

MHSN170032612020 	Received on	18.06.2022
	Registered on	26.07.2022
	Decided on	05.01.2026
	Duration	03Ys.06M.18Ds.
	Exh.No.	40

IN THE DISTRICT COURT, VITA, DIST. SANGLI
(Presided over by R.R. Bhagwat, District Judge -1 Vita)

REGULAR CIVIL APPEAL NO.455/2024
(OLD R.C.A. NO.149/2022)

- | | | | |
|----|-------------------------------------|---|--------------------------|
| 1) | Ramesh Vishwanath Nandugade |) | |
| | Age-33 Years, Occu. Business |) | |
| 2) | Vidya Ramesh Nandugade |) | |
| | Age-30 Years, Occu. Household |) | <u>Appellants</u> |
| 3) | Dilip Vishwanath Nandugade |) | |
| | Age-30 Years, Occu. Business |) | |
| | All R/o. Rajewadi, Taluka - Atpadi, | | |
| | District - Sangli | | |

VERSUS

- | | | | |
|----|--|---|---------------------------|
| 1) | Shantabai Maruti Dudhane |) | |
| | Age-62 Years, Occu. Household & Agri. |) | |
| | Rajewadi, Taluka - Atpadi, Dist. Sangli |) | |
| 2) | Rahibai Gangadhar Salunkhe |) | <u>Respondents</u> |
| | Age-57 Years, Occu. Household |) | <u>No.1 to 4</u> |
| | R/o. Awalai, Taluka - Atpadi, Dist. Sangli |) | <u>are orig.</u> |
| 3) | Shalan Bhajandas Patale |) | <u>plaintiffs</u> |
| | Age-52 Years, Occu. Household |) | |
| | R/o. Khandale, Tal. Malshiras, |) | |
| | District - Solapur |) | |

- | | | |
|----|---|------------------------------|
| 4) | Suman Sambhaji Jagtap |) |
| | Age-37 Years, Occu. Household |) |
| | R/o. Gomewadi, Tal. Atpadi, Dist. Sangli |) |
| 5) | Ramdas Bapu Shirkande |) |
| | Age-55 Years, Occu. Agriculture |) |
| 6) | Shankar Vithoba Shirkande |) <u>Respondents</u> |
| | Age-60 Years, Occu. Agriculture |) <u>No.5 to 9</u> |
| 7) | Dinkar Vithoba Shirkande |) <u>are original</u> |
| | Age-54 Years, Occu. Agriculture |) <u>defendants</u> |
| 8) | Nandkumar Vithoba Shirkande |) <u>No.1 to 5</u> |
| | Age-55 Years, Occu. Agriculture |) |
| 9) | Mari Bapu Shirkande |) |
| | Age-53 Years, Occu. Agriculture |) |
| | No.5 to 9 all R/o. Rajewadi, Tal. Atpadi, |) |
| | District - Sangli |) |

Appeal u/Order 41 of the Code of Civil Procedure

Shri. A. U. Shete, Ld. Counsel for the appellants.

Shri. S. K. Sanadi, Ld. Counsel for respondents No.1 to 4.

None for respondents No.5 to 9.

JUDGMENT

(Delivered on 05.01.2026)

1] The appellants are third persons who have purchased the suit property at Sr.No.3 having Gat No.393 of village Rajewadi, Tal. Atpadi, Dist. Sangli and they want to challenge impugned judgment and decree dt.21.01.2012 in Regular Civil Suit No.15/2010 passed by Ld. Civil Judge, Junior Division, Atpadi, Tal.Atpadi, Dist. Sangli granting relief of partition and separate possession to the plaintiffs therein.

2] Perused appeal memo, paper book, proceeding of Ld. Trial Court and documents on record. Heard Ld. Counsel Shri. A. U. Shete for the appellants and Ld. Counsel Shri. S. K. Sanadi for the respondents No.1 to 4 (original plaintiffs).

3] The appellants are the third persons. Respondents No.1 to 4 are original plaintiffs No.1 to 4. Respondents No.5 to 9 are original defendants No.1 to 5.

