

MHTH080000702020	Received on	20.01.2020
	Registered on	20.01.2020
	Decided on	14.08.2026
	Duration	06 years 06 months 25 days

IN THE COURT OF 4th JOINT CIVIL JUDGE, SENIOR DIVISION,
AT KALYAN, DISTRICT THANE.
[Presided over by J. S. Kokate]

Regular Civil Suit No.53/2020
Exhibit No.87

Sunita Pandurang Patil

Age - 41 years, Occupation – Business
Residing at Flat No.03, B Wing, Amrai,
Vishal Nagar, Kalyan-East,
District-Thane.

.. Plaintiff

V/s.

- 1) Satish Ramchandra Patil
Age - 45 years, Occupation- Service,
- 2) Sagar Ramchandra Patil
Age - 39 years, Occupation- Service,
Residing at Flat No.206, Second Floor,
Building No.10, Manohar Shreeji Nirvana,
Deep Laxmi Complex, Katrap, Badlapur-East,
Taluka-Ambernath, District-Thane.
- 3) Rahul Ramchandra Patil
Age - 27 years, Occupation- Service,
- 4) Ramchandra Balu Patil
Age - 71 years, Occupation- Agriculturist,
No.1, 3 and 4 are residing at Pacharde,
Post-Kardwadi, Taluka-Bhudargad,
District-Kolhapur.
- 5) Santosh Dhanaji Patil
Age - adult, Occupation- Service as Talathi
Address at Mauje Pacharde, Sajja-Kardwadi,
Taluka-Bhudargad, District-Kolhapur.

.. Defendants

Appearances :

For plaintiff : Adv. R. N. Kachve
For defendant No.1, 2 and 4 : Adv. Shri. S. K. Kumbhar
For defendant No.3 : Adv. Shital Vaidya
For Defendants : Adv. Smt. U. A. Jadhav

: JUDGMENT :

(Delivered on this 14th day of August, 2026)

1) Plaintiff is sister of defendant No.1 to 3 and daughter of defendant No.4. Plaintiff is lawful owner and occupier of following joint family properties-

A	Ancestral property of joint family i.e. agricultural land bearing gut No.71, 108, 116-B, 116-A, 164, 176, 5, 91, 104, 105, 21, 99, 236, 90, 229 and 168 situate at Mauje Kardwadi, Taluka-Bhudargad, District-Kolhapur.
B	Flat No.305, Third Floor, D Wing, Vishal Nagari CHSL, Amrai, Kalyan-East.

The said property A and B, here-in-after will be referred as “the suit properties” for convenience.

2) It is the contention of plaintiff that, agricultural land i.e. gut No.168, ad-measuring 0.76.60 HR Square Meter with residential premises, purchased by defendant No.4 in the name of defendant No.1 and defendant No.1 mutated his name in the said property. It is further contended by plaintiff that, defendant No.1 and 2 committed offence of forgery, cheating and breach of trust with the plaintiff and deprived her from her legal rights, interest in above mentioned joint family properties. Defendant No.1 and 2 promised plaintiff of equal partition and obtained her signatures on partition deed without showing or giving original partition deed and register it in the office of Sub-Registrar, Bhudargad, District-Kolhapur on 09.05.2016. When plaintiff got photocopy of said

false and bogus partition deed, she came to know that, she is deceived at the instance of defendant No.1 and 2 by signing the said deed. Plaintiff asked defendant No.1 and 2 to cancel the partition deed but they denied for the same. Plaintiff made complaint to various authorities and also instructed defendants in writing but they did not respond. Therefore, plaintiff constrained to file present suit and prayed for declaration that plaintiff has 1/5th share in suit lands as well as in suit flat and also claiming partition of the suit property. The plaintiff has also prayed for grant of temporary injunction restraining defendant No.1 and 2, their servants, agents from disposing the suit property or creating third party interest in respect of the same. Plaintiff also prayed for grant of temporary injunction restraining defendant No.5 from recording mutation entry in revenue record in respect of suit properties.

