


MHKO080000802011 	Presented on	:	07/03/2011		
	Registered on	:	08/03/2011		
	Decided on	:	09/04/2026		
	Duration	:	Y	M	D
			15	01	02

IN THE COURT OF DISTRICT JUDGE -1 GADHINGLAJ,
DIST. KOLHAPUR
(Presided over by M. A. Shinde)

Reg. Civil Appeal No. 16 of 2011
Exh. No. 51/A

1.	Sou. Fulavati Janaba Patil- Deceased her legal heirs - Shri. Ravsaheb Pandurang Patil, Age-24 Years, Occup. Education & Farmer, R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur.	.. Appellant.. (Original Plaintiff)
	//Versus//	
1.	Shri. Bhimrao Jivaba Patil- Deceased his legal heirs - 1-A) Smt. Indubai Bhimrao Patil, Age-75 years, Occup. Household, R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur. 1-B) Shivaji Bhimrao Patil- Deceased his legal heirs - 1-B-1) Smt. Sarita Shivaji Patil, Age-43 years, Occup. Household, R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur.	

<p>1-B-2) Shri. Rohit Shivaji Patil, Age-22 years, Occup. Agriculturist, R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur.</p> <p>1-B-3) Kum. Rohini Shivaji Patil, Age-20 years, Occup. Education, R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur.</p> <p>1-C) Shri. Sambhaji Bhimrao Patil, Age-52 years, Occup. Service, R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur.</p>	
<p>2. Shri. Pandurang Jivaba Patil, Deceased his legal heirs :-</p> <p>2-A) Smt. Shobha Pandurang Patil, Age- 52 years, Occup. Household, R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur.</p> <p>2-B) Smt. Rajashri Maruti Mahangekar, Age 35 Years, Occu. Household, R/o. Sidheshwar General Store, Near New Shopping Centre, 316 Bus Stop, Bandra (East).</p> <p>2-C) Sou. Ratnamala Suresh Gaikwad, Age-33 Years, Occup. Household, R/o. Rafiq Nagar, Near Sai Baba Mandir, Govandi, Mumbai- 400 043.</p> <p>2-D) Sou. Jayashri Pramod Patil, Age-31 Years, Occup. Household, R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur.</p> <p>2-E) Shri. Ravsaheb Pandurang Patil (Appellant) R/o. Manwad, Tal. Gadhinglaj, Dist. Kolhapur.</p>	<p>.. Respondents .. (Ori. Defendants)</p>

<i>Appearance:-</i>	
For Appellants	Shri. R.I.Palkar, Ld. Advocate
For Respondent No.1-A to 1-C	Shri. V.A.Karveerkar, Ld. Advocate
For Respondent No.2-A to 2-E	Shri. V.V. Mang

J U D G M E N T
(Delivered on 9th April, 2026)

1. The present appeal is moved by the appellant being aggrieved and dissatisfied with the findings recorded by the Ld.Civil Judge Senior Division, Gadhinglaj on 04/02/2011 in Regular Civil Suit No.58/2004 and dismissed the suit which was filed by the present appellant for perpetual injunction in respect of Gat No.580, admeasuring 3 Hector 49 Are, situated at village Manwad, Tal. Gadhinglaj, Dist. Kolhapur. ('the suit property' for short). Fulavati, Bhimrao and Pandurang are sisters and brothers of each other. Their father Jivaba died on 24/10/2002. It was self acquired property of Jivaba. Jivaba was residing separately from the defendants. Their mother Ratnabai died in the year 1992.

2. The plaintiff has look after her father till his last breath. Therefore, he had executed a resistered Will (Exh.103) on 27/01/1997 in her favour ('the Will' for short). After death of Jivaba on 24/10/2002 Mutation Entry No.761 was approved on the basis of the Will (Exh.103). Therefore the defendant No.1 has moved R.T.S.Appeal No.25/2003 which was dismissed on 28/01/2004 and the Mutation Entry No.761 is made absolute. Thereafter, no appeal proceeding was moved by the defendant No.1. Thus, the said decision has attain finality. However,

meanwhile the defendants have started disturbing the peaceful possession of the plaintiff over the suit property. Therefore, she is compelled to file the suit for perpetual injunction.

