

Received on - 01.01.2011
Registered on - 01.01.2011
Decided on - 22.06.2018.
Duration - 21Ys.05M.06Ds.

IN THE COURT OF 7th JT. CIVIL JUDGE (J.D.) THANE.
(Presided over by D. G. Kankhare)

Regular Civil Suit No.1060/2012.
CNR MHTH02-000527-2012
Exh. No.151

1) **Smt. Gowribai Baliram Kini(Dead)**
Legal Heirs of Plaintiff no.1

- 1/1] Nandabai Krishna Bokre
- 1/2] Nainabai Prakash Bokre
- 1/3] Subhash Baliram Kini
- 1/4] Pramila Ramakant Bhurve
- 1/5] Anil Baliram Kini
- 1/6] Smt. Dakshita Jagdish Tare
- 1/7] Chandrabhaga Atmaram Bokare

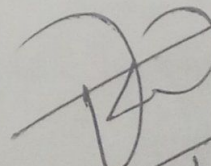
2) **Smt. Chandrabhaga Atmaram Bokare**
adult, Occu-household
R/at- Village owale, Koliwada,
Ghodbunder Road, Taluka,
Dist-Thane

... Plaintiffs.

V/s.

1) **Shri Janardan Hendar Vaity (Dead)**
Legal Heirs of Defendant no.1

- 1/A] Smt. Janabai Janardan Vaity
- 1/B] Shri. Naresh Janardan Vaity
- 1/C] Shri. Jagdish Janardan Vaity
- 1/D] Shri. Paresh Janardan Vaity
- 1/E] Shri. Raman Janardan Vaity


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1/D(i) Smt. Pratiksha Paresh Vaity

1/D(ii) Master Utkarsh Paresh Vaity

Both r/at- Village owale, Koliwada,
Ghodbunder Road, Taluka and Dist-Thane

2) Shri. Rajesh Nathalal Barot,
adult, Indian inhabitant,
R/at- Village Owla, Koliwada,
Ghodbunder Road, Thane.

3) M/s. United Iron Realtors Co.,
a partnership firm, having it's officer
at-3, Nivara, Veer Savarkar Road,
Thane (West)

.... Defendants.

Claim : Suit for Partition, Declaration and injunction

Advocate for plaintiffs - Shri. D.G.Naik

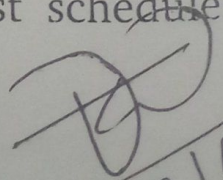
Advocate for defendants - Shri Mahadik

J U D G M E N T

(Delivered in Open Court on 22/06/2018.)

1/- This is suit for partition, declaration and injunction. Plaintiffs have alleged that Shri. Devu Manglya Vaity was personally cultivating the following properties, more particularly described in First, Second and Third Schedule herein below, as the agricultural tenant of the respective owners thereof.

All those pieces and parcels of land situate, lying and being at Village Mogarpada, Taluka and District Thane, in the Registration District and Sub-District Thane and now within the limits of the city of Thane Municipal Corporation. First schedule property as under:-


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Sr No.	Old Survey No.	New Survey No.	Hissa No.	Area in Sq.meters	Assessment in Rs. Ps.	Name of the Original Owner
1]	174	13	4	9430	11. 0 6	Poonamchand Nathaji
2]	174	13	5	1090	1.31	Poonamchand Nathaji
3]	177	12	12	200	0.34	Poonamchand Nathaji
4]	192	14	02	2510	3.00	Dwarkadas Ratanji

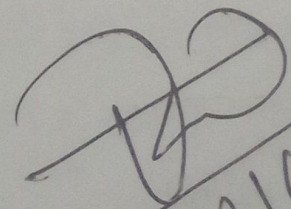
Second Schedule

Sr No.	Old Survey No.	New Survey No.	Hissa No.	Area in Sq.meters	Assessment in Rs. Ps.	Name of the Original Owner
1]	173	07	3/B	3910	4. 756	Dwarkadas Ratanji
2]	173	07	10	50	0.06	Dwarkadas Ratanji
3]	171	08	02	280	0.25	Dwarkadas Ratanji
4]	166	12	01	530	0.44	Maruti Devu

