

MHRT070010642021



Received on - 27.09.2021

Registered on - 27.09.2021

Decided on - 10.05.2024

Duration - Ys. Ms. Ds.

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**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,
AT : CHIPLUN, DIST. RATNAGIRI**

(Presided Over By : Prasanna R. Kulkarni)

(JUDGMENT DELIVERED ON 10.05.2024)

**Regular Civil Suit No.63/2021
Exhibit No.53**

- Plaintiff - **Mahadeo Laxman Sawant,**
Age 77 years, Occu. Farmer.
R/o. Kharavate, Tal. Chiplun,
Dist. Ratnagiri.
- Advocate - Shri. J. K. Relekar
- Defendants - 1) **Santosh Sadashiv Sawant,**
Age 60 years, Occu. Service,
R/o. Konkan Vaibhav Chawal,
Sambhaji Nagar, Ravalpada, Dahisar (E)
- 2) **Sandesh Sadashiv Sawant,**
Age 51 years, Occu. Farmer,
R/o.Kharavate, Tal.Chiplun,
Dist.Ratnagiri.
- 3) **Sou. Deepali Deepak Sakpal,**
Age 55 years, Occu. Housewife,
R/o.Devghar, Tal.Guhagar,
Dist.Ratnagiri
- 4) **Uday Keshav Sawant,**
Age 47 years, Occu. Teacher,
R/o. G.G.Bhosale Chawal, Vakola
Bridge, Near Datt Temple, Dimelo
Compound, Santacruz (E).

- 5) **Ulhas Keshav Sawant,**
Age 45 years, Occu. Service,
R/o. G.G.Bhosale Chawal, Vakola
Bridge, Near Datt Temple, Dimelo
Compound, Santacruz (E).
- 6) **Umesh Keshav Sawant,**
Age 38 years, Occu. Service,
R/o. G.G.Bhosale Chawal, Vakola
Bridge, Near Datt Temple, Dimelo
Compound, Santacruz (E).
- 7) **Usha Keshav Sawant,**
Age 36 years, Occu. Housewife,
R/o. G.G.Bhosale Chawal, Vakola
Bridge, Near Datt Temple, Dimelo
Compound, Santacruz (E).
- 8) **Ketan Suresh Sawant,**
Age 22 years, Occu. Service,
R/o. Room No.3, Garuda Apartment,
Bivi Mishra Compound, Sahakar Nagar,
Jivdani Kos Road, Virar (E)
- 9) **Smita Ashok Mayavanshi,**
Alias Smita Suresh Sawant ,
Age 32 years, Occu. Housewife,
R/o. Room No.3, Garuda Apartment,
Bivi Mishra Compound, Sahakar Nagar,
Jivdani Kos Road, Virar (E).
- 10) **Aashlesha Arun Varik,**
Alias Aashlesha Suresh Sawant ,
Age 30 years, Occu. Housewife,
R/o. Room No.3, Garuda Apartment,
Bivi Mishra Compound, Sahakar Nagar,
Jivdani Kos Road, Virar (E)

- 11) **Shital Eknath Sapne,**
Alias Shital Suresh Sawant ,
Age 25 years, Occu. Housewife,
R/o. Room No.3, Garuda Apartment,
Bivi Mishra Compound, Sahakar Nagar,
Jivdani Kos Road, Virar (E)
- 12) **Ranjana Lalit Mayavanshi,**
Alias Ranjana Suresh Sawant ,
Age 25 years, Occu. Housewife,
R/o. Room No.3, Garuda Apartment,
Bivi Mishra Compound, Sahakar Nagar,
Jivdani Kos Road, Virar (E)
- 13) **Manohar Mahipatrao Ghag,**
Age 70 years, Occu. Retired,
R/o. Sidharth Residency, Room No.1,
Sr.No.243/8/10, D.P Road, Aundh,
Near Medipoint Hospital, Pune 07
- 14) **Swapnil Satish Ghag,**
Age 36 years, Occu. Service,
R/o. 72/1/A, Suryanagari Society,
Room No.16, B Wing, A4, PCMC
Garden, Pimpale Gurav, Pune
- 15) **Aatish Satish Ghag,**
Age 32 years, Occu. Service,
R/o. 72/1/A, Suryanagari Society,
Room No.16, B Wing, A4, PCMC
Garden, Pimpale Gurav, Pune
- 16) **Rekha Satish Ghag,**
Age 55 years, Occu. Housewife,
R/o. 72/1/A, Suryanagari Society,
Room No.16, B Wing, A4, PCMC
Garden, Pimpale Gurav, Pune

