

MHOS130015182024



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CNR No. : MHOS13-001-518-2024

IN THE COURT OF 2nd JT. CIVIL JUDGE JUNIOR
DIVISION, BHOOM, TAL. BHOOM, DIST. OSMANABAD.

(Presided Over By : Husna R. Khan)**Reg. Civil Suit No.497/2024****Exh.No.15**

- 1. Siddheshwar Subhash Ware,**
Age : 24 years, Occu.: Agri,
R/o. Chincholi, Tal. Bhoom,
Dist. Osmanabad.
- 2. Padmin Subhash Ware,**
Age : 45 years, Occu.: Agri & Household,
R/o. As above.

.....Plaintiffs.**Versus**

- 1. Subhash Somnath Ware,**
Age : 45 years, Occu.: Agri,
R/o. Chincholi, Tal. Bhoom,
Dist. Osmanabad.
- 2. Rohini Tanaji Khochare,**
Age : 29 years, Occu.: Household,
R/o. Wanjarwadi, Tal. Bhoom,
Dist. Osmanabad.

.....Defendants.

<u>ADVOCATES</u> :	For Plaintiffs	:	Mr. R.B.Salunke
	For Defendant Nos.1 & 2	:	Ex-parte

J U D G M E N T
(Delivered On 15th October, 2024)

Present suit is filed for partition and separate possession in respect of agricultural land in block No.150 adm. 1H-10R situated at village Barhanpur, Tal. Bhoom, Dist. Osmanabad. (*Hereinafter referred as “suit land”*).

The brief facts of plaintiffs case is as under :

02. Plaintiffs and defendants are the members of Hindu joint family. Defendant No.1 is the Karta of the family. Plaintiff No.2 and defendant No.1 are the husband and wife. Plaintiff No.2 is their son and defendant No.2 is their daughter.

03. The suit land is ancestral property of plaintiffs and defendants. They all are in joint possession of suit land and cultivating the same jointly. The 7/12 extract of suit land bears the name of defendant No.1. Apart from suit land, they don't possess any ancestral property or Hindu joint family property. The partition has not taken place between the parties till date. Frequent cruel arose between the parties on account of cultivating the suit land.

04. Defendant No.1 is habitual of alcohol and to fulfill his need, he intended to sell out the suit land without consent of plaintiffs. On 25.06.2024, plaintiffs demanded partition and separate possession of suit land from defendant No.1, for which he refused which led cause of action to file present suit.

05. Inspite of service of summons on defendant No.1 and 2 vide Exh.10 and 12 respectively, they failed to appear hence, suit

proceeded ex-parte against them vide order dated 31.07.2024 and 30.08.2024.

06. To substantiate their claim, plaintiffs have examined plaintiff No.2 as a sole witness vide **Exh.13** and thereby closed their oral evidence by moving evidence closed purshis vide **Exh.14**. Plaintiffs relied upon the documentary evidence in form of Gaon namuna No.8/A of block No.150 at **Exh.7** and 7/12 extract of block No.150 at **Exh.8**.

07. Considering the matter before this Court, following points arise for determination. Findings on them are recorded for decisions to follow:

POINTS FOR DETERMINATION	FINDINGS
1. Whether plaintiffs prove that, suit land is Hindu joint family property of plaintiffs and defendants?	Yes
2. Whether plaintiffs prove that, they are entitled to claim partition? If yes, what is are the shares of parties?	Yes, 1/4th share of each party.
3. What order and decree?	Suit is decreed with costs.

08. Heard learned advocate Mr. R.B.Salunke for plaintiffs. He argued that the suit land is the Hindu joint family property of plaintiffs and defendants and the same is not partitioned yet. Each party has one fourth share in the suit land. Defendant No.1 is habitual of alcohol and under the influence of alcohol, he intends to sell out the suit land. If he succeeded in selling out the suit land, plaintiffs

and defendant No.2 would be deprived from their rights and share in the suit land. He further argued that testimony of plaintiff No.2 has gone unchallenged. It is supported by documentary evidence and no evidence to the contrary is adduced by defendants as they have not contested the suit. Therefore, whatever plaintiffs have stated or deposed before this Court is true and sufficient to establish plaintiff's case and therefore, suit is deserve to be decreed.