Third Schedule

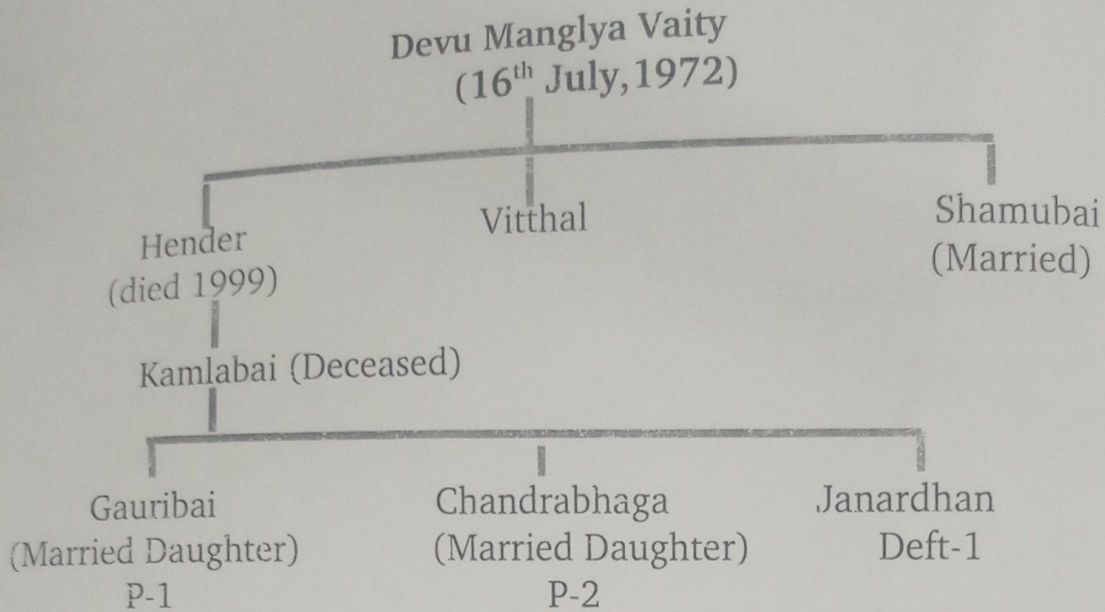
Agricultural land bearing Old. Survey no. 193, New Survey No. 96, Hissa No.8, admeasuring 530 sq.meters, situate, lying and being at Village Bhaindrapada, Taluka and District Thane, in the registration District and Sub-District Thane and now within the limits of the City of the Thane Municipal Corporation which was owned by Shri Maruti Devu.

(for brevity sake, the property described in First, Second and Third schedule herein above written shall be hereinafter referred as " the suit property").


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2/-

The geneology of the parties is as under :-



The plaintiffs state that by a Mutation Entry No. 1730, dated 18th November 1980, the names of the said Shri. Hendar Devu Vaity and Shri Vithal Devu Vaity and Smt. Shamubai Tularam Tandel, were recorded in the cultivation column of the 7/12 Extract of the suit property.

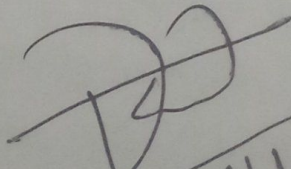
3] The plaintiffs alleged that on 14th June, 1989, a Deed of Partition of several properties including the suit properties left by Late Shri Devu Manglya Vaity came to be executed by and between the said Shri. Hendar Devu Vaity and Shri Vithal Devu Vaity. However, the said Smt. Shamubai Tukaram Tandel was not a party to the said Deed of partition as she had executed release deed dated 22nd July 1989 in the office of Sub Registrar under Sr.No. TNN-1/5834/1989, which is registered on 31st July 1989. Smt. Shamubai

[Signature]
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Tukaram Tandel had released, relinquished and given up her undivided right, title, interest and share in the properties in favour of her two brothers namely Shri. Hendar Devu Vaity and Shri. Vithal Devu Vaity.

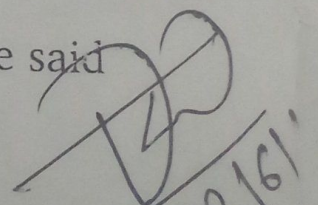
4] Plaintiffs alleged that the said Shri. Hendar Devu Vaity had filed an application under Section-32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948, before the Addl. Tahasildar and Agricultural Land Tribunal, Thane against the respective owners of the suit property for fixation of the purchase price of suit property. Thereafter, the name of the said Hendar Devu Vaity was recorded in the 7/12 Extract of the suit property as the tenant purchaser thereof.