17) Geeta Ramakant Dalavi,
Alias Prabhavati Mahipatrao Ghag,
Age 68 years, Occu. Housewife,
R/o.15/8, Gopi Tank Road, Back side of
City Light Cinema, Ram Wadi, Mahim
West, Mumbai 16

Advocate - Shri. S . N. Mohite for 1 to 3
Shri. J. K. Relekar for 4 to 17

Claim : The suit for partition and declaration.

This is a suit for partition and declaration.

The suit property -

2. The property situated at Kharavate, Tal. Chiplun,
Dist. Ratnagiri which is a part of -

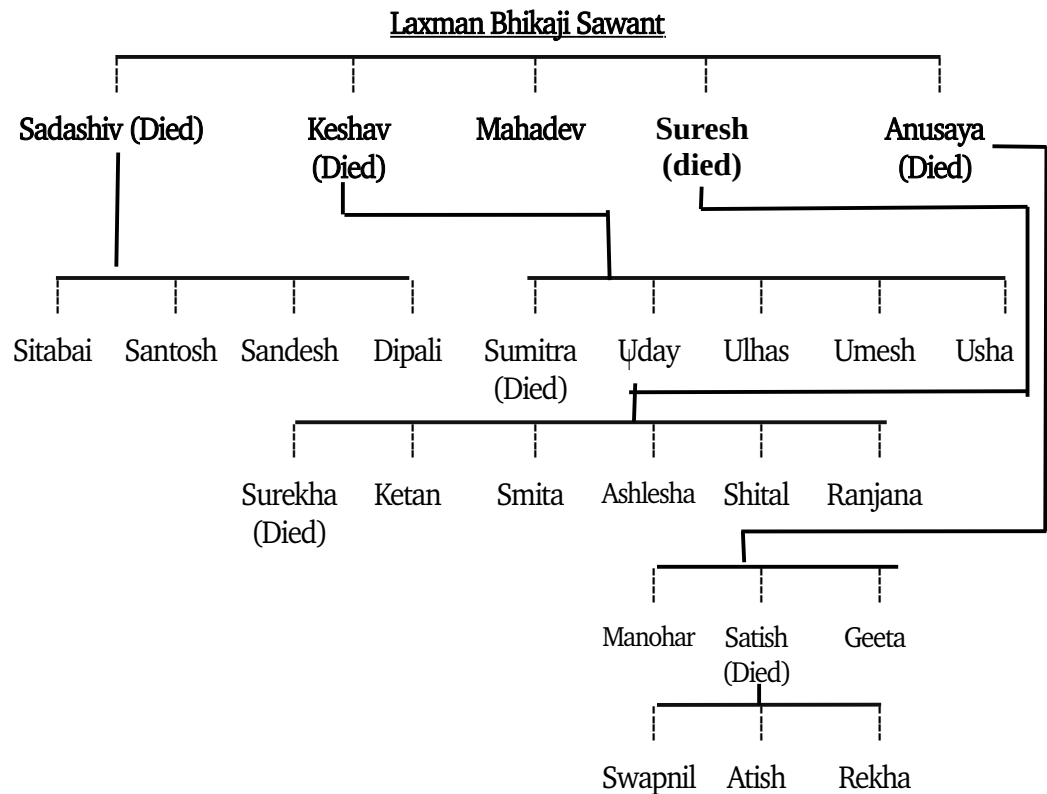
Sr.No.	Place Name	Survey Number	Area	Land Revenue
1.	Bombicha Aad	2206	0.04.50	0.37
2.	Sutake	440	0.02.80	0.19
3.	Dhawade	480	0.41.00	0.17
4.	Kupedecha Mal	601	0.31.00	0.10
5	--	60/3	0.02.00	0.02