3) Defendant No.1, 2 and 4 filed their written statement at Exh.14 denying all allegations raised by the plaintiff. They contended that, the plaintiff has filed this suit suppressing correct facts and circumstances with malafide intention and ulterior motive. She has fled vexatious suit to harass defendants. It is contended that, plaintiff has not given particulars of the suit properties. No cause of action arose to file present suit. Suit is not properly valued. Suit is insufficiently stamped. Suit is barred by the limitation. It is further contended that the plaintiff has filed R.C.S. No.313/2019 against present defendants for same reliefs. Hence, suit is not tenable. This Court has no jurisdiction to try, entertain and decide the present suit.

4) It is further contended that plaintiff has given consent to the partition deed, accepting its contents and she duly signed the same before Sub-registrar. Partition deed is executed after availing consent of all parties. Defendants contended that they have not committed mischief, breach of trust, forgery and cheated the plaintiff in respect of the suit

property. It is further contended that, defendant No.1 purchased property of Gut No.168 vide registered sale deed No.619/1999 dated 11.11.1999 and plaintiff has no right in this self acquired property of defendant No.1. Defendant No.4 given amount of Rs.20,00,000/- to the plaintiff to purchased flat at Kalyan and also fulfilled her all demands time to time.

5) It is further contended that defendant No.2 purchased the suit flat vide registered agreement for sale bearing No.2732/2011 dated 14.03.2019 by availing bank loan. Further, the said flat was purchased by defendant No.1, 3 and wife of defendant No.2 from defendant No.2 vide registered agreement for sale No.7186/2014 dated 29.10.2014. Thereafter, wife of defendant No.2 and defendant No.3 released the said flat by released deed No.2118/2017 dated 12.03.2018 which is now in use, occupied and possessed by defendant No.1. Thus, plaintiff has no right in respect of the said flat. Plaintiff is having two flats in Kalyan in which defendant No.4 invested amount more than Rs.20,00,000/-. Plaintiff has also filed false Writ Petition No.566/2019 before the Hon'ble Bombay High Court against defendants for the offences of forgery, cheating and breach of trust. Defendants have duly complied the notices issued by the plaintiff. The plaintiff has no right to demand 1/5th in the suit properties and therefore, plaintiff is not entitled to claim any relief in respect of the suit properties. Defendant have denied all contentions raised by plaintiff and prayed to dismiss the suit with costs.

6) Defendant No.3 by filing vakalatnama through Adv. Shital Vaidya appeared as per Exh.18. But failed to file written statement. Hence, suit proceeded without written statement of defendant No.3

7) Defendant No.5 filed his reply and denied entire contentions of plaintiff in paragraph No.1, 3 to 12 and 14 to 22. It is contended by defendant No.5 that he does not have any right to decide the legality of registered document and Court has authority to decide it. Revenue officers

only take down entries of registered documents and defendant No.5 just performed his duty. Unless and until a registered document cannot be declared illegal by the Court, it be treated as valid document. On 03.01.2020, defendant No.5 have registered mutation entry No.711 and issued notice in Form 9 to the plaintiff. Plaintiff raised objection to the said mutation entry and filed RTS Application No.01/2010. The said appeal was dismissed on 19.10.2020 and mutation entry was confirmed. The plaintiff filed RTS Appeal No.19/2021 at Sub-Divisional Office, Ajara who dismissed the said appeal. Lastly, defendant No.5 submitted that, he has not at all concerned with this suit. He has done his duty as per the provisions of law. The plaintiff has personally get involved to defendant No.5 in this suit just to harass him. Plaintiff has filed baseless suit which is liable to be dismissed.

8) Upon rival contentions, on 07.03.2025, my learned Predecessor framed issues as per Exh.41. I am reproducing those issues along with my findings thereon for the reasons mentioned there under :-

No.	Issues	Findings
1.	Does the plaintiff prove that suit property A and B are joint family properties of the plaintiff and defendant No.1 to 4 ?	In the negative.
2.	Does the plaintiff prove that she is entitled to 1/5 th share in suit property A and B ?	In the negative.
3.	Does the plaintiff prove that partition deed No.849/2016 dated 26.05.2016 in respect of suit property A, prepared by defendant No.1 and 2 and registered at Joint Registrar, Bhudargad, District-Kolhapur is null and void ?	In the negative.
4.	Is the plaintiff entitled for declaration that she and defendants are joint owners of the suit properties with equal share ?	In the negative.
5.	Is the plaintiff entitled for relief of injunction against defendant No.1 and 2 ?	In the negative.
6.	Is the plaintiff entitled for relief of injunction against defendant No.5 ?	In the negative.