5] Plaintiffs further alleged that Shri. Hendar Devu Vaity died on 29th July, 1999 leaving behind his widow by name Smt. Kamlabai Hendar Vaity (Since deceased), two married daughters namely Smt. Gowribai Baliram Kini and Smt. Chandrabhaga Atmaram Bokre, being the plaintiff no. 1 and 2 respectively and a son Shri Janardan Hendar Vaity, being the defendant no.1, as his heirs and legal representatives entitled to the estate of the deceased including the suit property. The plaintiffs averred that after the demise of the said Shri. Hendar Devu Vaity, the plaintiffs, the defendant no.1 and Smt. Kamlabai Hendar Vaity became the joint owners of the suit property.


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6] On 17th October, 1994, Hender executed Will in favour of defendant No.1. Late Shri.Hendar Devu Vaity had no exclusive right, title and interest in the suit property and therefore, he had no right to bequeath the suit property either to the defendant no.1 or to any other person. The Will is bogus and fraudulent document. The defendant No.1 has not obtained the Probate of the said alleged Will.

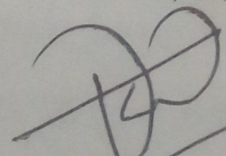
7] After the demise of the said Shri. Hendar Devu Vaity, defendant no.1 had made an application, dated 21st June, 2003, to the Tahasildar of Thane, to record his name in the 7/12 Extract of the suit property on the basis of Will. On the basis of the said alleged will, dated 17th October, 1994, the Talathi of Village Mogarpada and Owla had effected a Mutation Entry No.61, dated 15th October, 2003 in respect of property mentioned in this suit. The Talathi of Village Bhayandar pada had also effected a Mutation Entry No. 207, dated 13th October, 2003 in respect of the property described in the third scheduled. Prior to certification of the said Mutation Entry No. 61 and 207 had served a notice under section-150 of the Maharashtra Land Revenue Code upon the plaintiff no.1. However, the Talathi of Village Mogarpada/Owala/Bhaindarpada has failed to serve the said notice upon the plaintiff no.2. Plaintiff no.1 had lodged her objection against said mutation entries vide her objection letter, dated 4th November, 2003. The Tahsildar Thane ought to have served a notice of hearing of the said complaint cases upon the plaintiff. Without effecting service of the notice the Tahsildar Thane has decided the objection raised by the plaintiff no.1 against the said


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Mutation Entry No. 203, dated 13th October 2003 and that too behind the back of the plaintiffs. In that complaint cases plaintiff no.2, the defendant no.1 on behalf of the plaintiff no.2 had filed a Written Statement in the said complaint cases. The Tahsildar Thane and Talathi of Village obtained order on dated 14th December 2003 without listening the plaintiff. On basis of said impugned order, the defendant no.1 had got his name recorded in the 7/12 extract of the suit property and the Talathi of Village Mogarpada / Owala / Bhaindarpada have certified the said impugned mutation entires behind the back of the plaintiffs. Defendant No.1 in collusion with the Revenue Officer attached to the Office of Tahasildar, Thane and Talathi managed to obtained an order behind the back of plaintiff. Plaintiffs are totally unaware of the said impugned order.

8] The plaintiffs further alleged that the defendant No.1 had also executed registered Deed of Conveyance, dated 05/03/2005 in the office of Sub-Registrar of Assurance at Thane under Sr. No.TNN-5/1887/2005, in respect of the land bearing Old S.No.166, New S.No.12, Hissa No.1 admeasuring 530 sq. meters, situate, lying and being at Village Owla, Taluka and District Thane in faovur of the Defendant No.3. The Plaintiffs were not aware of the said alleged Deed of Conveyance, dated 5th March, 2005.

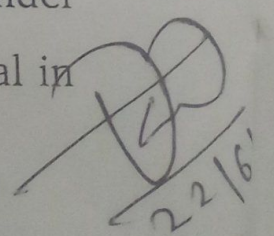
9] The plaintiffs further stated that the defendant No.1 had also executed registered Deed of Conveyance, dated 22/07/2005 in


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the office of Sub-Registrar of Assurance at Thane under Sr. No.TNN-5/5597/2005, in respect of the land bearing Old S.No.193, New S.No.96, Hissa No.8 admeasuring 530 sq. meters, situate, lying and being at Village Bhayandar Pada, Taluka and District Thane in faovur of the Defendant No.2. The Plaintiffs were not aware of the said alleged Deed of Conveyance, dated 5th March, 2005.