(Hereinafter these properties are referred as '*suit property*' for brevity).

The plaintiff's case in nutshell is as under ;

3. In the year 1970 consolidations scheme was worked out at village Kharvate. The suit property is the joint family property of plaintiff and defendants. They were initially owned by Laxman Bhikaji Sawant. After his death, those were

succeeded by Sadashiv Laxman Sawant, Mahadeo Laxman Sawant, Keshav Laxman Sawant, Suresh Laxman Sawant and daughter Anusaya. For proper understand the family tree is elaborated here below -



4. After consolidation, the property ought to have been recorded in the name of all the legal heirs of Laxman Bhikaji Sawant. However, it was only recorded in the name of Sadashiv Laxman Sawant Said entry was continued further. The 7/12 extract disclose the names of all legal representatives of Sadashiv even after the death of all the hairs of Laxman as narrated in family diagram. Yet no partition effected therefore property is still joint family property of plaintiff and defendants. Being so, the suit for declaration of status in respect of suit property.

5. The defendants nos.1 to 3, at Exh.22 ; defendants nos.4, 5 and 8 at Exh.25 and defendants nos.6, 7, 9 to 17 at Exh.28 have admitted the claim by filing their purshis respectively.

6. Perused the record. Heard, the learned advocates at length. On the basis of material on record and pleading, following points arise for my determination and I have recorded my findings for the reasons given below -

NO.	ISSUES	FINDINGS
1)	Does plaintiff prove that, suit properties are joint family properties of plaintiff and defendants ?	Partly yes.
2)	Whether plaintiff is entitled for the relief of declaration ?	Partly yes.
3)	What order and decree ?	The suit is partly decreed.

REASONS

7. LIST OF PLAINTIFFS EVIDENCE –

RANK	NAME	NATURE OF EVIDENCE
PW1	Shri. Mahadev Laxman Sawant (Exh. 31)	The plaintiff.

8. LIST OF PLAINTIFFS DOCUMENTS -

Sr. No.	Exhibit No.	Description
1	6	Extract No.8
2	7	7/12 Extract of Survey No.2206
3	8	7/12 Extract of Survey No.440
4	9	7/12 Extract of Survey No.480
5	10	7/12 Extract of Survey No.601
6	11	7/12 Extract of Survey No.60/3
7	12	Extract of consolidation scheme.
7	40	Death certificate of Laxman Bhikaji Sawant
8	41	Letter of Talathi Office, Kharvate

10	34	Tahasildar, Chiplun Letter on dt.11.08.2022.
11	42	Copy of Mutation register bearing Mutation No. Reg.no.230.
12	43	Extract No. 6(c)
13	45	Evidence Close Purshis.

9. The defendants neither entered in the witness box nor adduced any evidence. By passing order below Exh.1, their evidence was closed.

AS TO ISSUE NO. 01 -

10. The suit is for declaration. As per section 34 of Specific Relief Act, the person entitled for right or status, can claim it's declaration against them who have denied such existence. As per the plaintiff's contention, the existence of jointness of the suit property is under investigation. The plaintiff specified that, the suit properties are joint family property of plaintiff and defendants. It is admitted position that parties are Hindu governed by Mitakshara school. It is the cardinal principle that Hindu family is presumed to be joint unless contrary is proved. In this case plaintiff contention that, suit properties are their joint family properties. The presumption narrated above though favours plaintiff, however in support of such presumption, party must have to lead his evidence.