3. Thereafter, the defendant No.1 has moved Regular Civil Suit No.151/2005 for partition and separate possession in respect of their ancestral property including the present suit property ('the partition suit' for short). The record further shows that, the Ld. Civil Court has passed common judgment and allowed the partition suit bearing R.C.S.No.151/2005 and granted shares to both the parties in all ancestral property including the suit property. The Ld.Civil Court has not accepted the legality and validity of the Will and the stand taken by the plaintiff/appellant that, it is self acquired property of Jivaba. Therefore, dismissed the suit for perpetual injunction.

4. Therefore, being aggrieved dissatisfied with the said common findings recorded by the Ld. Civil Court, the present appellant has moved two appeals. The first appeal is against the partition decree bearing R.C.A.No.15/2011 and this appeal against the dismissal of the injunction suit.

5. The record further shows that, meanwhile R.C.A.No.15/2011 was disposed of on technical issue. Therefore, restoration application was moved which was allowed by this Court and R.C.A.No.15/2011 was restored on the file of this Court. Initially, both the proceedings were pending in the Court of District Judge No.2, Gadhinglaj. However, after restoration order in Civil Misc. Application No.42/2024, dated

27/03/2025 passed by the District Judge No.2, the R.C.A.No.15/2011 was allotted to the Court of the District Judge No.1 and was heard and decided on merit by my learned Predecessor, who was the then District Judge No.1, Gadhinglaj. The operative order passed in the said appeal is reproduced for ready reference.

ORDER

1. The appeal is partly allowed with cost.
2. The judgment and decree passed in RCS No.151/2005 is modified as follows
 - a) The plaintiff, defendant No. 1, 6 to 8 each are entitled to get 1/6th share in suit property except land Gat No.580 out of suit property. Defendant No. 2 to 5 jointly entitled to get 1/ 6th share in suit property except land Gat No.580 out of suit property.
 - b) The defendants are directed to give 1/ 6th share to the plaintiffs in suit property except land Gat No.580 out of suit property.
3. Operative order No. 5 to 7 passed by learned Civil Judge Sr. Div. Gadhinglaj shall remained as it is.

Date : 22/09/2025

Sd/-
(Onkar R. Deshmukh)
District Judge-1, Gadhinglaj.

6. Thus, my learned Predecessor has modified the judgment and decree passed in R.C.S.No.151/2005 and held that, the suit property is self acquired property of Jivaba and he has validly executed the Will (Exh.103) in favour of the present appellant Fulavati. Meanwhile, Fulavati also died leaving behind a Will in favour of her maternal nephew Raosaheb Pandurang Patil, who succeeded her and contested both the appeals.

7. The present appeal was pending on the file of the District Judge No.2. On 30/03/2006 the Court of District Judge No.2 was disbanded and all the files including the present appeal transferred to this Court.

8. Thus, on the background of these factual aspects heard both the parties at length. Perused the record. The following points arise for my determination and my findings thereon are recorded as under :-

<u>No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiff/appellant proves the exclusive possession over the suit property?	.. In the affirmative.
2.	Whether the plaintiff/appellant are entitled of perpetual injunction in respect of the suit property?	.. In the affirmative.
3.	Whether the Ld. Civil Court was justified in dismissing the suit?	.. In the negative
4.	What order?	As per final order.