4] Record shows that respondents No.1 to 4 had filed R.C.S. No.15/2010 against respondents No.5 to 9 seeking relief of partition in respect of five agriculture lands as mentioned in para 1 of the plaint. It is mentioned in the plaint that respondents No.5 to 9 were going to create third party rights in the suit property and therefore, partition is claimed. Record further shows that respondents No.5 to 9 were duly served with suit summonses, but they failed to appear before Ld. Trial Court. Ld. Trial Court passed ex parte order dt.05.10.2011 below Exh.1 against respondents No.5 to 9 and proceeded to record evidence of respondents No.1 to 4/plaintiffs. Ultimately, impugned judgment and decree came to be passed.

5] Now, the appellants have challenged impugned judgment and decree on the grounds that predecessor in title of present appellants had purchased Gat No.393 from respondent No.5 Ramdas as per sale deed of the year 2009. Sale transaction was given effect in the record of rights as per mutation entry

No.2822. Respondent No.5 had deliberately stayed away from the suit and he did not participate in it. Matter is proceeded ex parte. None of them have challenged mutation entry in the name of Predecessor in title of the appellants in record of rights of Gat No.393 in owner's column in place of respondent No.5 pertaining to the sale deed of the year 2009. The said sale deed is not challenged in the suit. Predecessor in title of the appellants had purchased Gat No.393 for legal consideration and it was executed prior to the date of institution of the suit. Relief of declaration regarding the said sale deed is not sought. Ld. Trial Court failed to appreciate that respondent No.5 and father of respondents No.1 to 5 had partitioned the suit properties amongst themselves and entire Gat No.434 and half share of Gat No.393 was given to share of respondent No.5. Gat Nos.448, 481, 506, 397, 452, 478, etc. were kept to the share of Bapu Pandu Shirkande i.e. father of respondents No.1 to 5. Partition was given effect to and mutation entry No.764 was effected in the year 1989.

6] They have dealt with the properties which came to their share in partition without obstruction or without consolidation of others exclusively. By highlighting these aspects, it is contended that amendment in the Hindu Succession Act is effected in the year 2005. None of house properties are subject matter of the suit. All joint family properties were not made subject matter of the partition suit. Therefore, the suit was liable to be dismissed. Gat Nos.443, 481, 452 of village Rajewadi, Tal.

Atpadi, Dist. Sangli were standing in the name of late Bapu, but these properties are not made subject matter of the suit. Gat No.393 stands in the name of respondent No.5. Suit properties have been jointly recorded in the name of the plaintiffs and defendant No.1 (respondents No.1 to 5). Ld. Trial Court wrongly held that inference of suit properties being joint family properties held by the plaintiffs and defendant No.1 can be drawn. By disputing joint nature of the suit properties and contending partition in the year 1989, it is prayed that impugned judgment and decree may be set aside. It is further prayed that it may be declared that the suit property bearing Gat No.393 of village Rajewadi, Tal. Atpadi, Dist. Sangli is not liable for partition and respondents No.1 to 4 cannot claim any partition of the same. Alternatively, it is prayed to remand the matter to Ld. Trial Court for fresh hearing taking into account fact that the present appellants were not parties to the original suit and they had no opportunity to lead the evidence. Costs of the suit is also claimed.

7] **Ld. Counsel Shri. A. U. Shete for the appellants submitted as under :-**

50% share is shown in the name of defendant No.5 Ramdas in revenue record of Gat No.393. He also referred reference of khata No.487 in 7/12 extract. Though 50% share in Gat No.393 is in the name of respondent No.5, respondents No.1 to 4 have shown entire Gat No.393 in the plaint. He further submitted that Satish and Sarika had purchased Gat No.393 8 Ana share of respondent No.5 Ramdas for consideration of

