

MHAH180010952011 	Presented on :	16/09/2011		
	Registered on :	17/09/2011		
	Decided on :	29/07/2026		
	Duration :	Ys.	Ms.	Ds.
		14	10	12

IN THE COURT OF 3rd JT. CIVIL JUDGE, JR.DN., RAHURI, TAL.RAHURI, DIST.
AHMEDNAGAR

(Presided over by P. H. Patil)

R.C.S.No. 516/2011

Exh. No. 86

1.Bhanudas Vithoba Londhe (died)

1.a Sambhaji Bhanudas Londhe.

Age- 41 Years, Occupation- Service.

R/O – Sangamner, Tal. sangamner

Dist. Ahamdnagar.

2.b Bhaskar Bhanudas Londhe.

Age- 44, Occupation – Agri.

R/O – Kanadgaon, Tal. Rahuri,

Dist- Ahmednagar

3.c Shivaji Bhanudas Londhe (died)

3.c(1) Nanda Shivaji Londhe

Age- 45, Occupation – Agri.

3.c(2) Yogesh Shivaji Londhe

Age- 23, Occupation – Agri.

3.c(3) Sopan Shivaji Londhe

Age- 20, Occupation – Agri.

3 a to 3 c R/o. Kandar Gaon, Tal. Rahuri.

Dist. Ahmednagar.

4. Sau. Mangal Keshav Jadhav

Age- 52, Occupation – Agri.

R/o. Ambi, Tal. Rahuri

5. Sangita Balasaheb Golhar

Age- 37, Occupation – Houswife

R/o. Asthagaon, Tal. Rahata

Dist. Ahmednagar

6. Kesharbai Bhanudas Londhe

Age- 74, Occupation – Housewife

R/o. Kanadgaon Tal. Rahuri,

Dist. Ahmednagar

....PLAINTIFF

V/S

1. Sukhdeo Vithoba Londhe

Age- 70 Years, Occupation- Agri.

2. Pandharinath Vithoba Londhe

Age- 58, Occupation – Agri.

3. Gorakh Eknath Londhe

Age- 39, Occupation – Agri.

4. Navnath Eknath Londhe

Age- 36, Occupation – Agri.

5. Balasaheb Eknath Londhe

Age- 32, Occupation – Agri.

All R/O – Kanadgaon, Tal. Rahuri

Dist. Ahmednagar

....DEFENDANTS

Suit: For Partition, Possession, Declaration and Injunction.

APPEARANCES

Advocate for the Plaintiff	:-	Shri. A. R. Walke
Advocate for Defendant no. 1 ,3 &4	:-	Shri. B. B. Urhe
Advocate for Defendant no. 5	:-	Shri. V. B. Todmal
Advocate for Defendant no. 2	:-	Exparte.

J U D G M E N T

(Delivered on 29/07/2026)

1) The present suit is for Partition, Possession, Declaration and perpetual Injunction regarding to the following properties situated at Kanadgaon, Tal Rahuri, Dist Ahmednagar surrounded by four boundaries:-

Sr.No	Gat No.	Area (Hectare-Are)	Assessment Rs. P.	Boundaries.			
				East	West	South	North
1	358	1-24 <u>Kh0-14</u> 1-28	1-15	359	357	361	350
2	336	1-36 <u>Kh0-02</u> 1-38	2-50.	332	327	320	323
3	309	0-48 <u>Kh0-01</u> 0-49	0-95	310	308	311	307
4	204	1-85	3-90	249	203	205	202
5	338	2-51 <u>Kh 0-27</u> 2-78	1-85	327	343	339	334

Herein after referred as 'suit properties'.

2) Defendant No 1 and 2 are the real brothers of Plaintiff. Defendant no 2 left home in 1991 on a pilgrimage and has not married. He has not returned till date. Defendant Nos. 3 to 5 are the nephews of plaintiff. The plaintiff's family is a Hindu joint family. The suit property, particularly Gat No. 338, was purchased by the plaintiff through a registered sale deed by using his own earnings and partly with financial assistance from his father-in-law. The remaining properties (Serial Nos. 1 to 4) are ancestral properties belonging to the Hindu joint family of the plaintiff and the defendants. Accordingly, these properties are recorded in the Record of Rights (7/12 extract) in the names of the plaintiff and defendant Nos. 3 to 5.

