

Presented on : 31-12-2012.
Registered on: 01-01-2013.
Decided on : 07-11-2016.
Duration : 03Y. 11M.07D.

IN THE COURT OF JT. CIVIL JUDGE JR. DN., UDGIR, DIST. LATUR.
(Presided over by S. D. Gawade)

Regular Civil Suit No.04/2013.

Exh. No.20

Aawantika W/o Venkatrao Patil
Age : 41 Years Occupation : House-hold
R/o Takali-Wagdari Tq. Udgir, Dist. Latur ... **Plaintiff.**

VERSUS

- 1] Gunderao S/o Babhrao Bhande
Age : 43 Years, Occu. : Agriculturist
- 2] Balaji S/o Baburao Bhande
Age : 39 Years, Occu. : Agriculturist
Both r/o Dawangaon, Tq. Udgir
Dist. Latur**Defendants.**

Appearance :

Mr. . G. K. Bedade : Ld. Advocate for Plaintiff.
Mr. R. D. Gambhire : Ld. Advocate for defendants

JUDGMENT

(Delivered on 07th November- 2016.)

The suit is filed for partition and separate possession of land Gat No. 303 admeasuring 01H 44R, revenue assessment of Rs. 05.55p., situated at village Dawangaon Tq. Udgir Dist. Latur (hereafter referred to as “ suit property” for brevity).

02. Brief facts of the case are that, the plaintiff is sister of defendants. The parties constitute the Hindu joint family. The parties are members of their joint family. The suit property is their ancestral landed property. The

suit property is not yet partitioned. The plaintiff has undivided share in the suit property. The father of the plaintiff namely Baburao Bhande is died on 06-07-2005. Thereafter, mutation entry No. 1138 is sanctioned on 04-10-2006 and names of the parties are entered on revenue record of the suit property as legal heirs of deceased Baburao Bhande.

03. It is further case of the plaintiff that, on the occasion of Gudipadva of the year 2012, the plaintiff demanded her share in the suit property in the presence of her relatives and panchas. At that time, defendants have refused to partition and give separate share to the plaintiff. Therefore, cause of action arose to file the suit. Finally, the plaintiff prayed to decree the suit.

04. The defendants have appeared, but failed to file their written statement. Therefore, the suit is proceeded further without their written statement as per order dt. 12-08-2013.

05. On the basis of pleadings of plaintiff, following points arise for my determination to which I have recorded findings thereon with reasons as under :

Sr.No	<u>Issues</u>	<u>Findings</u>
1	Does plaintiff prove that the suit property is ancestral joint family property of the parties ?	In the Affirmative.
2	Does plaintiff prove that she has undivided 1/3rd share in the suit property ?	In the Affirmative
3	Does plaintiff prove that she is entitled for partition and separate possession of her 1/3rd share in the suit property ?	In the Affirmative
5	What order and decree ?	The suit is decreed with costs.

REASONS**As to point Nos. 1 to 3 :**

06. The plaintiff in support of her claim filed her affidavit for examination-in-chief (Exh. 14) and reiterated the contents of plaint therein. The plaintiff filed 7/12 extract (Exh.18) of the suit property on record. 7/12 extract (Exh.18) shows that name of the parties are jointly recorded on revenue record of the suit property. Perusal of mutation entry extract No. 1138 (Exh.19), it shows that after the demise of plaintiff's father Baburao Bhande, names of the parties are recorded on revenue record of the suit property as legal heirs of deceased Baburao Bhande.

07. The plaintiff in support of her claim filed affidavit for examination-in-chief Exh.15 of Shivaji (PW2) who deposed that the suit property is ancestral joint family property of the parties and the plaintiff has undivided 1/3rd share therein. The suit property is not yet partitioned. He further deposed that on the occasion of Gudipadva-2012 the plaintiff demanded her separate 1/3rd share in the suit property to the defendants. The defendants denied to partition the suit property and give her separate share in it.

08. Above oral and documentary evidence of the plaintiff remained unchallenged throughout the trial of the suit. The defendants have failed to cross examine the plaintiff and Shivaji (PW2). They have failed to enter into the witness box and failed to adduce evidence. Under such circumstances, the plaintiff's oral and documentary evidence is sufficient to show that the suit property is ancestral joint family property of the parties and the plaintiff being legal heir of deceased Baburao Bhande has undivided 1/3rd share in the suit property. The record also shows that the plaintiff's father Baburao Bhande was alive when the Hindu Succession Amendment Act, 2005 has come in to existence. Baburao Bhande was died

on 06-07-2005. The defendants have denied to give separate share to the plaintiff when asked by her to them. Therefore, the plaintiff is entitled to seek partition and separate possession of her equal 1/3rd share in the suit property along with the defendants. Considering all above aspects, I answer point Nos. 1 to 3 in the affirmative.

As to issue No. 4 :-

09. The plaintiff has proved that the suit property is ancestral joint family property of the parties and she has undivided 1/3rd share therein. She further proved that, she is entitled to for partition and separate possession of her share in the suit property. Therefore, in answer to point No.4, I pass following order.

ORDER

1. The suit is decreed with cost.
2. It is declared that the plaintiff has 1/3rd share in the land Gat No. 303 admeasuring 01H 44R, , situated at village Dawangaon Tq. Udgir Dist. Latur.
3. Partition of the suit property mentioned above be effected equitably by the Collector, Latur, or any Gazetted subordinate of the Collector deputed by him in this behalf in accordance with above declaration of share in conformity with the Law and the plaintiff be delivered possession of the land of her share.
4. The decree be sent to Collector for compliance of directions given in clause-3 above U. sec. 54 of the Code of Civil Procedure.
5. Preliminary decree be drawn up accordingly.
(Dictated and pronounced in open court)

Date : 07/11/2016.

(S. D. Gawade)
Jt.Civil Judge, J.D.,Udgir,
Dist. Latur.