7.	Does defendant No.2 prove that suit property B is his self acquired property ?	In the affirmative.
8.	Does defendant No.1 prove that Gut No.168 is his self acquired property ?	In the affirmative.
9.	What order and decree ?	As per final order.

: REASONS :

9) In support of her contentions, the plaintiff has examined herself at Exh.42 and relied upon following documents:-

Name of the documents	Exhibit No.
Schedule of suit property	48-A
Partition deed	49
Agreement for sale No.7186/2014 dated 29.03.2014 in respect of property B.	50
Legal notice dated 03.11.2018 sent by plaintiff to defendants.	51
Complaint dated 12.12.2018 by the plaintiff to Gargoti Police Station.	52
Notice dated 13.01.2020 sent by the plaintiff to defendant No.5.	53
Judgment in Misc. Civil Appeal No.42/2024	54
Notice dated 12.09.2018 sent by the plaintiff to Jt. Sub-registrar, Bhudargad.	55
Notice dated 29.01.2018 sent by the plaintiff to defendant No.1 and 2.	56
Letter dated 05.03.2018 sent by the plaintiff to defendant No.5.	57

Thereafter, plaintiff closed her evidence by filing pursis at Exh.58.

10) As against this, defendants have examined defendant No.1 Satish Ramchandra Patil at Exh.70 and witness Namdev Dinkar Patil at Exh.77. Defendants have not filed any documentary evidence on record.

As to Issue No.1 :

11) In support of her contention, the plaintiff deposed at Exh.42,

stating therein that, the suit property is joint family property of the plaintiff and defendants. She specifically stated that suit property (B) is purchased out of joint family fund and therefore, it also become joint family property. In cross-examination, the plaintiff specifically admitted that she does not have any documentary evidence to show that she has given amount by taking bank loan. On the contrary, defendant No.1 led evidence (Exh.70) and specifically pleaded that he has purchased agricultural land at Pacharde By registered sale deed dated 11.11.1999 and flat No.305, Vishalnagari, Kalyan.

12) In support of her oral evidence, plaintiff has filed agreement for sale (Exh.76) showing that it has purchased from joint family income and therefore, plaintiff also have her equal share in the said property. But to substantiate oral evidence led by plaintiff, there no documentary evidence is on record to show that suit property (B) is purchased out of joint family income. On the contrary, sale deed executed in the name of defendant No.2, and thereafter, in favour of defendant No.1, his brother and wife of defendant No.2, itself shows that, the consideration amount was paid by defendant No.1 and others to defendant No.2. Thus, on perusal of documents on record, it appears that release deed has been executed by brother Rahul Ramchandra Patil and Snehal Sagar Patil who were co-owners of property (B), itself shows that they released their share in the said property in favour of defendant No.1. All these documents are registered documents executed before the Sub-registrar. If plaintiff was any objection in respect of property (A) and (B), then from execution of documents, no further steps taken by her in respect of cancellation of those registered documents.

13) Though it is the contention of the plaintiff that property B is purchased out of the joint family income, but no such document is filed on record in that regard and in recitals of sale deed, it is nowhere mentioned that property (B) is purchased from joint family income. Under such

circumstances, as defendant No.1 specifically pleaded in his evidence that, defendant No.2 has purchased property (B) by registered sale deed. Thus, it can be said that defendant No.2 was the owner of property (B).