3) Although the suit properties standing in the name of the defendant, the plaintiff, Defendant Nos. 1 and 2, and the father of defendant Nos. 3 to 5 had orally partitioned the properties among

themselves in the year 1960. Since that partition, plaintiff and defendants has been cultivating and possessing the land that fell to their respective share separately. From that time onward, the plaintiff and defendant have remained separate in residence and have been in exclusive possession and enjoyment of their respective portions according to the oral partition. At the time of the above oral partition, the plaintiff had gone with his maternal grandfather, Kundlik Ramchandra Musmade, to earn a livelihood. Therefore, the ancestral agricultural lands that had fallen to the plaintiff's share were entrusted to his brothers for cultivation. The plaintiff worked on his maternal grandfather's agricultural lands and also worked as a laborer for others. From those earnings and with financial assistance received from his maternal grandfather, he has purchased Gat No. 338, ad-measuring 2 Hectares 51 Ares, with 0.27 Are Pot-Kharaba, through a registered sale deed in the year 1963. Since then, by cultivating the land with his own labour and effort, he has been earning a good income and maintaining his family. Thereafter, Defendant Nos. 1 and 2 and the father of Defendant Nos. 3 to 5 joined together and filed Regular Civil Suit No. 287 of 1988 against the plaintiff seeking partition of the suit properties. The plaintiff appeared through his advocate and filed his written statement. In that suit, the plaintiff specifically pleaded that, the property Gat No 338 was purchased by him and it was his self-acquired property, and that he had been living separately from the defendants since 1960.

4) Plaintiff further stated that, while the said suit was pending before the Court, the defendant no. 1, 2 and father of defendant 3 to 5 intention to deceived the plaintiff. They told him that, they only intended to record the oral partition of 1960 in the court records and persuaded him to sign. Taking advantage of the fact that

the plaintiff's advocate was not present, they engaged another advocate, obtained the plaintiff's signatures on false and fabricated documents, and thereby secured an unlawful decree. Even after the decree was passed, the plaintiff and the defendants continued to remain in separate possession and cultivation of their respective lands exactly as per the 1960 oral partition. Since the plaintiff had no knowledge of the decree, the defendants never got the mutation entries in the Record of Rights (7/12 extract) changed according to that decree. Even today, the suit properties continue to be possessed and cultivated by the parties according to the 1960 partition. The plaintiff remains in actual possession and cultivation of his self-acquired property, Gat No. 338. Further, Defendant No. 2 left home in 1991 on a pilgrimage. Before leaving, he permanently entrusted the land that had fallen to his share to the plaintiff for cultivation.

5) Defendant No. 2 is unmarried, has no children, and there is no possibility of his returning. During his absence, he permanently handed over his share of the property to the plaintiff. Despite this, the defendants have illegally taken possession of that property. Thereafter, in September 2011, the defendants applied before the Tahsildar, Rahuri, seeking mutation of the revenue records in accordance with the decree passed in Regular Civil Suit No. 287 of 1988. The defendants have no right, title, or interest whatsoever in Gat No. 338. Since the decree in Regular Civil Suit No. 287 of 1988 was obtained by fraud and deceiving the plaintiff, it is fraudulent, bogus, and unlawful. The plaintiff therefore seeks cancellation of that decree and requests that the defendants be restrained from making any mutation entries in the revenue records (7/12 extract) on the basis of that fraudulent decree or from interfering with the plaintiff's actual possession and cultivation of the property. Hence, the plaintiff has been constrained to institute this

suit against the defendants.

6) In response to the suit summons, the defendant no 1, 3 to 5 appeared and filed their written statement vide Exh 13 & Exh-16. They denied each and every material allegation alleged by the plaintiffs. They contended that, suit properties are the ancestral properties of both the plaintiff and the defendants, and which was acquired from their forefathers and family income. The plaintiff and the defendants have been jointly cultivating and enjoying the suit properties. There was dispute between them. Therefore, the father of Defendant Nos. 3 to 5, Eknath Vitoba Londhe, filed Regular Civil Suit No. 287 of 1988 for partition. Under the decree passed in that suit, the properties were partitioned. In that suit there was amicable settlement, and on the basis of settlement the Court passed a consent decree accordingly. The plaintiff was represented by his own advocate at that time. After considering all aspects, the plaintiff and the defendants mutually agreed to the partition, and the Court passed the decree based on that compromise. Accordingly, the necessary entries were made in the Record of Rights (7/12 records). At the time of the compromise, Pandharinath Vitoba Londhe, who was the plaintiff's brother, was alive. He consented to the compromise, and therefore the Court passed the decree. A few days later, Pandharinath Vitoba Londhe was went from home. Neither the plaintiff nor the defendants had any prior knowledge of his presence. The allegations made by the plaintiff in this suit are false and fabricated. The plaintiff has made false statements before the Court. The suit property Gat No. 338 was not self acquired property of plaintiff. In reality, the plaintiff was of a very young age in 1963 and had no independent understanding or financial capacity. Therefore, the claim that he independently purchased the suit property Gat no 338 from his own earnings is completely false and misleading.

