



RCS 70/2022
...1.... Mehmudabi Shaikh V/s Aapshanbi Pathan
CNR No. MHPA190008662022

Filed on 02/11/2022
Registered on 02/11/2022
Decided on 04/08/2023
Duration Y M D
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PART-"A"

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, MANWAT,
DISTRICT PARBHANI
(Presided over by G. A. Karajgar)**

R.C.S. No. 70/2022

Exhibit No. 20

PLAINTIFF -

1) Mehmudabi Halim Shaikh,
Age 45 years, Occupation Household Duties,
R/o. Devdahiphal, Taluka Dharur,
District Beed
2) Rashidabi Ahmedkhan Pathan,
Age 40 years, Occupation Household Duties,
R/o. Palodi, Taluka Manwat,
District Parbhani
Now R/o. Devdahiphal, Taluka Dharur,
District Beed

DEFENDANT -

1) Aapshanbi Ahmedkhan Pathan,
Age 70 years, Occupation Agriculture,
2) Mushtaqkhan Ahmedkhan Pathan,
Age 55 years, Occupation Agriculture,
3) Irfankhan Ahmedkhan Pathan,
Age 53 years, Occupation Agriculture,
4) Aashpakhan Ahmedkhan Pathan,
Age 40 years, Occupation Agriculture,
All R/o. Palodi, Taluka Manwat, District Parbhani

Suit for declaration of share

V.O.S.M. Rs. 1,000/-

Appearances

Adv. S. A. Shaikh for Plaintiffs

Adv. S. A. Khaja Pasha for defendants

PART "B"

Date of filing of suit	02/11/2022
Date of registration of suit	02/11/2022
Date of framing of issues	-
Date of commencement of hearing of suit	20/06/2023
Date on which judgment is reserved	15/07/2023
Date of judgment	04/08/2023

PLAINTIFF'S DETAILS

Sr. No.	Name of plaintiff	Date of filing of suit	Date of commencement of evidence	Suit under Section	Result of suit
1	Mehmudabi Halim Shaikh	02/11/2022	20/06/2023	Suit for declaration of share	Suit is decreed
2	Rashidabi Ahmedkhan Pathan	02/11/2022	20/06/2023	Suit for declaration of share	Suit is decreed

DEFENDANT'S DETAILS

Sr. No.	Name of defendant	Date of service of summons	Date of appearance	Suit under Section	Result of suit
1	Aapshanbi Ahmedkhan Pathan	25/11/2022	05/12/2022	Suit for declaration of share	Suit is decreed
2	Mushtaqkha	25/11/2022	05/12/2022	Suit for	Suit is

	n Ahmedkhan Pathan	2	2	declaration of share	decree d
3	Irfankhan Ahmedkhan Pathan	25/11/202 2	05/12/202 2	Suit for declaration of share	Suit is decree d
4	Aashpakhan Ahmedkhan Pathan	25/11/202 2	05/12/202 2	Suit for declaration of share	Suit is decree d

PART "C"

PLAINTIFF'S EVIDENCE

RANK	NAME	EXH.NO
P.W.1	Mehmodabi Halim Shaikh	10

LIST OF DOCUMENTS FILED BY PLAINTIFF

Sr. No.	Exh. No.	Description of document
1	11	Account No. 65222 extract at Palodi, Taluka Manwat
2	12	7/12 extract of Gat No. 282 at Palodi, Taluka Manwat
3	13	Account No. 631 extract at Palodi, Taluka Manwat
4	14	7/12 extract of Gat No. 318 at Palodi, Taluka Manwat
5	15	Mutation Entry No.1685
6	18	Heirship Certificate issued as per order in Civil M.A.No.412/2021 on 23/11/2021

Plaintiff has filed evidence close pursis at Exh. 19.

DEFENDANT'S EVIDENCE

RANK	NAME	EXH.NO
-	-	-

LIST OF DOCUMENTS FILED BY DEFENDANT

Sr. No.	Exh. No.	Description of document
-	-	-

Defendant's evidence closed vide order below Exh. 1 on
15/7/2023.

JUDGMENT
(Declared on 04/08/2023)

This suit is filed for declaration of share.

2. Suit Property: 1A) Land bearing Gat No. 282, admeasuring Hector 2.04 Are, Pot Kharab Hector 0.10 Are totally admeasuring Hector 2.04 Are, assessed at Rs. 4.81 Paise, having four boundaries - towards east - Property of Jameer Gafar, towards west - Property of Shakerkhan and others, towards south - Property of Mujjamil Ansar and others, towards north - Property of Shamat Pasha and others.

1B) Land bearing Gat No. 318, admeasuring Hector 7.81 Are, Pot Kharab Hector 0.10 Are totally admeasuring Hector 7.91 Are, assessed at Rs. 17.67 Paise, out of it land admeasuring Hector 1.58 Are, Pot Kharab Hector 0.10 Are, assessed at Rs. 17.67 Paise, having four boundaries - towards east - *Pandan* road, towards west - Property of Latif and others, towards south - Property of Majjid and others, towards north - Property of Miyakhan and others.

