

(Judgment)

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R.C.S.No. 264 of 2015



Received on : 27.10.2015
Registered on : 27.10.2015
Decided on : 10.08.2026
Duration Y M D
10 09 14
Exh. No. : 123

IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION AT MOHOL,
DISTRICT SOLAPUR
(Presided over by S. V. Munde)
(CNR NO.MHSO1900-1572-2015)

Reg. Civil Suit No. 264/2015

Jayashri Madhusudan Kadam,
Age : 48 yrs., Occ. Agri./Housewife
R/at- Dattanagar, Mohol, Tal.Mohol,
Dist. Solapur

... PLAINTIFF

-//Versus//-

Suryakant Shivaji Supate,
Age : 61 Yrs., Occu. Agri.,
R/o. Vadval, Tal.Mohol,
Dist.Solapur

..DEFENDANT

=====
Advocates' Appearance :

For Plaintiff : Shri. A.V. Deshpande
For Defendant : Shri. L.A. Gavai
=====

J U D G M E N T
(Delivered on 10.08.2026)

The present suit is filed for declaration that the Will dated 05/01/2015 is illegal and not binding upon the plaintiff and partition and separate possession of the suit property along with ½ share thereof.

Description of the Property Involved in the Suit:-

02] The suit properties comprise agricultural lands bearing Gat numbers as follows-

Sr. No.	Gat No.	Area	Assessment
1-A	60/2	06 H. 05 R.	10.40 ps
1-B	112/1/A/1	1 H. 48 R.	5.22 ps
1-C	113/1/A/6	0.6 R	0.21 ps
1-D	44	1 H. 58 R.	3.40 ps

Agricultural property at serial No.1-A and 1-D are situated at village Najik Pimpri, Tal.Mohol, Dist.Solapur while agricultural property at serial No.1-B and 1-C are situated at village Basveshwar Nagar, Tal.North Solapur, Dist.Solapur (hereinafter collectively referred to as **“the suit properties”**).

Brief Facts of the Plaintiff's Case:-

03] It is claimed that Defendant is the brother of the Plaintiff. Their father Shivaji was passed on 28/01/2011 while mother was passed on 10/02/2014. Till the death of the parents of the Plaintiff and Defendant, they were joint family. Plaintiff is married person and resides at her matrimonial home.

04] It is further claimed that, father of the Plaintiff was originally resident of village Degaon, Tal.North Solapur, Dist.Solapur. Suit properties at serial No.1-B and 1-C are ancestral properties of their father Shivaji. Later on, Shivaji was settled at Mohol and from income of the ancestral properties, the properties at serial No.1-A and 1-D were purchased by him in the name of Defendant. It is further claimed that, the Defendant had no independent source of income. Therefore, after the death of father and mother, the Plaintiff has $\frac{1}{2}$ share in the suit properties.

05] It is further claimed that, after death of Shivaji, the Plaintiff, Defendant and their mother's name were mutated in the 7/12 extract of the suit properties at serial No.1-A i.e. Gat No.60/2, as legal heir of the deceased Shivaji vide mutation entry No.1760, on 29/11/2013. It is also claimed that, the Plaintiff and Defendant are jointly cultivating the suit properties therefrom.

06] It is further claimed that, the Plaintiff had filed an application for recording her name to the suit properties at serial Nos.1-B and 1-C whereby her name was recorded to the 7/12 extract of the said properties vide mutation entry No.1636. However, the Defendant objected the mutation entry on the ground that the deceased Shivaji had executed Will dated 05/01/2012 in his favour. It is further claimed that, for the first time, the Defendant took stand of Will. After that, the Plaintiff came to know that the Will relied by the Defendant is false and fabricated. According to the Plaintiff, her father was ill before death. He was under medical treatment. Due to old age and health issue, he was not able to understand and think properly. He had not signed the Will. Alleged Will was prepared in collusion with the witnesses. As a result, there is no

reference to the Plaintiff and her mother in said Will. Even the Will was not executed by deceased Shivaji in his lifetime.

07] It is further claimed that, alleged Will was registered on 27/05/2015, i.e. after four years of death of the Plaintiff's mother. It was presented to the office of Sub-Registrar by witness Shahir More who had no right to do such act. It is also claimed that, the deceased Shivaji had no wish to execute such Will. He was died in the house of Plaintiff. At no point of time, the Defendant use to take care of him.