10] Therefore plaintiff prayed for declaration that Will dated 17/10/1994 is null and void. The plaintiffs have share in the suit property. Plaintiffs also have equal right in the property those were sold to defendant no.2 and 3 by the defendant no.1. Defendant No.1 be restrain from alienating, developing or to create any third party interest in the suit property. They have also prayed for relief of injunction.

11] Defendant no.1 has opposed suit claim by filing his written statement at Exh. 24. He submitted that since 1950, Hender Devu Vaity and Vitthal Devu Vaity were cultivating the land as protected tenant and therefore defendant No.1 has denied the ownership of Devu Manglya Vaity. Defendant No.1 further submitted that in the year 1972 after the death of Devu Manglya, there was partitioned of entire properties between Hender and Vitthal. The suit property was come to the share of Hender Devu Vaity. Since then, Hender Vaity is the absolute owner of the property. Defendant No.1 further submitted that on 22/7/89 Smt. Shamubai Tukaram Tandel has made registered release deed in favour of Hender and Vitthal in

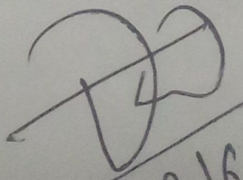

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respect of suit property. As per Section 32G of Maharashtra Tenancy Rule, father of defendant was declared protected tenant of suit property and got certificate of section 32m.

12] Defendant No.1 further, averred that as per the Hindu Succession Act, after the death of Hender Devu Vaity, plaintiff and defendant No.1 himself are the absolute owner of the suit property. He has admitted that the suit property is the ancestral property and therefore the suit property was partitioned in the year 1989 and since then nature of joint family's property was ceased and therefore the registered Will made by Hender Devu Vaity on 17/10/1994 and Hender Vaity was right to bequeath the suit property by Will.

13] The issues framed at Exh.41 are reproduced below along with my findings thereon:-

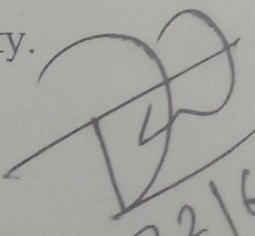
ISSUES	FINDINGS
1 Whether plaintiffs prove that, by partition dated 14/06/1989 suit property came to the share of Hender Deu Vaity?	Redundant
2 Whether plaintiffs prove that, Smt. Shamubai Tandel relinquish her share in the suit property?	Redundant
3 Do plaintiffs prove that they are having share in the suit property	Affirmative
4 Whether suit is properly valued?	Redundant
5 Whether suit is within limitation?	Affirmative


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- | | | |
|----|--|-------------|
| 6 | Whether the plaintiffs prove that they are entitled for declaration as prayed for ? | Affirmative |
| 7 | Whether the plaintiffs prove that they are entitled for partition as claimed for ? | Affirmative |
| 8 | Whether they further prove that they are entitled for permanent injunction as sought for ? | Affirmative |
| 9 | Does defendant prove that he has acquired exclusive right and ownership over the suit property by the Will dated 14/10/1994? | Negative |
| 10 | What order and decree ? | |

14. The plaintiff examined two witnesses (P.W.1) plaintiff himself at Exh.56 and Vikas Pralhad Patil (P.W.2) at Exh.88. The plaintiffs have closed their evidence by filing evidence close pursis at Exh.104.

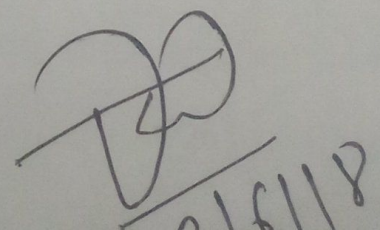
15. Following documents were filed on the behalf of the plaintiff;
- i] Original Power of Attorney dated 20/01/2011 executed by the plaintiffs in favour of Shri. Anil Baliram Kini and Shir. Nitin Atmaram Bokare. **Exh.59**
 - ii] 7/12 extract of the suit property. **Exh.60**
 - iii] Mutation Entry No.591 dated 18/11/1980. **Exh.61**
 - iv] Certified copy of Deed of Partition, dated 14/06/19 executed by and between Shri. Hendar Devu Vaity and Shri Vitthal Devu Vaity. **Exh.62**
 - v] Photocopy of Deed of Release dated 22/07/1989. **Exh.63**
 - vi] Photocopy of death certificate of Shri Hendar Devu Vaity. **Exh.64**