7) The plaintiff has also falsely alleged that the defendants filed Regular Civil Suit No. 287 of 1988 seeking partition of the ancestral properties. According to the defendants, the partition actually took place under the Court's decree in 1988, and even since then each party has been in separate possession and cultivation of his respective share. Hence prayed to dismiss the suit with compensatory cost.

8) On the rival pleadings to the parties my learned predecessor has framed the issues Exh 30. I, have recorded my findings against each of them for the reasons stated below:-

S.No.	Issues	Findings
1.	Does the plaintiff prove that, defendants have the fraudulently obtained the decree in RCS No 287/1988 ?	Negative
2.	Does the plaintiff prove that suit property bearing Gat No 338 is his self acquired property?	Negative
3.	Does the plaintiff prove that there was oral partition in between plaintiff and defendants in the year 1960?	Negative
4.	Is suit hit by principle of res-judicata ?	Negative
5.	Is plaintiff entitled for declaration as sought ?	Negative
6.	Is plaintiff entitled for permanent injunction as prayed ?	Negative
7.	Are defendants entitled for compensatory cost ?	Negative
8.	What order and decree ?	Suit is Dismissed.

REASONS

9) Plaintiff in order to substantiate his claim Plaintiffs have examined the following witness-

Sr.No	Witness Name	Relavancy	Exhs.
1	Sambhaji Bhanudas Londhe	Plaintiff no 1 (a)	32
2	Patilsaheb Bhausaheb Gagare	Witness	48

10) Apart from the ocular evidence, the plaintiff have also relied on the following documentary evidence.

Sr.No	Document	Exhs
1	7/12 extract of Gat No 358 dt 24/8/2011	76
2	7/12 extract of Gat No 326 dt 24/8/2011	77
3	7/12 extract of Gat No 309 dt 24/8/2011	78
4	7/12 extract of Gat No 204 dt 24/8/2011	79
5	7/12 extract of Gat No 338 dt 23/8/2011	80
6	Sale deed no 85/1963	49
7	7/12 extract of Gat No 309 dt 8/8/2017	81
8	7/12 extract of Gat No 338 dt 8/8/2017	82
9	7/12 extract of Gat No 326 dt 8/8/2017	83
10	7/12 extract of Gat No 204 dt 8/8/2017	84
11	Certificate copy of Decree in RCS No 287/1988	85

Plaintiff closed their evidence vide pusis Exh 51.

11) In order to debunk the plaintiffs case Defendant No 1 to 4 has relied on the following witness.

Sr.No	Witness Name	Relavancy	Exhs.
1	Sukhadeo Vithoba Londhe	Defendant No 1	54

12) Apart from the ocular evidence, the Defendant have also

relied on the following documentary evidence.

Sr.No	Document	Exhs
1	Mutation Entry No 107	57
2	Certificate copy of Vakilpatra filed by plaintiff in RCS No 287/1988	58
3	Certificate copy of Vakilpatra filed by defendant no 3 in RCS No 287/1988	59
4	Mutation Entry No 2613	61
5	Mutation Entry No 2660	62
6	Mutation Entry No 2194	63
7	7/12 extract of Gat No 204(2003-2004)	64
8	7/12 extract of Gat No 309(2003-2004)	65
9	7/12 extract of Gat No 338(1973-74)	66
10	7/12 extract of Gat No 326(1973-74)	67
11	Certificate copy of RCS No 287/1988	68
12	Certificate copy of Written Statement filed by defendant No 2	69
13	Certificate copy of compromise pusi in RCS No 287/1988	70
14	Mutation Entry No 1107	71

Defendant no 1 & 3 closed their evidence vide pusi Exh-60

13) Defendant no 5 relied upon following witness-

Sr.No	Witness Name	Relavancy	Exhs.
1	Balasaheb Eknath Londhe	Defendant No 5	72

Defendant no 5 closed his evidence vide pusi Exh-73.

