



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. _____ of 2026
(Arising out of SLP (C) No.6565 of 2020)**

Pradeep and Ors.

...Appellant (s)

Versus

Jagadishwari And Ors.

...Respondent (s)

ORDER

Leave granted.

2. A multi-layered litigation; commenced with a suit for partition in 1940, by a minor, in which a preliminary decree and a final decree were passed. An execution petition was initiated by the plaintiff, Sri. Prabhakarlal Mohanlal Kalawar (hereinafter called the Decree Holder), in the year 1979, the offshoot of which has led to the present appeal.

3. While the execution case was pending, the Decree Holder realized that a property in Solapur was not included in the suit, on which also the plaintiff had 1/4th share. While petition seeking to include the Solapur property was rejected

when the final decree was drawn; finding it to be a self-acquired property, this order was reversed in appeal and directed to be included in the partition by an order dated 23.01.1973. The decree indicated the property to have an extent of 15 acres, which actually had an extent of 25 acres. By the time the Execution Petition was filed in 1979, a portion of the property was purchased by a third party who claimed protection under the provisions of the Transfer of Property Act, 1882, and also pointed out that Additional Civil Judge's Court at Belgaum, dealing with the execution case, had no jurisdiction by virtue of Section 39(4) of the Code of Civil Procedure, 1908; incorporated in the year 2002.

4. The Court found favour with the contention raised, based on Section 39(4) and by an Order dated 17.10.2006, directed the execution case to be transferred to the Court of Civil Judge (Senior Division), Solapur. The Civil Judge (Senior Division), Solapur, however, replied by Annexure P3 dated 24.01.2007, pointing out that the judgement and decree as also the record of proceedings are in Kannada, without due translation in English or Marathi. The record of proceedings were remitted to the Court at Belgaum.

5. The matter continued with the Court at Belgaum, when in the year 2011 by Annexure P4-Application, a memo of settlement between the Decree Holder and the purchaser, whose successors are the present appellants in this appeal, entered into a compromise. The compromise indicated that the Decree Holder was paid Rs.10,51,000/-, by the Judgment Debtors 12 to 15, as full and final value of the entire claim of the appellant against the property in RS No.329/1, renumbered as 116/1, measuring 2 acres 39 guntas at Solapur within the Maharashtra State. It was also unconditionally undertaken that the Decree Holder or his heirs, legal representatives, assignees etc., shall not lay any further claim or right in future against JD Nos.12-15. The court at Belgaum, based on the compromise, closed the execution case as against JD Nos.12-15, recording satisfaction of the decree as against the property held by them. The Memo was taken on record and the Execution Petition (E.P) stood dismissed against JD's 12 to 15 on 29.09.2011, as per Annexure P-5 proceedings of the Executing Court.

6. One son of the Decree Holder sought impleadment and raised contentions against the compromise entered into,

through an application dated 22.10.2011. The claim also was that he and his two brothers, children of the Decree Holder, have independent share in the property and sought impleading as DH Nos. 2, 3 and 4.

7. Obviously, on a reading of the application, produced as Annexure P5, we should presume that the original plaintiff was alive and the impleading sought as DH No.2 to 4, was to contest the compromise on an independent claim of share in the property, distinct from the claim under their father. The said application was rejected as per Annexure P7 dated 04.03.2013. The order rejecting the compromise passed on 22.10.2011, affirmed the dismissal of the E.P against JD Nos.12-15. Later, on 25.11.2013, the present respondents filed a writ petition numbered as WP No.83144 of 2013 before the High Court of Karnataka, Dharwad Bench, the judgment in which is impugned herein.

8. While dealing with the IA filed by the sons of the original plaintiff and the writ petition, which led to the impugned order, we need to look at certain facts regarding the claim raised in both i.e. the IA and the writ petition. In Annexure P7 order of 04.03.2013, the issues raised by the

Executing Court were, as to whether the third party applicants can be impleaded so as to oppose the compromise reported and whether the compromise could have been accepted. The Court noticed the chequered history of the proceedings commencing in the year 1940 when the Decree Holder was a minor, with a suit instituted on his behalf. Several properties were involved and lastly the property at Solapur was sought to be divided by metes and bounds. A portion of the said property remaining in the possession of judgment debtor 3A was sold to M/s Suratwala Brothers, *vide* sale deed dated 01.03.1965; represented by JD No.12 to JD No.15. Though the sons of the Decree Holder contended that the property was a joint family property and allegation of collusion was raised against the Decree Holder, the executing court refused to accept it. It was specifically noticed that earlier the sons of the plaintiff filed a suit for partition against their father and others, which was dismissed and so was the appeal dismissed. It was hence the application for impleading was dismissed and the recording of compromise affirmed.