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- vii] Photocopy of application dated 21/06/2003. **Exh.65**
- viii] Mutation Entry No.1730 dated 18/11/1980. **Exh.66**
- ix] Mutation Entry No.207 dated 13/10/2003. **Exh.67**
- x] Mutation Entry No.61 dated 15/10/2003. **Exh.68**
- xi] Photocopy of Objection Letter dated 04/11/2003. **Exh.69**
- xii] Photocopy of Order dated 14/12/2004 issued by Tahasildar of Thane in Takrari Case No. Revenue/Section-1/T-3/SR/15/04/Vashi/9743. **Exh.70**
- xiii] Photocopy of say filed by the Defendant No.1 in Takrari Case No. Revenue/Section-1/T-3/SR/15/04/Vashi/9743. **Exh.71**
- xiv]
- xv] Certified copy of Deed of Conveyance dated 05/03/2005. **Exh.73**
- xvi] Certified copy of Deed of Conveyance dated 22/07/2005. **Exh.74**
- xvii] Office copy of application dated 03/01/2011. **Exh.75**
- xviii] Office copy of Letter dated 07/04/2014. **Exh.76**

16. The defendants Raman Vaity has filed his examination-in-chief as (D.W.No.01) at Exh.106, Bhaskar Undrya Vaity (D.W.No.02) at Exh.137, Shri. Pramod P Men, Medical practitioner (D.W.No.3) at Exh.141. Defendant have closed their evidence by filing evidence closed pursis at Exh.147.

17. Following documents were filed on the behalf of the defendants;
- i] Receipt of registration of Will deed at Exh.107
 - ii] Copy of Receipt Article 'A
 - iii] Original notice send by the landlord Ratanshi trust at **Exh.108**
 - iv] Order of Tahasildar at Exh.109,
 - v] Chalan at **Exh. 110**,



- vi] Certificate of 32M at Exh.111,
- vii] Order of Tahasildar at Exh.112,
- viii] Chalan at Exh.113,
- ix] Certificate of 32M Exh.114,
- x] Original Will Deed Exh. 138.

:: REASONS ::

Admitted Facts:

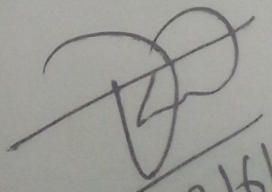
18. Relationship between plaintiffs and defendant is admitted. Death of Hender Deu Vaity. Partition between Hender Vaity and Vitthal vaity. Release deed executed by the shamubai Tandel.

As to Issue No.1 and 2 :-

19. The fact of partition between Hender Vaity and Vithhal Vaity and Smt. Shamibau Tandel relinquished her share by way of release deed dtd. 22/07/1989 are admitted by defendant through his written statement at Exh.24. Hence, Facts admitted are need not be proved. Therefore, issue no.1 & 2 becomes redundant.

As to Issue No. 4 :-

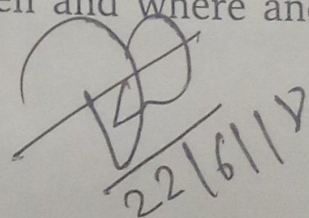
20. Issue no. 4 is related to valuation of suit. Defendant has objection that suit is not properly valued. He has filed application at Exh.39 under section 8 of Bombay court fees Act. My ld. Predecessor had rejected the said application. Hence, this issue is also become redundant.


16/

As to Issue No.9 :-

21. In the present matter as defendant wants to rely on the Will. Therefore, the burden of proving the Will and its execution is on the defendant. To prove the Will and its execution defendant No.1 examined himself and deposed that after the death of Devu Mangalya Vaity suit property were cultivated by Hender Vaity and Vitthal Vaity. The properties of Devu Mangalya Vaity were partitioned between Hender and Vithal. Shamubhai Tandel executed released deed in favor of Hender and Vithal. After partition the suit property become the absolute property of Hender Vaity and he had right to bequeath the same. Hender Vaity executed Will Deed on 17/10/1994 in favor his son Janardan Vaity. He died on 29/07/1999. He bequeathed entire suit property to his son namely Janardan Vaity.

