mr. Patil, learned Advocate for Appellants; Mr. Kanchanpurkar, learned Advocate for contesting Respondents; Mr. Butala, learned Advocate for Respondent No. 3 and Mr. Jain, learned Advocate for Respondent Nos. 5 to 8 - CIDCO.

2. After hearing the learned Advocate for Appellants on 09.01.2026, this Court passed the following order:-

"1. Not on Board. Mentioned by way of filing praecipe dated 09.01.2026. Perused the praecipe.

2. Heard Mr. Patil, learned Advocate for Appellants.

3. At the outset, it is informed that there is delay in filing the Appeal from Order. I have perused the Interim Application. Delay of more than 600 days stands condoned in the interest of justice because of the reasons mentioned which is the subject matter of the lis between the parties. Interim Application (Stamp) No.39508 of 2025 to that effect stands allowed due to the exigency mentioned by Mr. Patil namely that Defendants do not dispute the one-fourth share of Plaintiffs.

4. Appeal from Order is taken up forthwith for hearing in view of exigency mentioned by Mr. Patil.

5. The grievance of Appellants who are Defendants in the suit proceedings is to the effect that claim of Plaintiffs which is to the extent of one-fourth share in the compensation which has been received pursuant to acquisition of the suit property is not disputed. The Defendants are aggrieved primarily because the learned Trial Court has granted injunction in respect of the entire amount.

6. Mr. Patil makes a statement across the bar that to the extent of one-fourth share the amount can undoubtedly be retained towards the share of the Plaintiff who is seeking partition. All parties to the suit proceedings are children of the original owner of Rambhau Patil alias Rama.

7. Once the Defendants make the aforesaid statement, prima facie, there should be no impediment in retaining the one-fourth share and releasing balance share.

8. In that view of the matter Plaintiff will have to be heard. An arguable case has been made out by Mr. Patil for issuance of notice to Respondents – Plaintiffs. Hence, issue notice to Respondents.

9. Humdast permitted. In addition to Court's notice, Appellants are directed to serve the Respondents a Copy of order, Appeal from Order and Interim Application forthwith 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. Plaintiffs shall apprise the Court about their objections, if any on the next adjourned date pursuant to which appropriate orders can be passed disposing of the present Appeal from Order.

11. Respondents are directed to comply with the aforesaid order.

12. Stand over to **22nd January, 2026**.

13. Praecipe is disposed."

3. Contesting Respondent is represented by Mr. Kanchanpurkar.

He would submit that undoubtedly contesting Respondent No. 1 is entitled to 1/4th share in view of the fact that she is the real sister of

deceased Madhukar Patil. He would therefore submit that even though there is doubt about the Appellants being entitled to 3/4th share insofar as 1/4th share is concerned that ought to be given to Respondent No. 1. Mr. Kanchanpurkar would be right if the shares would have been crystallized. It is in fact Respondent No. 1 who is the Plaintiff before the learned Trial Court and if she has approached the Trial Court for seeking entitlement to her 1/4th share, then the same will have to be proved by her. Written statements filed before the Trial Court are to the effect that Defendants have denied the relationship of Respondent No. 1 to the deceased as also the fact that Respondent No. 1 would be entitled to any share whatsoever at all, lest 1/4th share claimed by her.

4. There are two benefits which are already derived by the parties in the present case. One is undoubtedly compensation due to acquisition of the original plot which has to be disbursed by CIDCO and second benefit is allotment of the alternate plot under the 12.5% Government Scheme. Compensation money is not yet disbursed. Plot is already allotted and Defendants have already created third party rights therein. However considering the substantive Suit proceedings filed by Respondent No. 1 before the Trial Court seeking 1/4th share as the Plaintiff Mr. Kanchanpurkar in his usual fairness informs the Court that the *lis* between the parties is only to the extent of 1/4th

share claimed in the compensation as also in the alternate plot that is allotted. In that view of the matter there can be no impediment in allowing the Defendants to be entitled to receive the 3/4th share of the compensation which has been declared by CIDCO. It is seen from the record that compensation in LAR 389/2016 is Rs. 7,26,51,831, compensation in LAR 332/2016 is Rs. 7,23,66,231/- and compensation in LAR 377/2016 is Rs. 7,42,28,403/-. Share of Plaintiff to the extent of 1/4th share can be preserved until the Suit is determined by giving appropriate directions to CIDCO not to disburse the same.