Evidence of the plaintiff-

14) P.W.No 1 Sambhaji Bhaudas Londhe testified himself as power of attorney for his father vide Exh 32. in his evidence he deposed that, the suit properties are family property. The suit

property Gat no 338 is purchased by him from own earned money and some money from his father in laws by way of registered sale deed. The suit property Sr.no 1 to 4 are ancestral Hindu joint family property. Although the suit properties standing in the name of the defendant, there was oral partition between them in the year 1960. Since that partition, plaintiff and defendants has been cultivating and possessing the land that fell to there respective share separately. The defendant no 1,2 and father of defendant no 3 to 5 filed suit for partition bearing no 287/1988 against plaintiff and in that suit, They told to plaintiff that, they only intended to record the oral partition of 1960 in the court records and persuaded him to sign. Taking advantage of the fact that the plaintiff's advocate was not present, they engaged another advocate, obtained the plaintiff's signatures on false and fabricated documents, and thereby secured an unlawful decree. Even after the decree was passed, the plaintiff and the defendants continued to remain in separate possession and cultivation of their respective lands exactly as per the 1960 oral partition. Since the plaintiff had no knowledge of the decree, the defendants never got the mutation entries in the Record of Rights (7/12 extract) changed according to that decree. Even today, the suit properties continue to be possessed and cultivated by the parties according to the 1960 partition.

15) During the cross examination witness admitted that, there was partition between his father and fathers uncle. His father was elder brother. His father name was entered in the suit property as the Karta of the joint family. He also admitted that, as per compromise decree mutation entry No 2693 was made and names of all the plaintiff and defendants recorded in the 7/12 extract. His father has not file any case against decree RCS No 287/1988 until his death. He

also admitted, although his father alleged that, his father was deceived in obtaining decree his father has not lodge any complaint in police station. His father has not challenged the mutation Entry no 2693. During the cross examination witness also admitted that, Gat no 358 was recorded in his fathers name as a Karta of the joint family and his father transfer the said gat no in the name of father of defendant no 3 to 5. witness also admitted that, his father used to sign document. He admitted that, his brother and sister were enough to understand the matters relating to transaction in the year 1991.

16) P.W No 2 Patilsaheb Bhausahab Gagre (Exh-48) deposed that, he knows plaintiff and defendants and suit properties. He stated that, suit property Gat no 338 is purchased by plaintiff from Sayyad usman shaikh by way of registered sale deed. He was present at the time of transaction. He also deposed that, on dated 16/5/1963 father of plaintiff purchased 13 Guntha land out of survey no 112 from Aminabai abbas shaikh. He was present at the time of both transaction. The property Gat no 338 is self acquired property of plaintiff and defendants has no right in the property.

17) During the cross examination witness admitted that, Bhanudas(plaintiff) was elder son of his family and he was Karta of his family. He also admitted that, plaintiff can read and write in marathi. He also admitted that, he has made only signature on the document and he has no knowledge about transaction.

Evidence of Defendant:

18) D.W. No 1 Sukhadeo Vithoba Londhe testified himself vide Exh-54. In his evidence he deposed that, suit properties are ancestral property and purchased from joint family income of ancestral property. Due to dispute arises between them, father of

defendant no 3 to 5 Eknath Vithoba Londhe filed partition suit bearing RCS No 287/1988. In that suit partition of suit property was sought. Plaintiff and defendant arrived at compromise and accordingly court passed compromise decree. At the time of compromise all the parties were present with their advocate. After considering all aspect court passed compromise decree and accordingly mutation entry were made and revenue records. In the year 1962 Plaintiff was very young and had not independent income. RCS No 287/1988 was filed for partition of suit property and which was ended in lawful compromise. Despite of full knowledge of these proceeding, plaintiff has filed this present suit.

19) Defendant no 5 Balasaheb Eknath Londhe testified himself vide Exh-72. In his evidence he deposed that, suit properties are ancestral and Joint Hindu family property. His father filed suit bearing RCS No 287/1988 for partition of suit property. In that suit partition of suit property was sought. Plaintiff and defendant arrived at compromise and accordingly court passed compromise decree. At the time of compromise all the parties were present with their advocate. After considering all aspect court passed compromise decree and accordingly mutation entry were made and revenue records. As per the decree, plaintiff and defendant are in possession of suit property as per their share and cultivating separately. Before 1991 the suit property was in the name of plaintiff as Karta person of their family.