3. Plaintiffs state that they and defendants No. 2 to 4 are brothers and sisters and defendant No. 1 is their mother. Husband of defendant No.1, father of plaintiffs and defendants No. 2 to 4 Ahmedkhan Umarkhan Pathan died on 23/4/2021 at Palodi, Taluka Manwat, District Parbhani. The Court has granted Heirship Certificate as per order in Civil Miscellaenous Application No. 112/2021 in favour of plaintiffs and defendants. Suit property is ancestral and joint family property of plaintiffs and defendants. Ahmedkhan Umarkhan Pathan was previous owner of suit property. Names of plaintiffs and defendants were entered in record of rights in common. Defendants used to give crops share to plaintiffs. Defendants have not given share of crops to plaintiffs in 2022. Plaintiffs asked for their share from

defendants on 25/10/2022. But they denied it. Therefore, plaintiff has filed this suit for declaration of their share in suit property.

3. Defendants No. 1 to 4 were served with suit summons Exh. 6 on 25/11/2022. Adv. Syed Azeem Khaja Pasha appeared for them on 05/12/2022. Defendants have failed to file their written statement within statutory period. Suit ordered to be proceeded without their written statement vide order passed below Exh. 1 on 18/4/2023.

4. On perusal of pleading and documents filed by plaintiffs, evidence adduced by them, following issues arise for my consideration to which I have given finding with reasons as under -

Sr. No.	Issues	Finding
1	Do plaintiffs prove that they are entitled for share in suit property? What is their share?	Yes
2	What order and decree?	Suit is decreed

REASONS

As to Issue No.1

5. To avoid repetition of facts, I have discussed all the issues together. Plaintiff No. 1 has examined herself and stated on oath that they and defendants No. 2 to 4 are brothers and sisters and defendant No. 1 is their mother. Husband of defendant No.1, father of plaintiffs and defendants No. 2 to 4 Ahmedkhan Umarkhan Pathan died on 23/4/2021 at Palodi, Taluka Manwat, District Parbhani. The Court has granted Heirship Certificate as per order in Civil Miscellaenous Application No. 112/2021 in favour of plaintiffs and defendants. Suit property is ancestral and joint family property of plaintiffs and defendants. Ahmedkhan Umarkhan Pathan was previous owner of suit property. Names of plaintiffs and defendants were entered in record of rights in common. Defendants used to give crops share to plaintiffs. Defendants have not given share of crops to plaintiffs in 2022. Plaintiffs asked for their share from defendants on 25/10/2022. But

they denied it. Therefore, plaintiff has filed this suit for declaration of their share in suit property.

6. There is no concept of ancestral, joint family property under Mohammedan Law. Muslim Law recognizes two types of heirs, sharers and residuaries. Sharers are entitled to certain share in deceased's property. Residuaries would take up the share in property left over after sharers have taken their part. Wife takes $1/4^{\text{th}}$ share where there are no lineal descendants. She takes $1/8^{\text{th}}$ share if there are lineal descendants. Where deceased has left sole daughter, she takes $1/2^{\text{th}}$ share. If deceased left more than one daughter, all daughters jointly take $2/3^{\text{rd}}$ share. If deceased left sons and daughters, then daughters ceased to be sharers and they become residuaries. Sons get double of what each daughter gets.

7. Heirship Certificate is issued to recognize heirs of deceased. It is issued for limited purpose only. Heirship certificates are not conclusive to determine the legitimate class of heirs of deceased under law of succession or title of heirs to disputed property belonging to deceased. Grant of heirship certificate is subject to the declaration of the court.

8. In the present case, Ahmedkhan Umarkhan Pathan was previous owner of suit property. Defendant No. 1 is his wife, Plaintiffs are his daughters, defendants No. 2 to 4 are his sons. Thus, as per the above rules of succession, defendant No. 1 is entitled for $8/64^{\text{th}}$ share, plaintiffs are entitled for $7/64^{\text{th}}$ share each, defendants No. 2 to 4 are entitled for share $14/64^{\text{th}}$ each in the suit property. Suit deserves to be decreed. Therefore, I have answered issue No. 1 in affirmative and for issue No.2, I proceed to pass the following order-

ORDER

1. Suit is decreed.
2. Plaintiffs are entitled for $7/64^{\text{th}}$ share each, defendants No. 2 to 4 are entitled for share $14/64^{\text{th}}$ each in the suit property.

3. No order as to costs.
4. Decree be drawn up accordingly.

Manwat.
Date: 04/08/2023

(G. A. Karajgar)
C. J. J. D., Manwat.

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Mehmudabi Shaikh V/s Aapshanbi Pathan

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