5. Impugned order dated 20.09.2022 is appended at page Nos. 72-97 of the Appeal from Order. By virtue of the directions contained in the operative clauses, learned Trial Court has directed that Defendants are restrained from withdrawing the compensation amount until the final decision of the Suit. Considering the facts in the present case and more specifically the agreed position that Defendant Nos. 1 to 8 would be entitled to 3/4th share in the compensation amount, direction given by learned Trial Court restraining them from receiving the said amount until the final decision of the Suit is on the face of record arbitrary and harsh considering Plaintiff's own case before the Trial Court.

6. It is seen that it is the case of Respondent No. 1 who is the Plaintiff before the Trial Court and the case of Plaintiff is restricted only to the extent of 1/4th share out of the total compensation amount. Once that is the position which is *prima facie* clarified from the record of the case, there can be no reason for the Trial Court to restrain the other Defendants who are otherwise entitled to 3/4th share of compensation from withdrawing the same or from receiving the same until final decision of the Suit. In that view of the matter, while retaining the impugned order as it is, directions contained in clauses, 2, 3, 4, 5 and 6 directing restraint on Defendant Nos. 1 to 8 from receiving 3/4th share of compensation stands deleted. Defendant Nos. 1 to 8 shall receive their 3/4th share.

7. Insofar as the direction contained in operative clause 6 is concerned, pleadings on record of the Trial Court *prima facie* show that third party rights have also been created in the alternate plots which have been allotted under 12.5% Government Scheme. Insofar as this issue is concerned, it is needless to state that if Respondent No. 1 who is the Plaintiff before the Trial Court succeeds in the Suit proceedings, learned Trial Court shall undoubtedly pass appropriate orders for determining the claim of Plaintiff in the alternate plots also in respect which Defendant Nos. 1 to 8 have created third party rights in accordance with law. Needless to state that in the first instance,

Plaintiff will have to first succeed in the Suit proceedings to show her entitlement to 1/4th share in the original subject Suit property.

8. All contentions of parties are expressly kept open.

9. While determining the Suit, learned Trial Court shall not be influenced by any observations made in the impugned order which are *prima facie* in nature neither be influenced by any observations made in the above order or in twin orders dated 20.09.2022 and 22.03.2024.

10. Considering that the Suit is filed in the year 2021 and in view of the request made by Mr. Kanchanpurkar, learned Trial Court is requested to determine the Suit as expeditiously as possible and in any event within a period of 12 months from today strictly in accordance with law. All contentions of the parties before the Trial Court are kept open.

11. Defendant Nos. 1 to 8 are warned by this Court not to take any unnecessary adjournments before the Trial Court in the Suit proceedings filed by the Plaintiff and learned Trial Court shall also not grant unnecessary adjournments and shall grant adjournment only in the case of extreme urgency, exigency or necessity, if so arises. Parties shall cooperate with the learned Trial Court for expeditious disposal of the Suit proceedings.

12. CIDCO is represented by Mr. Jain. CIDCO shall act on a server copy of this order and take appropriate necessary indemnity from Defendant Nos. 1 to 8 before disbursement of the 3/4th share of compensation to them. Needless to state that if the indemnity is required to be furnished in the Darkhast proceedings which are pending before the Executing Court, same shall be furnished therein by the parties.

13. With the above directions, Appeal from Order is disposed. Interim Application is also disposed.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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2026.03.05
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