22. Bhaskar Vaity, D.W. 2 (Exh.137) deposed that he knows the Hender Vaity very well. Hender Vaity died prior to 17-18 years. Hender Vaity was his friend and relative. Affidavit at Exh.137 is not prepared as per his instruction and in his presence. He also does not remember date of execution of the Will at Exh.138. He doesn't know that who had drafted the Will at Exh.138. He doesn't know when and where he had sign the Will at Exh.138 as a witness. Janardan Vaity had never shown the Will at Exh.138 to him. He further deposed that he is not aware in whose presence Hender Vaity had sign the Will at Exh.138. He also don't know when and where and



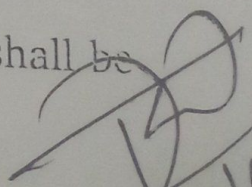
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before whom Valkya Shankar Mukadam (another witness to the Will) had sign the Will at Exh.138 as a witness. Valkya Shankar Mukadam has not sign the Will at Exh.138 in his presence.

23. Pramod Men D.W.3 (Exh.141) deposed that medical certificate at Exh.142 was issued by him. He is family doctor of Hender Vaity. He frequently examined the late Hender Vaity. However, in his cross examination he admitted that the mental condition of the person can be disclosed by neurologist. He also admitted that he is not neurologist.

24. Ld.Advocate for the defendant argued that as per section 91 of Indian Evidence of Act,1872, evidence of DW2 is to be excluded. However, advocate for the plaintiff argued that Will not proved as per law. The Will is bogus and not genuine one. But As per section 91 it is clear that exclusion of oral evidence by documentary evidence. But execution of the Will itself is not proved, in such situation section 91 is not come into picture. Section 91 is applicable to the document those are proved and forms the part and parcel of evidence. It is applicable only when the Will is proved and one of witness is deposing in respect of the Will, then oral evidence of such witness can be excluded by documentary evidence.

25. It is an admitted fact that Shri. Hendar Devu Vaity died on 29th July,1999. It alleged by the defendant that suit properties were bequeathed by Will to him. But, being testamentary document execution of Will shall be proved. It is settled law that Will shall be


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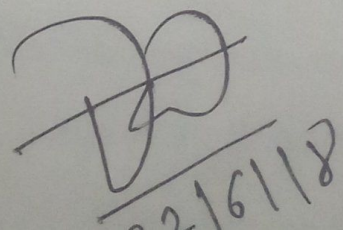
proved by one or two attesting witnesses. Testator shall signed the Will in the presence of the witnesses. Both witnesses have to signed the Will in presence of each other. Ld. Adv.for defendant relied on the following case law:-

Kasturi Wankhede V/S Sheshrao Zamre 2006 (5) Bom.C.R.638

Held- It is not necessary that both the attesting witness to the Will has to sign in presence of each other.

26. In the present matter it has come in the evidence of the DW2 that testator himself had not sign the Will in presence of the witness to the Will. Therefore, though it is not necessary that both witnesses need not signed the Will in each other presence but testator shall have to signed the Will in presence of witness. Hence, this citation is not applicable to the present matter.

27. Therefore, in such arena it is difficult believe the execution of Will. A Will is one of the solemn documents known to law. Therefore, it is essential that trustworthy and cogent evidence should be produced before the court to establish genuineness and authenticity of the Will. In order to judge the credibility of witnesses and discern the truth from falsehood the court is not confined only to their testimony and demeanor. It would be open to the court to consider the circumstances brought before the court. It would be open to the court to look into surrounding circumstances as well as inherent improbabilities of the case. If there is the slightest doubt in the execution of Will then to act upon such a Will would be improper and against the law.



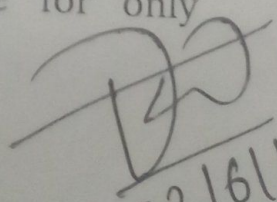
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28. In the present matter existence of Will is not disputed. The Will is filed on record at Exh.138. It is registered. But, mere producing the Will on record and it is registered is not sufficient to act upon it on the part of the Court. The execution of Will shall be proved as per law. But in the present matter execution of Will is not proved as per law, therefore, to act upon it would be unjust. Hence, I answered issue no.9 in negative.

As to Issue No.3 :-

29. Anil Kini PW1 (Exh.56) deposed that both plaintiffs have executed a power of attorney in favor of the PW1 at Exh.59. Therefore, he is deposing before this court. He further deposed that plaintiff no. 1 is his mother and plaintiff no.2 is his aunt. Both plaintiffs are suffering from low of vision. Hence, they are unable to appear before the court. He further admits that he did not produce any document to show plaintiffs low vision. It has come on record that both plaintiffs are having non-veg food. They are visiting religious temple.