Rs.3,90,000/- as per sale deed dated 29.12.2009. Accordingly, mutation entry is effected and khata No.584/18 is shown in the name of Satish and Sarika in respect of Gat No.393. Suit is filed on 18.02.2010. Sale deed dated 29.12.2009 is not challenged in the suit. Ramdas and Arjun were shown to have 25% share each in Gat No.393 as per mutation entry No.764 dated 03.04.1989. It reflects partition. When mutation entry No.1367 was effected in respect of other properties, reference of Gat No.443 and 393 was not made therein. After death of Bapu, legal heirs had sold Gat No.481 to Jayashri as per mutation entry No.1477 in the year 1998. Similarly, respondent No.5 Ramdas sold Gat No.443 as per mutation entry No.1227. By giving references of these mutation entries and past sale transactions, he contended that earlier transactions are not disputed. Particulars of earlier partition are not brought on record by respondents No.1 to 4. Suit in respect of previously partitioned properties is not maintainable. Respondents No.6 to 9 are having relationship with respondents No.1 to 5. By harping about these aspects, he contended that collusive suit was filed to frustrate rights of purchasers of Gat No.393. According to him, appeal may be allowed in order to let the appellants to protect their interest in better manner. He reiterated prayers in the appeal and prayed for allowing the appeal.

8] **On the contrary, Ld. Counsel Shri. S. K. Sanadi for respondents No.1 to 4 reiterated developments in the matter and**

submitted as under :-

That suit was filed on 18.02.2010. Mutation entry in favour of purchasers namely Satish and Sarika is effected on 11.01.2010. Decree is drawn on 21.01.2012. He further submitted that sale deed dated 30.12.2009 in favour of Satish and Sarika is executed by respondent No.5. Meanwhile, sale deed dated 04.12.2012 is executed by Sarika in favour of appellant Vidya Ramesh Nandugade and Dilip Vishwanath Nandugade regarding her share in Gat No.393. Satish also executed sale deed dated 04.12.2012 in respect of his share in Gat No.393 in favour of appellant Ramesh Vishwanath Nandugade. By giving reference of these material dates, he contended that the appellants claimed right, title and interest in Gat No.393 on the strength of sale deeds which were executed subsequent to drawing of the decree. According to him, present appeal is not maintainable. He specifically denied any kind of partition in the past. According to him, all properties are ancestral in nature. No consent of sisters was obtained for effecting mutation entry No.764 and it is not evidence of partition. Respondent No.5 executed sale deed of Gat No.393 without consent of sisters. Bar of *lis pendens* to the sale deeds of the year 2012 is applicable. Appeal is not tenable. 7/12 extract and mutation entries are purely for fiscal purpose and they cannot be considered for the purpose of reading particulars of partition. He prayed for dismissal of the appeal.

9] Following points arose for my determination and I have recorded my findings thereon for the reasons stated

thereunder: -

S.N.	Points	Findings
1	Whether the appellants are entitled to come into picture in proceeding of R.C.S. No.15/2010 decided by Ld. Civil Judge, Junior Division, Atpadi, Tal. Atpadi, Dist. Sangli on the strength of sale deeds dated 04.12.2012?	In the Affirmative
2	Whether the appellants are entitled to question legality of impugned judgment and decree qua Gat No.393?	In the Affirmative
3	Whether impugned judgment and decree is liable to be set aside by making interference in findings therein?	Partly in the Affirmative
4	What order ?	As per final order

: R E A S O N S :

As to Points No.1 to 4 :-

10] Considering rival submissions and material on record, it is explicit that Gat No.393 was standing in the name of respondent No.5 and he proceeded to execute sale deed dated 29.12.2009 in favour of Satish and Sarika as referred earlier. Subsequent thereto, respondents No.1 to 4 filed the suit for partition on 18.02.2010. Meanwhile, names of Satish and Sarika were mutated in revenue record of Gat No.393. Thereafter, ex parte proceeding was conducted against respondents No.5 to 9. Then, two sale deeds dated 04.12.2012 came to be executed in favour of the appellants in respect of Gat No.393 as referred earlier. Considering these developments, it is clear that

predecessor in title of the appellants had acquired right, title and interest in Gat No.393 prior to filing of the suit by respondents No.1 to 4 and their names were also mutated in revenue record. Respondents No.1 to 4 had sufficient opportunity to gather knowledge regarding sale transactions between respondent No.5 and predecessor in title of the appellants. Even then, they have feigned ignorance and filed suit for partition without seeking declaration regarding sale deed dated 29.12.2009. It is pertinent to note that respondents No.5 to 9 have not approached this Court by contending or by taking stands that they were or are willing to challenge the impugned judgment and decree. In short, there is scope to believe that respondents No.1 to 9 are hand in gloves with each other.