08] It is further claimed that, the right claimed by the Defendant on the basis of Will is illegal and not binding upon the Plaintiff. He is trying to grab the suit properties by denying the Plaintiff's lawful right. In these circumstances, the Plaintiff is entitled to claim $\frac{1}{2}$ share in the suit properties along with declaration that the so called Will dated 05/01/2015 is not binding on the Plaintiff's right.

09] In reply, the Defendant has filed his written-statement at Exh.22 and denied the Plaintiff's claim. It is contended that, the suit property at serial No.1-A bearing Gat No.60/2 was purchased by the father of Defendant from Ramkrishna Garad on 19/09/1994 under registered sale-deed. He had every right to dispose of his property. By Will dated 05/01/2011, above property was given to the Defendant. Therefore, the property at serial No.1-A is not available for the partition as claimed by the Plaintiff.

10] It is further contended that, suit properties at serial No.1-B and 1-C were given to deceased Shivaji by his brother Krushnaji Supate. Thus,

the deceased Shivaji had every right to dispose the said properties in his personal capacity. As Will of the aforesaid properties is executed by deceased Shivaji in favour of the Defendant, the said properties are not available for the partition as claimed by the Plaintiff.

11] It is also contended that, the suit property at serial No.1-D is self-acquired property of the Defendant. He had purchased said property from Dnyanoba Ramchandra Waghmode on 04th of August, 1977 for consideration of Rs.14,000/- from his income of goat farming and Milk business. Consequently, this property is also not available for the partition as claimed by the Plaintiff.

12] It is further contended that, the marriage of Plaintiff was performed by her father. He had spent lots of money in the said marriage. The Defendant look after the Plaintiff as a brother. He had constructed a bungalow for the Plaintiff at Mohol. As per the wish of deceased Shivaji, Will was executed in favour of the Defendant. The contentions of Plaintiff about Will is misleading and incorrect.

13] It is further contended that, the father of Plaintiff was mentally stable and understood the consequences of documents executed by him. He had executed Will in front of Dr. Shivaji Garad, Shahir More and respectable person Suresh Shivpuje. He had wish to prepare Will, therefore, deceased Shivaji prepared Will on 05th January, 2011. He died on 18th January, 2011. After the death of Shivaji, on 27th May, 2015, the Will was registered to the office of Sub-registrar, Mohol. It is also contended that, the Plaintiff and her mother was aware of the Will.

14] It is lastly contended that, deceased Shivaji had every right to dispose of his property and therefore, the Will executed by him is legal. Consequently, the Plaintiff has no right in the suit properties and therefore, the present suit is liable to be rejected with costs.

15] After considering the rival pleadings the issues were framed at (Exh.33), which reproduced below along with findings and reasons thereon as under: -

NO.	ISSUES FOR CONSIDERATION	FINDINGS
1.	Does the Plaintiff prove that the suit properties are joint family properties of the Plaintiff and Defendant?	Yes...
1A	Does Plaintiff prove that, disputed Will dated 05/01/2011 which is registered on 27/05/2015 is not binding on her share?	Yes...
2.	Does Plaintiff prove that, she is entitled to claim partition? If yes, what would be the share of the parties?	½ share
3.	Does Defendant prove that, deceased Shivaji Supate executed Will in his favour in respect of suit properties?	No...
4.	What Order & Decree ?	As per Final Order.

- : REASONS : -

Oral Evidence Led by the Respective Sides:-

16] To prove her case, plaintiff examined the following witnesses:

1. Jayashri Madhusudan Kadam (PW-1) at Exh. 50.

17] To support the defence, the defendant examined the following witness:

1. Suryakant Shivaji Supate (DW-1) at Exh-79.
2. Shahir Sadashiv More (DW-2) at Exh-83.

Documentary Evidence Led by the Respective Sides:-

18] To support her claim, the plaintiff filed the following documents:-

No.	Particulars	Exh. No.
1	Certified copies of 7/12 extracts of the suit properties.	102 to 106
2	Certified copies of mutation entry No.485, 1843, 2549, 2550.	107, 109 to 111
3	Scheme extract.	108

19] To support the defence, the defendant filed the following documents:

Sr. No.	Particulars	Exh. No.
1	Original copy of Will deed.	87
2	Copy of sale-deed of Gat No.44 and 60.	112 & 113
3	Copy of 7/12 extract of Gat No.112/1/A/1 and 113/5.	114 & 115
4	Copy of extract of 8A.	116
5	Copy of extract of 6D of mutation entry No.1741, 1742, 6534 and 3839.	117 to 120

AS TO ISSUE NOS.1, 1A & 3:- (Nature of the suit properties & Will)

20] In order to prove the nature of the properties and illegality of Will, Plaintiff Jayashri (PW-1) filed affidavit in lieu of examination-in-chief at Exh.50-C and reproduced the contents of plaint. In cross-examination, the Plaintiff deposed that the land out of Gat No.113/1-A/6 was acquired for road and its compensation was received by her. Her father was a clerk in Railway Department. He was retired in the year 1991. Her mother, Dattatray Garad and Dr. Vasantrao Garad are siblings. Her marriage was

solemnized in 1979. She resides with her husband from the date of marriage.

21] It is further deposed that, Gat No.60/2 was purchased by her father after retirement. The Defendant was of 24 years old in 1977. She denied that the Gat No.44 was purchased by Defendant from his own earnings. No suit has been filed to challenge the sale of Gat No.44, till today.

22] In reply, the Defendant filed an affidavit in leu of examination-in-chief at Exh.79-C and reproduced the contentions of written-statement. In his cross-examination, he deposed that 28 R. land out of Gat No.112/1/A/1 was acquired for road. The compensation of acquired land was received by him and the Plaintiff equally. The 7/12 extract of Gat No.112/1/A/1 bears the name of Plaintiff and Defendant. His name was there in Gat No.60/2. After death of his father, the name of Plaintiff and his mother was mutated in Gat No.60/2 as a legal heir vide mutation entry No.1760. He had no land prior to purchase Gat No.44. The properties situated at Basveshwar Nagar are left to mutate their names till 2015.

23] It is evident from the testimony of the witnesses that, the nature of suit properties at serial No.1-B and 1-C are not disputed. The 7/12 extract of Gat No.112/1/A/1 for the year 2011-12 bears the name of deceased Shivaji Narayan Supate while Gat No.113/1/A/6 shows the name of Vasant, Rajaram, Shivaji, Mohan, Shashikant and Satish Supate. Hence, it is clear from the 7/12 extract that the suit property bearing Gat No.112/1/A/1 is in the name of father of the Plaintiff and Defendant while the other property bearing Gat No.113/1-A/6 is in the name of

Plaintiff's father and uncle. Therefore, it can be inferred that these properties are the ancestral properties of the Plaintiff and the Defendant.

24] It is contended by the Defendant that suit property bearing Gat No.60/2 was self-acquired property of his father. He had received said land under Will of his father. However, the 7/12 extract at Exh.102 of Gat No.60/2 shows the name of Plaintiff, Defendant and their mother. He further contended that Gat No.44 was purchased by him from the business of goat farming and milk. The 7/12 extract of Gat No.44 shows in the name of Defendant. Apart from these contentions, the Defendant contended that he is sole owner of the suit properties by virtue of Will executed by his father in his favour.

25] In this regard, it is submitted by the learned advocate for the Plaintiff submitted that the Defendant failed to discharge the burden on him that there was no joint nucleus in between his family and therefore, the presumption of joint family property exist in favour of the Plaintiff. He relies on the judgments in case of D.S. Lakshamaiah & Anr. V/s. L.Balsubramanayam & Anr., 2003 AIR SCW 4347, Bindiya A. Chawala & Ors. V/s. Ajay Lajpatrai Chawala, 2009 SCC online Bom-503, Kesharbai V/s. Tarabai, 2014 (5) Mh.L.J. 242, Pundalik Akhatkar V/s. Wasudev Akhatkar 2009 (5) All MR 240 and V.K. Surendra V/s. V.K. Thimmaiah and Ors, civil appeal No.1499 of 2004, decided on 10/04/2010.

26] In the present case, the Defendant contended that, he had business of goat farming and milk. Apart from the said pleadings, no evidence has been given on record to support his contention that the suit property at serial No.1-A i.e. Gat No.44 was purchased by him and

therefore, it becomes his self-acquired property. In view of the Law laid down by the Hon'ble Supreme Court in the case of D.S. Lakshamaiah & Anr. and Bindiya A. Chawala & Ors. supra, it is clear that when it is proved or admitted that family possessed sufficient nucleus with the aid of which the members might have made acquisition, the law rises the presumption that the joint family property and the onus shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus.