: REASONS :

As to Point No.1 to 3 :-

A) Argument :-

9. Assailing the findings recorded by the Ld. Civil Court, the Ld. Counsel for plaintiff, Shri. R.I.Palkar submitted that, the suit property was self acquired property of Jivaba, who has bequeathed it to his daughter Fulavati who was exclusive owner in respect of the suit property till her death by virtue of the Will (Exh.103). Therefore, he

submitted that, the Ld.Civil Court has heard in dismissing the injunction suit and therefore prayed to allow the present appeal by reversing the findings recorded by the Ld. Civil Court.

10. On the other hand, the learned Counsel Shri. V.A.Karveerkar supported the findings recorded by the Ld. Civil Court stating that, the Ld. Civil Court has properly appreciated the evidence on record and come to the logical conclusion that, the suit property is in common enjoyment and cultivation of both the parties. He pointed out the admissions given by Fulavati herself in the cross-examination, wherein she admitted that, the suit property is in common cultivation of both the parties and therefore submitted that, the appeal is devoid of merit and hence it be dismissed with costs. He also stated at bar that, his clients have preferred Second Civil Appeal before the Hon'ble Bombay High Court, Circuit Bench, Kolhapur and therefore the findings recorded by this Court are under challenge in the Second appeal therefore may not be considered to decided the present matter in issue as this Court while deciding the first appeal did not touch to the issue of possession in respect of the suit property.

11. I have carefully gone through the pleadings as well as evidence led by the parties. The plaintiff Fulavati has filed her evidence affidavit at Exh.65. She was excessively cross-examined by the learned Counsel Shri. V.A. Karveerkar and she has given admission that, Gat No.201, 165, 491 and 580 were in joint cultivation. But it must be kept in mind that, the plaintiff is an illiterate women, she has put her thumb impression on her evidence affidavit. Moreso, on the background of the long standing and

consistent stand taken by her in both the Civil suits, that the suit property is self acquired property of her father who has bequeathed her by virtue of the Will (Exh.103) exclusively and therefore only on the basis of the stray admission, it cannot be considered that, the suit property is in common enjoyment of both the parties.

12. This Court while deciding R.C.A.No.15/2011 has upheld the validity of the Will and nature of the suit property that, it is the self acquired property of deceased Jivaba. Though, the learned Counsel Shri. V.A.Karveerkar has submitted at bar that, the said findings is challenged by his clients by filing Second appeal. But even the present appeal is to be decided on the basis of the factual position presented before this Court and considering the above evidence discussed above it cannot be said that, the suit property is in common enjoyment and cultivation of both the parties. Rather both of them have taken opposite stands in respect of the suit property which needs to be considered and therefore, I hold that, the Ld. Civil Court has erred in dismissing the suit and by holding that, it is in common enjoyment of both the parties and refused to grant injunction in favour of the plaintiff.

13. The plaintiff has reasonable apprehension at the hands of the defendants that, they will disturb her possession over the suit property and therefore the very purpose of executing the Will by her father in her favour will be frustrated. Hence, interference is required in the finding recorded by the Ld. Civil Court in R.C.S.No.58/2004. Thus, I answered points No.1 and 2 in the affirmative and point No.3 in the negative. In the result, following order is passed.

ORDER

- 1) The Regular Civil Appeal No.16/2011 is allowed with costs.
- 2) The judgment and decree dated 04/02/2011, passed by the learned Civil Judge Senior Division, Gadhinglaj in Regular Civil Suit No.58/2004, is quashed and set aside.
- 3) The suit is decreed with costs.
- 4) The defendant No.1-A to 1-C are perpetually restrained from disturbing the peaceful possession of the plaintiff over the suit property bearing Gat No.580, admeasuring 3 Hector 49 Are, situated at village Manwad, Tal. Gadhinglaj, Dist. Kolhapur
- 5) Decree be drawn accordingly.
- 6) Record and Proceedings be sent to the office of the Ld. Civil Judge Senior Division, Gadhinglaj, forthwith.

(Dictated and pronounced in open Court.)

Date: 09/04/2026.

(M. A. Shinde)
District Judge-1, Gadhinglaj.