14) On perusal of further evidence of defendant No.1, he specifically deposed that thereafter, defendant No.2, by executing sale deed (Exh.71) transferred property B in the names of his brother and wife. Thereafter, brother and wife of defendant No.2 executed relinquishment deed dated 12.03.2018 in favour of defendant No.1 and accordingly property B was transferred in the name of defendant No.1. Oral and documentary evidence of defendant No.1 is not challenged in cross-examination. On the contrary, specific evidence is on record to the effect that defendant No.1 purchased property A as specifically mentioned in the partitioned deed is false is categorically denied by defendant No.1 in cross-examination. In partition deed, it is specifically mentioned that defendant No.1 has purchased agricultural land from his own income. Defendant No.1 admitted in cross-examination that, inspite of the fact that, he is the owner of property (B), he has shown shares of his two brothers in the said property. Being owner of the property, it is choice of defendant No.1 to include his brothers as co-sharers in property (B) or not. But mere fact that defendant No.1 has shown share of two other brothers in property B is not a ground to treat the said property as joint family property. There is no other evidence on record to show that property B is joint family property. Under such circumstances, I am of the considered opinion that, there is no any denial by plaintiff that property (A) is also not joint family property of plaintiff and defendants.

15) From perusal of contentions in written statement, it appears that property A is joint family property of the plaintiff and defendants is admitted by defendants except land Survey No.68. As per Section 58 of the Indian Evidence Act/Section 53 of the Bhartiya Saksh Adhiniyam, "admitted facts need not be proved". Hence, in view of the above

discussion, I answer issue No.1 is partly affirmative.

As to Issue No.2 and 4 :

16) It is the contention of the plaintiff that partition deed (Exh.49) in respect of property A is null and void. It is further contention of the plaintiff that, she has 1/5 share in the suit property. The plaintiff has reiterated the contentions in plaint in her evidence. But to substantiate her oral evidence she has not given any other evidence on record to show that partition deed executed between the plaintiff and defendant by playing fraud by defendants. On the contrary, in order to prove genuineness of alleged partition deed, defendants have examined Namdev Dinkar Patil (DW2) who specifically deposed in his evidence that, at the time of execution of partition deed, the plaintiff was present before the Sub-registrar. Partition deed was read over to the plaintiff and she had no objection for it at the time of signing and executing the same.

17) I have perused cross-examination of Namdeo Patil (DW2). Certain questions were put forth to him in regard to the distribution of land in partition, whether all claimants or co-sharers have given equal proportion of share. But I am of the considered opinion that this witness is pertinent to the execution of partition deed, therefore, whether same was executed in his presence or not, is material. It is the specific evidence led by this witness about his presence at the time of execution of partition deed and both plaintiff and defendants were present and they had signed the document of partition deed under no influence and pressure. It means partition deed executed between the plaintiff and defendants is legal.

18) Learned advocate for the plaintiff denied to disbelieve the creditability of this witness by putting some question in cross-examination as regard to the dispute between defendant No.1 and his father and father has filed maintenance proceeding against defendant No.1 are not a fact in

issue before this Court. All these questions are not material and not in issue in this suit. Therefore, I am of the considered opinion that, DW2 is cogent and reliable. There is not any reason on record as to why credibility of this witness should be doubted and therefore, I am relying on this witness.

19) Mere fact that, at the time of drafting of partition deed, this witness has not signed on the partition deed is not sufficient to disbelieve the credibility of this witness. It is in evidence of DW2 that at the time of drafting of partition deed he was present. Therefore, mere fact that absence of this witness at the time of drafting partition deed will not disbelieve his evidence as regard to the presence of this witness at the time of execution of partition deed. Therefore, I am of the considered opinion that, DW2 is cogent and reliable witness as regard to the execution of partition deed and therefore, partition deed (Exh.73) executed before sub-registrar is duly proved by defendants.

20) Learned advocate for the plaintiff relied upon the judgment of the Hon'ble Supreme Court in **Mallesappa Bandeppa Desai and others V/s. Desai Mallappa and others** and submitted that when defendant No.1 blended his property (B) into joint family property. Hence, doctrine of blending applicable this case. As defendant No.1 blended his property into stock of joint family property. Therefore, again cannot claimed this property as his self acquired property. It is her further contention that as defendant No.1 purchased property B showing names of other brother and sisters as co-owners of said property. It means he himself blended his flat into the stock of joint family property. Therefore, as per Section 115 of the Indian Evidence Act, he thereafter estopped from saying that suit property is not joint family property.

21) I have read aforesaid judgment carefully, wherein Hon'ble Supreme Court, in paragraph No.6 of the judgment observed that -

“If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family estate ; in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and get thrown into the common stock of which it becomes a part. This doctrine therefore inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention to benefit the members of the family by allowing them the use of the income coming from the said property may not necessarily be enough to justify an inference of blending”.