9. The writ petition was filed with the contention that the plaintiff had filed the suit for 1/4th share against Jayaprakash Bansilal Kalwar, Bansilal Gulabram Kalwar and others. The suit was decreed and the appeal filed by the defendants were also rejected, after which final decree proceedings were initiated by the Decree Holder. The final decree passed on 31.03.1956 was challenged by one Shamlal Gulabram Kalwar and Bansilal Gulabram Kalwar by two separate RFAs, which were clubbed together and the property at Solapur was included with the partition. The typing mistake with respect to the extent was also corrected on application by the plaintiff/ Decree Holder. There is then a statement made by the writ petitioners that they have 1/4th share in the Solapur property without tracing their lineage to the defendants in the suit, and merely on a statement that they are the legal heirs of Shamlal Gulabram Kalwar. Shamlal Gulabram Kalwar admittedly was prosecuting the matter, at least before the trial court and the appellate court, and as we saw from the proceedings in the Execution Petition, the property at Sholapur was specifically sought to be included by the

plaintiff/ Decree Holder in the decree which was also allowed.

10. In the Execution Petition, the persons who were parties to the final decree were also parties and the mere statement of the petitioners herein that they were unaware of the proceedings does not give them a right to intervene at a later stage when their predecessors-in-interest had not taken up the issue with the Court. The Execution Petition at Annexure P-1 shows two sets of legal heirs having been impleaded, one of whom definitely traces their ancestry to a Kalawar [JD No.3A and JD Nos.3(a) to (c)], and the other set JD No.4A to 4D, likely so since the last two of them bears the name Kalawar.

11. In any event the claim raised before the Writ Court is also only of 1/4th share in the properties at Solapur. The Decree Holder has already conceded to the JD No.12 to JD No.15 his interest, as per the compromise which extent will be reckoned in the share of JD No.3A, or her legal heirs. JD No.12 to JD No. 15 obviously purchased the property from JD No.3A, another co-sharer, thus her share, to that extent, being now with JD No.12 to JD No. 15. The claim in the writ

petition is of a 1/4th share in the properties at Solapur which is of an extent of 25 acres of which the land conceded to JD No.12 to JD No.15 is only of 2 acres and 39 guntas. The contention also is that the writ petitioners and their predecessors were purposefully not impleaded in the Execution Petition. Immediately we need to notice that the Preliminary Decree & Final Decree was for partition in a suit filed by the Decree Holder, claiming his 1/4th share. When an Execution Petition is filed, he impleads those parties from whom he has to obtain the 1/4th share decreed in his favour. Obviously, the Decree Holder had no claim against the writ petitioners. We reiterate that what has been compromised is only the claim of the plaintiff/Decree Holder, which he has by compromise conceded to JD No.12 to JD No.15, predecessors of the petitioners herein of the specific extent sold to them. The writ petitioners not having claimed through the Decree Holder cannot challenge the compromise; since their claim is of an independent 1/4th share. It is also pertinent that JD No.12 to JD No. 15 who purchased the property from JD No.3A, also purchased the right of the Decree Holder in the extent of land purchased. Thus, the appellants herein, by

virtue of their purchase from JD No.3A & the Decree Holder, steps into the shoes of a co-sharer.

12. The High Court by the impugned order found that since the execution was already transferred to Solapur, the Executing Court at Belgaum had no jurisdiction to pass the impugned order dated 04.03.2013. It is to be observed that the E.P filed by the plaintiff though was directed to be transferred to Sholapur, the records were received back at the Executing Court at Belgaum. The E.P was pending there wherein the compromise was recorded and simultaneously an application was filed to implead the sons of the Decree Holder. The application for impleadment was rejected and the recording of the memo of compromise was affirmed. We are of the view that since the compromise was accepted with respect to the Solapur property, though Section 39(4) prohibits a Court to execute a decree against any person or property, insofar as the Decree Holder and JD No.12 to JD No.15 are concerned, there is no prohibition in the court accepting a compromise and thus requiring no further transfer of the proceeding to Solapur.

13. It is undisputed that the Decree Holder having 1/4th share in the property, in the execution petition, entered into a compromise with JD No.12 to JD No.15 who was in possession of the said property conceding to them his rights. The purchasers stepped into the shoes of a co-sharer and if the writ petitioners have a joint claim of 1/4th share in the total property, it is for them to seek partition of the final decree, establishing their descent from the original sharers, especially when JD No.12 to JD No.15 had purchased the property from another co-owner, JD No.3A, thus acquiring that share to the extent purchased. Their rights under the original decree has to be agitated before the jurisdictional Court at Solapur, wherein the appellants herein, who are in possession would have the rights under the original purchaser and the compromise as accepted by the Executing Court at Belgaum, to the extent of such rights available to the original plaintiff/Decree Holder and JD No.3A.

14. Our reasoning is fortified by the fact that the writ petitioners/the respondents herein are not claiming through the Decree Holder and hence has no *locus standi* to contest the compromise. The respondents would have to agitate their

cause independently before the jurisdictional court at Solapur since they claim a partition and separate allotment, which they have liberty to prosecute, subject to just exceptions including the laws of limitation. The impugned order, hence, stands set aside, rejecting the writ petition and affirming the compromise, but leaving liberty as reserved hereinabove. We make it absolutely clear that the sons of the Decree Holder or their legal heirs, who are before us as respondents 7.1 to 7.3, have absolutely no claim against the property in the possession of JD No.12 to JD No.15. As against them the order of the Executing Court has attained finality.

15. The Civil Appeal stands allowed in the above terms.

16. Pending application(s), if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
AUGUST 20, 2026.**