R-E-A-S-O-N-S

AS TO POINT NO.1 TO 2 :-

09. These point are interconnected with each other therefore, reasons pertaining to them are taken together for discussion to avoid repetition. Under the Hindu law of inheritance and succession, there is presumption of jointness of family and the one who pleads partition or disruption of joint family status must prove the same. In other wards when relationship between parties inter-se and status of property as the property of Hindu undivided Family (HUF) is not disputed, then it is presumed that it is a HUF. Though there is a presumption of jointness of family but there is no presumption of jointness of property.

10. There are several kinds of properties in Hindu undivided family such as ancestral property, joint family property, co-parcenary property, separate property, self acquired property, absolute property blended into joint family etc. Status of all these properties are distinct, but as present suit does not have any controversy to that effect, the law in that regard is not discussed. Partition is acceptable

only when it is by metes and bounds or when it is with the consent of members of HUF.

11. In the case at hand, plaintiff consistently deposed that the suit land is the Hindu joint family property of plaintiffs and defendants which is not partitioned yet. It is further deposed by plaintiff No.2 that defendant No.1 is trying to sell out the same depriving the shares of plaintiffs. This witness is not cross examined and therefore, her testimonies remained unchallenged. Neither pleadings of plaintiffs is challenged by written statement nor the evidence is challenged either by cross examination or by counter evidence. Therefore, whatever this witness has consistently deposed, appears to be true and I don't find any reason to disbelieve it.

12. Certified copy of gaon Namuna No.8/A, 7/12 extract of suit land are placed on record which substantiate ocular testimony of plaintiff No.2 in regard to nature of suit land. Therefore, there is sufficient, cogent and reliable evidence on record to believe the story of plaintiffs as truth. Plaintiffs have established that, they are having shares in the suit land. Even the aspect of selling out the same by the defendant No.1 is not challenged. Therefore, if plaintiff's right and share over suit land is not protected, they may loss the share and possession over suit land.

13. It is proved that the suit land is the Hindu joint family property of plaintiffs and defendants and each plaintiff and defendant is having $\frac{1}{4}^{\text{th}}$ share in suit land and plaintiffs are entitled for partition and separate possession of their respective share. Finally, I answer point No.1 and 2 in affirmative.

AS TO POINT NO.3 :-

14. Decision supra reveals that suit deserves to be decreed. General rule is that the victorious party gets the cost from losing party. I don't find any specially reason to deviate from the general rule. Therefore, defendants shall be directed to pay cost of this suit to the plaintiffs. Finally, I answer point No.3 as suit is decreed with costs and proceed to pass following order:

ORDER

1. Suit is decreed with costs.
2. Each Plaintiff and defendants is entitled to have $\frac{1}{4}^{\text{th}}$ share in suit land i.e. agricultural land in block No.150 adm. 1H-10R situated at village Barhanpur, Tal. Bhoom, Dist. Osmanabad.
3. Defendants shall bear their costs and pay costs of this suit to plaintiffs.
4. As per section 54 and Order XX Rule 18(1) of the Code of Civil Procedure, 1908, a preliminary decree shall be sent to Collector, Osmanabad for effect partition of suit land supra which is agricultural land asses to land revenue and putting in possession of his respective share supra as per decree.
5. Preliminary decree shall be drawn up accordingly.

(Judgment delivered and pronounced in open Court.)

Place :- Bhoom.

Date :- 15.10.2024

(**Husna R. Khan**)
2nd Jt. Civil Judge Jr. Dn.,
Bhoom.

C E R T I F I C A T E

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

Name of Stenographer	...	N. V. Koli Stenographer Grade-3
Name of Court	...	2 nd Jt. Civil Court Jr. Dn., Bhoom.
Judgment Date	...	15.10.2024
Judgment signed by the Presiding Officer on	...	15.10.2024
Judgment uploaded on	...	16.10.2024