22) Thus, from the aforesaid authority and the facts before me, it appears that there is no any specific evidence on record to show that there was intention of defendant No.2 to treat his flat (property B) as forming a part of coparcener property. There is clear intention that property which is separated clearly has been deliberately and willingly thrown by owner in the joint stock with clear intention of abandoning his claim on the said property and with object of assigning it to joint family property then the said property become a part of joint family property.

23) Here, in this suit, when intention of defendant No.1 is gathered from his conduct then it appears that even if he has shown names of other brothers and sisters in the flat, (property B) but act of execution of release deed by his brothers and sisters, in favour of defendant No.1 and after mutation of said flat in the name of defendant No.1, itself shows that intention of defendant No.1 was not shown to

blend his property into joint family property. Therefore, I am of the considered opinion that the facts of the aforesaid matter, with due respect are not applicable to the present suit and therefore, the said judgment is not helpful to defendant No.1.

24) Learned advocate for the plaintiff relying upon judgment of Hon'ble Supreme Court in the case of **K. V. Narayanswami Iyer V/s. K.V. Ramkrishna Iyer and others** and submitted that when property is clearly in the name of members of joint family it mean they have sufficient nucleus on that property. There should clear evidence that property is not purchased from the income of joint family property. It is further submitted by the learned advocate for the plaintiff that defendant No.1 purchased property B in the name of joint family out of joint family fund. Therefore, same should be treated as joint family property. He further submitted that defendant No.1 and 2 committed fraud by not giving the plaintiff her clear share in the joint family property and therefore, she is entitled to have 1/5 share in it.

25) I have perused the aforesaid judgment. It appears that allegations of fraud as such pleaded in the plaint in respect of property which ought to have deposed in evidence. In suit in hand, it is admitted that, plaintiff has raised allegation of fraud in respect of partition deed executed before sub-registrar. After going through the contentions in the plaint and evidence adduced, it appears that no such evidence adduced or in the pleading or in the cross-examination of defendants' witnesses as to how fraud has been committed by defendant No.1 and 2 as regard to property (B). When no specific suggestion put forth either to DW1 or to DW2 in cross-examination in respect of fraud committed by defendants in respect of property (B), Thus, I am of the considered opinion that facts of aforesaid judgment, with due respect are not applicable to the case in hand.

26) Thus, from the aforesaid evidence on record and judgment cited, it appears that plaintiff has failed to prove that suit properties (A & B) are joint family properties of the plaintiff and defendants. The plaintiff also failed to prove that partition deed (Exh.49) is null and void. Hence, point No.2 to 4 are answered in negative.

As to Issue No.7 and 8 :

27) DW1 in his evidence (Exh.77), deposed that suit property (B) is self acquired property. He specifically deposed that, at the time of execution of partition deed (Exh.49), the plaintiff and defendants were present. As regard to property (B), defendants have filed registered agreement for sale and lease deed which show that defendant No.2 has purchased property (B). When there is no any evidence on record led by the plaintiff showing that property (B) is purchased by defendant No.2 out of the joint family income. No inference can be drawn from the evidence of the plaintiff that, defendant No.2 did not have sufficient source of income at the time of purchasing property (B). On the contrary, certain documents produced on record to show that defendant No.2 has obtained loan from the bank to purchased property (B). The plaintiff ought to have create some suspicious doubts in entire cross-examination of DW1. But suggestions put forth to DW1 in cross-examination regarding property (B) is not self acquired property of defendants as specifically denied by DW1. Under such circumstances, I am of the considered opinion that, the plaintiff failed to prove that the suit property is joint family property of the plaintiff and defendants.

28) As regard to property (A) is concerned, it appears that registered sale deed is on record. Property (A) was initially purchased by defendant No.2 and thereafter, he given it to his wife and two brothers by execution of sale deed and thereafter, defendant No.1 and wife of defendant No.2 executed released deed in favour of defendant No.1 in

respect of property (A). Thus property (A) was initially purchased by defendant No.2 and thereafter, as per the provisions of the Transfer of Property Act, it was transferred in the name of defendant No.1.