30. Vikas Patil PW2 Tahsildar Thane, Exh.88 deposed about the method of maintaining the records. He had not personally gone through the records of matter before the court. He further admitted that form No. 7-A is maintained by the talathi and it bears only entries regarding tenancy right. Purchase price is required to proved by the additional tahsildar. These entries are made for only collection of revenue.


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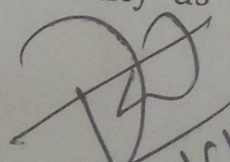
31. The Ld. Advocate argued that as per law plaintiffs himself can give best evidence. Both plaintiffs are doing all day to day activity but still they are unable to depose before the court. All the evidence of PW1 is hearsay in nature and not believable. Ld. Advocate relied upon:-

Mrs. Varsha A. Maheshwari V/s M/s Bhanushali Steel Ltd. And anr. (2011 (2) ALL MR 744)

Held- Power of attorney holder has only right to appear. He cannot be heard as representative party unless specifically permitted by the court on proper application.

32. In the present matter power of attorney holder is not only power of attorney holder but he is son of plaintiff no.1 and niece of plaintiff no.2. Therefore, he is legal heir of plaintiffs. PW1 is indirectly plaintiff in the present matter after demise of plaintiffs. Therefore, He has right to depose on behalf of plaintiffs being legal heir of plaintiffs. He does not require specific permission from the court. Hence, this case law is not applicable to the facts of the case in hand.

33. He further deposed that, Hender died and leaving behind his widow by name Smt. Kamlabai Hender Vaity (Since deceased), two married daughters namely Smt. Gowribai Baliram Kini and Smt. Chandrabhaga Atmaram Bokre, being the plaintiff nos. 1 and 2 respectively and a son Shri Janardan Hendar Vaity as legal heirs.


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After the death of Hender Devu Vaity, plaintiff and defendant No.1 himself are the absolute owner of the suit properties.

34. It is argued by the ld. Advocate for the defendant that the suit property is separate property of the defendant. Therefore, he has right to execute the Will and relied upon following citation:

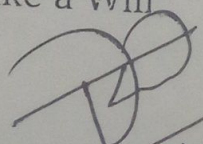
Hardeo Rai V/S Sakuntala Devi (2008 (4) ALL MR 894)

Held- Where Coparcener takes definite share in the property, he is owner of that share and as such he can alienate the same by sale or mortgage in the same manner as he can dispose of his separate property.

35. In view of the provision of Hindu Succession Act, there is no doubt that Late Hender Vaity could at best execute a Will bequeathing his undivided interest in the properties in favour of the any person. It can be done only when, he is sole surviving coparcener or up to his interest in the suit property. After partitioned the suit property is his separate property as against other coparceners of horizontal branch. But as soon as his son born the said property become ancestral property to his legal heirs. Son has acquired interest in the property of the father from his birth.

Rushi Pavari V/s Roxan Buhariwala 2009 (3) SCC 687

Held – It was held by Apex court that allegation of undue influence on the deceased and his lack of testamentary capacity to make a Will are not sufficient.


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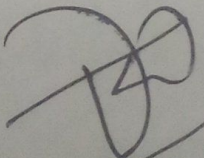
In the present matter Will is not proved. Hence, the citation is not applicable.

36. The Ld. Advocate for the defendant relied on the citation: Smt. Harsha Mahendra Gutka V/s Mahendra Premchandra Shah 2013 (1) ALL MR 301.

Held – Hon'ble High Court held that Will Deed executed in favor of sister is legal and as per law. In this case husband and wife are residing separately and they had dispute. Due to that dispute husband executed Will in favor of his sisters. Both the parties have no issue in that wedlock. Therefore, the husband is sole coparcener to the property that's why he can execute the Will as to whole property according to law.

37. In the present matter Will is not proved. Hence, It appears from the records that in the deed of declaration at Exh.62. It is mentioned that defendant received the suit property through partition of ancestral property. There are two different submission about the nature of the suit properties. Defendant is saying that As per Section 32G of Maharashtra Tenancy Rule, father of defendant declared protected tenant of suit property and got certificate of section 32M. As per Bombay tenancy Act, properties received as protected tenant vide section 32G are heritable in nature vide section 40. Therefore, in either nature of properties plaintiffs have share in the suit property.

38. Therefore, the provisions of HSA is very well applicable to properties received under section 32G. Therefore, Late Hender


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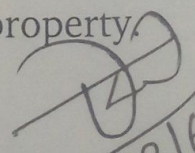
Devu Vaity had no exclusive right to execute a Will in respect of suit property in favor of defendant no.1. Hence, it is proved that, Plaintiffs have share in the suit properties.