11. The plaintiff has examined himself at Exh.31. He deposed on oath that though in consolidation scheme in the year 1970, the suit properties were recorded in the name of Sadashiv Laxman Sawant, however all his brothers and sisters who are predecessor in title of plaintiff and defendants, holding it as a joint family property. In this regard, he emphasised on the

revenue record. The 7/12 extract annexed below Exh.06 to 11 shows the names of heirs of Sadashiv Laxman Sawant. Moreover, the consolidation scheme extract at Exh.12 shows the name of Sadashiv Laxman Sawant. The revenue records though shows the names of heirs of Sadashiv Laxman Sawant, it is well settled position that for the relief of declaration of ownership, entries in the revenue record can not considered as proof of title. Those entries are only meant for the fiscal purpose of collecting taxes. Therefore, the admission at the hands of legal representatives of Sadashiv i.e. defendants nos.1 to 3 are stands on upper footing. At Exh.22, they have admitted the claim of plaintiff. It means they have admitted the nature of property as a joint family property. This admission which is filed in writing have bearing to decide nature of the property.

12. As per Section 17 and 59 of Indian Evidence Act, though admissions are not conclusion proof. However, those facts which are admitted need not be proved. Moreover, declaration can be granted on the basis of clear cut and unambiguous admission. More particularly other defendants, vide Exh.25 and 28, have also admitted the said nature. Apart from this, the testimony of plaintiff remains unchallenged and no one has step forward to cross-examine him. Therefore, in absence of denial and cross-examination, there is no reason to disbelieve the testimony of the plaintiff.

13. The collective discussion as above shows that, the suit properties having nature of joint family property. However, in respect of land block no.60/3, in the 7/12 extract at Exh.11 name of one Bhiva Vishram Ghag is appearing. This Bhiva is neither party to this suit nor any specification is given about his

rights in said property. Therefore, by passing order below Exh.1, clarification was called out. Accordingly by filing purshis at Exh.52, the plaintiff has relinquished his right and claim in respect of block no.60/3. In view of said relinquishment, the property block no.60/3 does not remain part of this suit for the relief of declaration. In the right of discussion supra and admissions at the hands of defendants, there is no hesitation in mind that the suit property except land block no.60/3 is joint family property of plaintiff and defendants. **Hence, I answered issue no.1 is partly affirmative.**

AS TO ISSUE NO.02 -

14. As per section 34 of the Specific Relief Act, declaration of status of the property was claimed. While answering issue no.1, I have been concluded that the suit properties except block no.60/3 are the joint family property of plaintiff. Being so plaintiff is entitled to for relief of declaration of jointness of the suit property except suit property block no.60/3. **Hence, I answered point no.2 in partly affirmative.**

AS TO ISSUE NO.03 -

15. The plaintiff has proved the nature of suit property as a joint family property, except land block no.60/3. Therefore, he is entitled for the declaration of relief of said declaration except land block no.60/3. Hence, the suit is deserving to be party decreed. Considering the nature of proceeding, it is necessary to bear the costs of the proceeding by both parties respectively by there owns. Hence, I pass following order -

ORDER

1. The suit is partly decreed.
2. It is hereby declared that the suit property except block no.60/3 is a joint property of plaintiff and defendants no.1 to 17.
3. Parties to bear their own costs.
4. Decree be drawn up accordingly.

(Dictated and pronounced in an open Court.)

Date : 10.05.2024
Place : Chiplun

[Prasanna R. Kulkarni]
Civil Judge, Junior Division,
Chiplun.

Certificate

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

Name of Stenographer	Mr. S. J. Thorat
Name of Court	C.J.J.D. & J.M.F.C., Chiplun.
Date of publish	10.05.2024
Order Signed by the P.O. on	10.05.2024
Order Uploaded on	03.07.2024