As to Issue no 1:

20) In regards to this issue, the plaintiffs must have to prove the fact that, the defendant obtained decree RCS No 287/1988 by way of fraudulently. They obtained signature of plaintiff on false and fabricated document. The learned advocate for plaintiff urged that,

the signature of plaintiff obtained by defendant on false and fabricated document, at the time of compromise decree. They told him to plaintiff that, they only intended to record the oral partition of 1960 in the court records and persuaded him to sign. Taking advantage of the fact that the plaintiff's advocate was not present, they engaged another advocate, obtained the plaintiff's signatures on false and fabricated documents, and thereby secured an unlawful decree. Per contra learned advocate for defendant urged that, the suit properties are ancestral property and Hindu joint family property. In RCS No287/1988 there was amicable settlement between plaintiff and defendant and on the basis of settlement the Court passed a consent decree accordingly. The plaintiff was represented by his own advocate at that time. After considering all aspects, the plaintiff and the defendants mutually agreed to the partition, and the Court passed the decree based on that compromise. Accordingly, the necessary entries were made in the Record of Rights (7/12 records). Before going into discussion it is necessary to consider definition of fraud.

21) Fraud means a deliberate deception or dishonest act by one person to induce another person or a court to believe something false, thereby obtaining an unlawful advantage or causing loss to another. *Sec 17 of Indian contract act 1978 fraud includes-*

i. suggesting as a fact something which is not true, by a person who does not believe it to be true.

ii. Active concealment of a fact by a person having knowledge of it.

iii. A promise made without any intention of performing it.

iv. any other act fitted to deceive.

v. Any act or omission which the law specifically declares to be fraudulent.

22) Fraud on the court means intentionally misleading the

court by acts such as producing forged or fabricated documents. Making false statements on oath, suppressing material facts, obtaining a decree by deception or collusion. Mere concealment of previous partition suit or compromise decree does not by itself amount to fraud.

23) In the present suit plaintiff contended that, the decree RCS No 287/1988 obtained by defendant is fraudulent decree. Plaintiff filed copy of decree vide Exh- 85. perusal of decree it appears that, the father of defendant no 3 to 5 filed partition suit against plaintiff, defendant no 1 to 3 for suit properties. That decree was consent decree as per their sulenama. Defendant filed certified copy of sulenama Exh- 70. perusal of sulenama it shows that, after verifying the signature of plaintiff, defendants and their advocate, court has recorded the sulenama as a compromise decree. When the court has recorded sulenama, it presume that, the court has recorded said document after verification of parties and contain admitted by them. In the suit bearing RCS No 287/1988, the court has recorded sulenama. It means that, it has been recorded after the verification of parties and contain admitted by them in it.

24) After the decree, the mutation entry no 1107 was recorded on dated 13/1/1992 in the name of plaintiff and defendant. It means in the year 1992 parties of the suit acted upon the compromise decree of said suit. Defendant also filed on record the vakilpatra of plaintiff vide Exh- 58. It means that, plaintiff advocate was present at the time of consent decree. As per contention of plaintiff that, at the time of consent decree, defendant told to plaintiff that they only intended to record the oral partition of 1960 in the court records and persuaded him to sign on sulenama. There is no evidence on record about oral partition of 1960. plaintiff has not

examine any witness to show that there was oral partition prior to decree RCS No 287/1988.

25) Perusal of the sulenama Exh. 70 it shows that, it was signed by original plaintiff and defendant no. 1, 2 and father of defendant no. 3 to 5 and there advocate. There is no evidence on record to show that, there was active concealment of fact by the defendant at the time of compromise decree. The plaintiff admitted in cross-examination that, his father was used to sign document. As per the mutation entry no. 2693 (Exh. 61) it reveals that, the suit property was transferred in the name of plaintiff and defendant as per compromise decree RCS No. 287/1988. The mutation entry was carried out on dated 11/08/2011. defendant also filed old 7/12 extract (Exh. 64 to 67) of suit property it shows that, the name of plaintiff carried on record as owner of suit property. It was admitted by plaintiff that, his father was elder brother of defendant and his name was enter in the suit property as the Karta of joint family. The 7/12 extract (Exh-64-67) It shows that, name of Plaintiff mentioned as owner of suit properties prior to compromise decree. After the compromise decree the mutation entry no 2613 (Exh-61) was carried out and names of plaintiff and defendant taken of 7/12 extract (Exh-81 to 84).

26) As per the contain of plaint, the fraud play with plaintiff namely Bhaudas vithoba Londhe. During the pendancy of suit and before cross examination, plaintiff Bhanudas vithoba londhe has filed the affidavit in chief, but he was died before cross-examination. Therefore we can say that, the person with whom the fraud has played not examine before court. He was best evidence for proving the fraud played by defendant but unfortunately, before cross examination he has been died. Plaintiff fails to bring the fraud played

by defendant in their cross examination. Considering all this fact it can be said that, plaintiff failed to prove that, defendant have fraudulently obtained the decree in RCS No. 287/1988. Accordingly I answer to the issue no. 1 is negative.