27] It is evident that the Defendant has admitted that the suit properties at serial No.1-B and 1-C are their ancestral properties of the Plaintiff and the Defendant. Therefore, it can be inferred that Plaintiff's family possessed sufficient nucleus and therefore, with the aid of said nucleus, the Defendant purchased the suit property at serial No.1-D i.e. Gat No.44. Even otherwise, there is no evidence on record which shows that, the Defendant purchased the suit property at serial No.1-D from his own independent income without aid of joint nucleus.

28] It is further argued that the suit property at serial No.1-A i.e. Gat No.60/2 was purchased by his father. He has given said property to the Defendant under Will. In this context, it is contended by the Defendant that the aforesaid property was self-acquired property of deceased Shivaji who had executed Will and given it to him. Accordingly, the Plaintiff has no share in the said suit property. In this regard, the learned advocate for the Plaintiff submitted that the Will by which entire properties are given to the Defendant is not sustainable in the eyes of law. He raise several grounds including in capacity, legality, registration and proof of Will. He

has further submitted that there are surroundings suspicious circumstances which clearly shows that the Will itself is not genuine.

29] In rebuttal to these arguments, the learned advocate for the Defendant relied upon the judgments in *Gurdial Kaur & Ors. v. Kartar Karu & Ors.*, 1998 Gojuris (SC) 1185; *Rani Purnima Debi & Anr. v. Kumar Khagendra Narayan Deb & Anr.*, 1961 Gojuris (SC) 278; and *H. Venkatachala Iyengar v. B.N. Thimmajamma*, 1958 Gojuris (SC) 143. It is submitted that the attesting witness Shahir More (DW-2) has specifically deposed to the manner in which the Will was executed and subsequently registered. As the Will is genuine, the entire suit property devolves upon the Defendant and becomes his exclusive and independent property by virtue of the testamentary disposition. The learned advocate also relied upon the statements of the attesting witnesses recorded at the time of registration and submitted that the Will was duly registered in accordance with law and thereby dispel the alleged suspicious circumstances surrounding its execution.

30] I have carefully considered the judgments relied upon on behalf of the Defendant. However, with due respect the facts of the present case are materially distinguishable from those involved in the cited decisions. In the present case, the propounder of the Will did not approach the registering authority in the capacity of the executor of the Will. The Defendant claimed that he had no knowledge of the execution of the Will until four years after the death of the testator. This stand is contradicted by the testimony of the attesting witness Shahir More (DW-2), who has during cross-examination categorically deposed that the Defendant was present when the testator called him to witness and sign the Will. This

inconsistency gives rise to serious doubt regarding the Defendant's version and cast doubt on the credibility of his defence. In view of these distinguishing facts, the principles laid down in the aforesaid judgments are not applicable to the present case.

31] It is further evident from Will at Exh.87 that on 05th of January, 2011 Will was executed. The testator had landed properties at village Najikpimpri and Basveshwar Nagar. The Defendant was appointed as executor in the said Will. However, the Will was presented for registration by the attesting witness Shahir More (DW-2) and registered on 27th of May, 2015. In this regard, the testimony of the Defendant's witnesses is necessary to determine the genuineness of Will.

32] According to the Defendant for the first time, he came to know about the Will in the year 2015. Attesting witness Shahire More (DW-2) deposed in paragraph No.6 of the cross-examination that when he had been to the house of Shivaji at Mohol, Defendant Suryakant was present. He further deposed contrary that, he knew the Defendant after the death of Shivaji. He was not aware that the Will was prepared by the Defendant or not. He had not called the witnesses for registration of Will. The witnesses were called by the sub-registrar, after the registration of Will.

33] He was not aware of the facts that whether the deceased Shivaji was failed and his leg was fractured in December, 2010 or not. He further not aware of the facts that whether the deceased Shivaji had attack of paralysis and he was bedridden. It is evident from the testimony of these witnesses that he is not firmed on what he deposed in the affidavit at the time of execution and registration of Will. His testimony is lack of

confidence and contrary to the extent of presence of Defendant at the time of Will. Therefore, it can be inferred from the testimony of the Defendant and the attesting witness that both of them tried to hide the execution of Will in presence of the Defendant.