Hence, I answer to point no.3 in Affirmative.

As to Issue No.6 and 7 :-

39. In view of finding of issue no.9 Will is not proved. Therefore, defendant is died intestate. Section 8 of HSA envisaged that when any male Hindu died intestate then his interest in the property shall be devolve as per provisions of this chapter. However, section 10 of HSA has provides the rules by which property shall be distributed. As per rule 2 of section 10 the son and daughter will take one share each. In the present matter two daughters and one son will take one share each out of the entire property. Plaintiff no.1, and 2 will get $1/3$ share each out of entire property.

40. Hence, the plaintiff no.1 and 2 are entitled for $1/3^{\text{rd}}$ share each in the suit property. In the present matter the $1/3^{\text{rd}}$ share of deceased plaintiff no.1 is equally divided into her legal heirs $1/1$ to $1/7$. Plaintiffs $1/1$ to $1/7$ will get $1/21^{\text{st}}$ share each. Moreover, Order 20 Rule 18 of the Code Of Civil Procedure, 1908 states that the decree in suit for partition shall declare the rights of several parties interested. In other words in the preliminary decree not only the right of plaintiff but right and interest of others can also be declared. Obviously, defendants No.1 is having right and interest in the suit property. Therefore, it necessary to declare his share. therefore, the defendant no.1 is also entitled for $1/3^{\text{rd}}$ share out of suit property.


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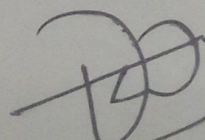
The $1/3^{\text{rd}}$ share of deceased defendant no.1 is equally divided between his legal heirs 1/A to 1/E. Defendants 1/A to 1/E will get $1/15^{\text{th}}$ share each. The $1/15^{\text{th}}$ share of deceased defendant 1/D is again divided between his legal heirs equally. Therefore, defendant 1/D(i) and 1/D(ii) will $1/30^{\text{th}}$ share each. Plaintiffs are entitled for partition and declaration as prayed. Therefore, I answered point no.6 and 7 in affirmative.

As to Issue No.6 :-

41. The defendant alleged that suit is not within limitation. The name of Janardan vaity was recorded in 7/12 extract in the year 2005. Therefore, the plaintiffs come to know about exclusion of there name from the joint family property in the year 2005. In view article 110 period of limitation for such suit is of 12 years from the date exclusion becomes known to the plaintiff. The present suit is instituted in the years 2012. Under such circumstances it is crystal clear that the suit is well within limitation.

As to Issue No. 8 :-

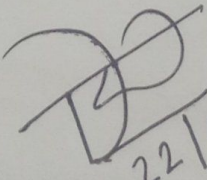
42. Defendant no.1 name is recorded in 7/12 extract of the suit property vide Exh.60. But, it is well settled law that revenue entries neither confers any right nor any title over such property. Revenue entries are just for fiscal purpose. Still, to protect the suit property injunction is necessary. Moreover, there may be chances that defendants may alienate the suit property or may create third


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party interest. Hence, injunction is necessary against defendants. Defendants are hereby restrained from alienating or creating third party interest in the suit property. Hence, I pass following order.

ORDER

- 1] The suit is decreed with costs.
- 2] It is declared that plaintiff no. 1/1 to 1/7 are entitled 1/21st share each in the suit property.
- 3] It is declared that plaintiff no. 2 is entitled 1/3rd share in the suit property.
- 4] It is declared that Defendants 1/A to 1/E will get 1/15th share each.
- 5] It is declared that defendant no. 1/D(i) to 1/D(ii) are entitled 1/30th share each in the suit property.
- 6] The preliminary decree shall be sent to the Collector of Thane to effect partition of suit property i.e. agricultural property vide Section 54 of the Code of Civil Procedure.
- 7] Defendants are hereby restrained from alienating or creating third party interest in the suit property.
- 8] A decree shall be drawn accordingly.

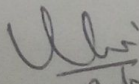

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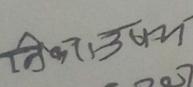
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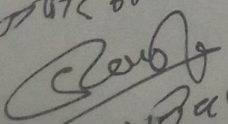
Date : 22/06/2018

7th Jt. Civil Judge, J.D.&J.M.F.C, Thane

Seen and noted


Ashutosh
29/6/2018


22/6/2018
1/1/2018


22/6/2018
22/6/2018