As to Issue no 2 and 3:

27) As to this issue plaintiff must have to prove the fact that, the suit property bearing Gat no. 338 is his self acquired property and there was oral partition between them in the year 1960. The plaintiff contended that, the suit Gat No. 338 is purchase by him from his own earning and his financial assistant received from his maternal grandfather. Plaintiff has filed the copy of 7/12 extract of Gat no. 338 (Exh. 80) it shows that, plaintiff is owner of Gat no. 338. defendant contended that, the suit property Gat no. 338 is purchased in the name of plaintiff to the income of joint family property. Perusal of the written statement of RCS no. 287/1988 (Exh. 69) and plaint (Exh. 68) it shows that, defendant specifically stated that, the suit property Gat no. 338 is purchased in the name of plaintiff through the income of other joint family properties. There is no evidence on record to show that, the suit property Gat no. 338 is self-acquired property of plaintiff. Moreover there is no evidence on record to show that, there was oral partition between plaintiff in the year 1960. Hence, plaintiff failed to prove the fact that, suit property Gat no. 38 is self-acquired property. Accordingly, I answer to issue no. 2 and 3 in the negative.

As to Issue no 4:

28) The Ld. Adv. For defendant urged that, the suit is hit by principle of res-judicata. The Ld. Adv. For plaintiff vehemently urged that, as per the compromise decree there was no partition between them as per mets and bound. Hence, the present suit is not hit by the

principle of res-judicata before going into discussion it is necessary to consider relevant provision of Res-judicata.

29) *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the

decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

30) On perusal of record and the proceeding it despite that, the previous suit bearing RCS No. 287/1988 is filed for the partition of suit property by father of defendant no. 3 to 5 against plaintiff and defendant no. 1 and 2. In previous suit bearing RCS No. 287/1988 and in present suit the parties are same and the relief claim against properties are also same but the previous suit bearing RCS No. 287/1988 was amicably settled between plaintiff and defendant and accordingly compromise decree was done. The learned advocate for defendant relied upon the authority of **Manjunath Tirakappa Malagi & ors Vs Gurusiddapa Tirakappa Malagi through Lrs** 2025 ALL SCR 1867. *a compromise decree cannot be challenged by filing a fresh suit as there is a bar on filing a fresh suit challenging the consent decree on the ground of the legality of the compromise under order XXIII Rule 3A of C.P.C* the fact of the case is not identical with present suit hence it cannot be considered. That previous suit RCS No 287/1988 was not finally heard and decided by court after taking evidence. It means that, the adjudication of previous suit RCS No. 287/1988 has not been heard by court on merit. Hence, which cannot operate res-judicata to the present suit. Accordingly I answer this issue in the negative.

As to Issue no 5 and 6:

31) Considering above evidence plaintiff fails to prove that, defendant have fraudulently obtained decree RCS no. 287/1988.

Therefore plaintiff is not entitled to relief of injunction. Hence, I answer issue no. 5 and 6 is negative.

As to Issue no 7:

32) The defendant must have to prove the fact that, the plaintiff has filed the suit vexatiously and falsely. On perusal of the evidence and findings, It despite that, the suit fails on fraudulent decree obtained by defendants. Hence, it can not meant that, the plaintiff has filed the vexatious and false suit. Hence, I answer issue no. 7 is the negative.

As to Issue no. 8

33) The plaintiff by way of oral as well as documentary evidence failed to prove the fact of fraudulent decree obtained by defendant. In view of findings to the issue no. 1 to 7 I proceed to pass following order.

ORDER

- i) Suit is Dismissed.
- ii) Parties to bear their own cost.
- Iii) Decree be drawn up accordingly.

(Declared & pronounced in Open Court.)

Rahuri
Date: 29/07/2026.

(Shri. P. H. Patil)
3rd Jt. Civil Judge, Jr. Dn., Rahuri.

CERTIFICATE

I certify that, the contents of this PDF File are word to word as per Original Order.

Name of Stenographer : B. A. Bari, Stenographer G-3
Name of the Court : 3rd Jt. C.J.J.D. & J.M.F.C. Rahuri.
Signed by Presiding Officer : 29/07/2026
PDF uploading date : 29/07/2026