29) There is no any evidence on record or any specific admission in cross-examination of DW1 to shows that property (A) is joint family property or it is purchased out of joint family income. Under such circumstances, mere oral evidence of plaintiff is not sufficient. On the contrary, to support oral evidence, defendants proved registered sale deed, released deed and mutation entry to show that defendant No.1 is the owner of property (A).

30) The plaintiff in her evidence admitted that, Revenue Appeal No.30/2001 is disposed off and judgment passed against the plaintiff. Being aggrieved by the said judgment, plaintiff filed Writ Petition No.565/2019 before the Hon'ble High Court which was also dismissed. Thus, appeals filed by the plaintiff in respect of mutation entry is dismissed. Under such circumstances, it can be said that the plaintiff did not challenge registered sale deed of property (A) till date. Hence revenue record is standing in the names of defendants. Documentary evidence on record is found to be consistent with evidence led by defendants. Therefore, property (A) is the self acquired property of defendant No.1. Hence, I answered issue No.7 and 8 in the affirmative.

As to Issue No.5 :

31) As I already discussed that, plaintiff has failed to proved that suit property (A & B) are joint family property of the plaintiff and defendant, so also, plaintiff failed to proved that partition deed (Exh.49) is null and void. On the contrary, defendants by proving contentions of partition deed (Exh.49), categorically proved that shares of the plaintiff and defendant were already given to them in equal proportion and at that

time, neither plaintiff nor any defendant opposed the same. It is pertinent to note here that it is the contention of the plaintiff that, defendant No.1 and 2 committed mischief and fraud on the plaintiff. But to support the oral evidence of the plaintiff, defendant No.3 and 4 ought to have depose in favour of the plaintiff and support her case. But defendant No.3 and 4 denied the claim of the plaintiff. Not only this, defendant No.3 and 4 in their written statement stated nothing about undue influence of defendant No.1 and 2 on them. On the contrary, they denied the claim of the plaintiff. Under such circumstances, it cannot be said that suit property (A & B) are joint property of the plaintiff and defendants.

32) On the contrary, partition deed (Exh.49) registered in the office of Sub-registrar, Bhudargad, District-Kolhapur is still in existence and the same is duly proved in the evidence of DW2 who is the witness of partition deed (Exh.49). Therefore, I am of the considered opinion that share of the plaintiff and defendants are allotted to them as per the portion allotted to them in partition deed (Exh.49) and hence, the suit property cannot be said as the joint family property of the plaintiff and defendants. When the plaintiff and defendants get their share as per partition deed (Exh.49) then no order of injunction restraining defendant No.1 and 2 or their servants, agents from dealing, disposing or creating third party interest in suit property (A & B) can be granted. Therefore, the plaintiff is not entitled to seek relief of injunction as prayed. Hence, issue No.5 is answered in the negative.

As to Issue No.6 :

33) The plaintiff also seeking relief of injunction against defendant No.5 restraining him from recording mutation entry in the revenue record i.e. "Gav Namuna 8A and 7/12 extract of suit property (A & B)". But I am of the considered opinion that relief seeking by the plaintiff is not tenable in the eyes of the law. Defendant No.5 is the public

servant and he acts as per the duties awarded to him for recording mutation entries in the revenue record. No right of declaration and authentication of partition deed, sale deed or any document of transfer is vested to defendant No.5. In other words, it is not the duty of defendant No.5 to ascertain or give opinion on any documents provided by persons who filing them for mutation. Therefore, mere fact that, defendant No.5 recorded mutation entry of the suit property (A) does not mean that he breached the duty. Moreover, injunction cannot be granted against public servant to restrain his act and to perform his duty as per the provisions of law as per Section 41 of the Specific Relief Act. Hence, I am of the considered opinion that plaintiff is not entitled to seek relief of injunction against defendant No.5 restraining him from performing his duty. Hence, I answer issue No.6 in negative.

As to Issue No.9 :

34) In view of above discussion and my findings to issue No.1 to 6, in answer to issue No.7, I pass following order.

ORDER

i)	Suit is dismissed with costs.
ii)	Decree be drawn up accordingly.

Place : Kalyan
Date : 14.08.2026

(J. S. Kokate)
4th Jt. Civil Judge
Sr. Division, Kalyan