34] It is further evident that, none of the Defendant's witnesses deposed about the custody of Will from 2011 to 2015. As per Section 40 of the Registration Act, 1908, the only propounder of Will i.e. the executor has to apply for registration. On this point, the learned advocate for the Defendant argued that, the wording of Section 40 impliedly permits any other person to apply for registration. However, in my considered view, there is no provision which permits or direct the attesting witness to apply for registration of Will.

35] It is significant to note that, the testator was died on 28th of January, 2011 i.e. after 23 days of execution of Will. The recitals of Will shows that the testator had been to Solapur twice for preparation of Will. He had shown Will to one of the advocate namely Chand Pasha who was one of the witness at the time of registration of Will. The very important point is that when the Defendant knows about the Will in 2011, why he keep mum till 2015. As a matter of record, the Defendant denied the knowledge of Will. However, the attesting witness Shahir More (DW-2) and other witnesses have clearly admitted that they were called by the testator at his home at Mohol. According to the Defendant, the testator was residing with him at his home. In these circumstances, it cannot be said that the Will is free from suspicion. Thus, it was for the propounder of the Will to remove all these suspicious circumstances before claiming any right over the Will. In the present case, the evidence on record is

insufficient to remove the suspicious circumstances therefore, the Will cannot be accepted as a genuine. As a result, the Will is not binding upon the share of Plaintiff.

36] Considering the foregoing discussion and the evidence on record, it is held that the suit properties mentioned at serial Nos. 1-A, 1-B, 1-C and 1-D fall within the purview of joint family properties. Accordingly, Issue No.1 is answered in the affirmative by holding that the suit properties are joint family properties. Accordingly, Issue No.1-A is also answered in the affirmative, whereas Issue No.3 is answered in the negative.

AS TO ISSUE NO. 2:-**(Entitlement)**

37] In view of the findings recorded on Issue Nos.1, 1-A and 3, it is held that the suit properties are joint family properties and that the Will relied upon by the Defendant has not been duly proved in accordance with law. Consequently, the Plaintiff, being a Class-I legal heir of deceased Shivaji Narayan Supate, is entitled to claim partition and separate possession of her lawful share in the suit properties.

38] It is further evident that deceased Shivaji Narayan Supate was survived by the Plaintiff (daughter), the Defendant (son), and his widow. Upon his death, his interest in the joint family properties devolved upon his Class-I legal heirs in accordance with the provisions of the Hindu Succession Act, 1956. Thereafter, upon the death of the widow, her share devolved equally upon the Plaintiff and the Defendant. Consequently, the Plaintiff and the Defendant are each entitled to ½ (one-half) share in the suit properties. Accordingly, Issue No.2 is answered in the affirmative by

holding that the Plaintiff is entitled to partition and separate possession of her ½ **share** in the suit properties.

AS TO ISSUE NO. 4:-**(What order)**

39] In view of the findings recorded on Issue Nos. 1, 1-A, 2 and 3, it is held that the suit properties are joint family properties and that the Plaintiff is entitled to partition and separate possession of her ½ share therein. The Defendant has failed to establish that the suit properties are his exclusive self-acquired properties or that the Will dated 05/01/2011 confers exclusive title upon him. Consequently, the Plaintiff is entitled to a preliminary decree for partition and separate possession of her share. Hence, I proceed to pass the following order :-

O R D E R

01. The suit is decreed with costs.
02. The Plaintiff is entitled to ½ (one-half) share in the suit properties at serial No.1-A to 1-D.
03. Alleged Will dated 05/01/2011 is not binding on the Plaintiff's share in the suit properties.
04. Decree shall be transmitted to the Collector under Section 54 of the Code of Civil Procedure, 1908, for effecting partition by metes and bounds in accordance with law.
- 05 Decree be drawn up.

(Dictated and pronounced in open court.)

(Judgment)

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R.C.S.No. 264 of 2015

C E R T I F I C A T E

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer	: A. S. Bakale
Court	: Civil Judge J. D., Mohol.
Judgment / Order signed by the Presiding Officer on	: 10.08.2026
Judgment / Order uploaded on	: 10.08.2026