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

**WRIT PETITION NO.11332 OF 2023**

Avinash Pramodkumar Magdum ... Petitioner  
**V/s.**  
 Vijay Sambhaji Waingade & Ors. ... Respondents

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RAMESH  
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VAIBHAV RAMESH  
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Mr. Nikhil N. Pawar for the petitioner.

**CORAM : S. G. CHAPALGAONKAR, J.**

**DATED : AUGUST 21, 2025**

**P.C.:**

1. Heard the learned advocate appearing for the petitioner.
2. The petitioner is the purchaser of the property under the auction held on 4<sup>th</sup> November 2020 by the Bank of Maharashtra. The Bank of Maharashtra had advanced a loan to respondent Nos. 6 and 7, and the suit property bearing C.T.S. No. 2976 was mortgaged for the same. A registered mortgage deed dated 6<sup>th</sup> November 2012 was executed in favour of the bank..
3. It appears that respondent No. 1 had instituted Regular Civil Suit No. 132 of 1994, seeking partition and separate possession in respect of the suit property, i.e., CTS No. 2976. The said suit was decreed by order dated 22<sup>nd</sup> March 2010. Respondent No. 1 and others were granted their respective shares under the decree. Respondent Nos. 6 and 7 were given a 1/14<sup>th</sup> share under the decree. In the wake of the aforesaid decree, respondent Nos. 6 and

7 created a mortgage in favour of the Bank of Maharashtra on 6<sup>th</sup> November 2012.

4. Now, execution of the decree is in process. The petitioner, who is the auction purchaser from the bank, filed an application seeking intervention in the execution proceedings vide application below Exhibit '176'. The learned Executing Court rejected the said application vide order dated 10<sup>th</sup> July 2023."

5. Learned advocate appearing for the petitioner, relying upon the exposition of law in the case of *Yogesh Goyanka v. Govind*, (2024) 7 SCC 524, contends that although the mortgage deed was executed after the decree, it would not be rendered invalid, and the petitioner would be entitled to share in the property that would be allotted to respondent Nos. 6 and 7. At least for purpose of exercising equatable right, the intervention of the petitioner ought to have been allowed."

6. Considering the submissions advanced, issue notice to the respondents, returnable on **18<sup>th</sup> September 2025**.

7. Till the returnable date, the execution of the decree and delivery of possession, to the extent of suit property CTS No. 2976, be kept in abeyance.

8. The petitioner shall be at liberty to serve the respondents by private mode, as permissible under law, and file an affidavit of service by the next date. In case of failure to serve respondents by returnable date, interim protection shall stand vacated without reference to court.

**(S. G. CHAPALGAONKAR, J.)**