11] In the light of these developments, it is incumbent to consider legal proposition. As predecessor in title of the appellants had acquired right, title and interest in Gat No.393 prior to the date of the suit, it was necessary for respondents No.1 to 4 to seek relief of declaration regarding illegality of sale deed dated 29.12.2009 or they should have sought relief of cancellation of the sale deed. No such exercise is carried out. Sum and substance of all these developments is that sale deed dated 29.12.2009 is still in force without any challenge and it is not declared to be null and void instrument or it is not declared that the said sale deed is not binding upon respondents No.1 to 4 or all respondents. In such circumstances, the respondents cannot

escape from the effect of sale deed dated 29.12.2009. If they are ever interest in to give go-bye to effect of sale deed dated 29.12.2009, they were expected to approached the Court by seeking specific relief to that effect. In short, they cannot question legality of two sale deeds dated 04.12.2012 on the strength of concept of *lis pendens* without challenging earlier sale deed dated 29.12.2009. The appellants have stepped into shoes of their predecessor in title. As sale deed executed in favour of predecessor in title of the appellants is still in force without any challenge, the appellants are entitled to protect their interest. Admittedly, the appellants and their predecessor in title were not parties to the suit. In short, interest of the appellants and their predecessor in title in Gat No.393 is compromised by obtaining decree for partition by respondents No.1 to 4.

12] Considering these developments, the appellants can be allowed to come into picture before Ld. Trial Court and to protect their interest qua in Gat No.393. For this purpose, appeal can be partly allowed. The appellants can be allowed to be impleaded in the suit proceeding by resorting to Order 1 Rule 10(2) of the Code of Civil Procedure. Impugned judgment and decree can be partly set aside to the extent of Gat No.393. Ld. Trial Court can be directed to conduct hearing in the suit after adding the appellants as defendants in the suit. Ld. Trial Court can appreciate all aspects independently and conduct the trial in the matter. In the result, I record my findings as to points No.1

and 2 in the affirmative, point No.3 partly in the affirmative and in answer to point No.4, I pass the following order :-

: ORDER :

1. Regular Civil Appeal No.455/2024 (old R.C.A. No.149/2022) is partly allowed.
2. Impugned judgment and decree dt.21.01.2012 in Regular Civil Suit No.15/2010 passed by Ld. Civil Judge, Junior Division, Atpadi, Tal. Atpadi, Dist. Sangli is hereby set aside to the extent of Gat No.393 of village Rajewadi, Tal. Atpadi, Dist. Sangli.
3. Ld. Trial Court is directed to implead the appellants in the suit proceeding by resorting to Order 1 Rule 10(2) of the Code of Civil Procedure.
4. Matter is remanded back to Ld. Trial Court with a direction to conduct fresh trial in the suit in respect of rights of parties in Gat No.393 of village Rajewadi, Tal. Atpadi, Dist. Sangli after adding the appellants as the defendants in the suit proceeding.
5. Parties shall appear before Ld. Trial Court on or before 16.02.2026.
6. Parties to bear their own costs.
7. Decree be drawn up accordingly.
8. Record and proceeding of Regular Civil Suit

(Ex.40)

12

R.C.A. No.455/2024 (old RCA No.149/2022) (J)

No.15/2010 shall be sent back to Ld. Trial Court immediately.

9. Regular Civil Appeal No.455/2024 (old R.C.A. No.149/2022) is disposed of accordingly.

(Dictated and pronounced in the open Court)

Vita
dt.05.01.2026

(R.R. Bhagwat)
District Judge– 1, Vita

CERTIFICATE

I affirm that, the contents of this P.D.F file, are same word to word, as per the original order/judgment.

Name of Stenographer	: H.G. Sutar (Steno Grade-I)
Court	: DJ-1 & Addl. Sessions Judge, Vita
Date of order	: 05.01.2026
Signed by Presiding officer on	: 05.01.2026
Uploaded on	: 06.01.2026