

MHAH010015402019



Presented on : 22.02.2019

Registered on : 26.02.2019

Decided on : **05.05.2026**

Duration : Y. M. D.  
07 02 13

**IN THE COURT OF DISTRICT JUDGE-5,**  
**AT : AHMEDNAGAR, DIST. AHMEDNAGAR.**

( Presided over by **Shri. Rajesh M. Tayade** )

**REGULAR CIVIL APPEAL No. 89/2019**

**Exh. 38**

**(CNR : MHAH01001540-2019)**

<b>1.</b>	<b>Smt. Parvati Madanlal Tasgaonkar</b> (Deceased)	) )	
<b>2.</b>	<b>Mr. Umesh Madanlal Tasgaonkar</b> Age-56 year, Occ. Business	) )	<b>..Appellants</b> (Ori. Plaintiffs)
	R/o. B-9, Shradha Apartment, 78, Railway Lines, Near St. Joseph Highschool, Solapur-413001.	) ) )	
	<b><u>VERSUS</u></b>		
<b>1.</b>	<b>Vijaykumar Madanlal Varma</b> (Deceased)	) )	
<b>1a.</b>	<b>Shobha Vijaykumar Varma</b> Age- 64 years, Occ. Business.	) )	
<b>1b.</b>	<b>Vaishali Vijaykumar Varma</b> Age- 35 years, Occ. Household	) )	
<b>1c.</b>	<b>Vishal Vijaykumar Varma</b> Age- 33 years, Occ. Business.	) )	
	All r/o. East of Kailas, New Delhi.	) )	

2.	<b>Ramesh Madanlal Tasgaonkar</b> Age- 69 years, Occ. Service	) )	
	R/o. 32, Middle Wich road, Nantwich, CW-5, 6HL, Nantwich, England, United Kingdom.	) ) )	
3.	<b>Dr. Ranjana Sandip Thalia</b> Age- 50 years, Occ. Medical Practitioner,	) ) )	
	R/o. Jyoti Building, Rambaug, Lane no.4, Near Janta Sahakari Bank, Kalyan (West), Dist. Thane.	) ) )	
4.	<b>Vilas Kundlik Jadhav</b> Age- 44 years, Occ. Business & Agril.	) ) )	
	R/o. Jadhav Mala, Behind Ajay Gas Godown, Burudgaon road, Ahmednagar.	) ) )	
5.	<b>Adam Ahmed Shaikh</b> Age- 45 years, Occ. Business.	) )	
	R/o. Azadnagar, Near V.R.D.E., Ahmednagar.	) )	<b><u>..Respondents</u></b> (Ori. Defendants)

.....

**: Advocates appeared :**

Shri. S.J. Kakade, Ld. Adv. for Appellant.

Shri. P.B. Mhaske, Ld. Adv. for Respondent nos.2 & 3.

Shri. P.K. Meher, Ld. Adv. for Respondent nos.4 & 5.

**Exparte** against Respondent nos.1a to 1c.

.....

**APPEAL : Under Section 96 of the Code of Civil Procedure.**

**: J U D G M E N T :**  
**( Delivered on 05<sup>th</sup> May, 2026 )**

This is Regular Civil Appeal filed by the appellant i.e. original plaintiff against the Judgment and Decree passed in Special Civil Suit no. 293/2011 by 2<sup>nd</sup> Jt. Civil Judge Senior Division, Ahmednagar on 18.01.2019. The appellant is the original plaintiff and respondents are the original defendants in the suit. The plaintiff filed suit for partition and separate possession in respect of suit property. The Ld. Trial Court dismissed the suit. Against the said Judgment and decree, present appeal is filed.

*(For better understanding, the parties herein are referred by their original nomenclature in the suit as plaintiff and defendant).*

**2. The facts of the case are as under :-**

The non-agricultural plot no.4 out of S.no.131/3 admeasuring 487.68 Sq.M. situated at Kedgaon, Tal. & Dist. Ahmednagar, described in plaint para-1 is the suit property.

The father of the plaintiff no.2, defendant no.2 and 3 namely Madanlal was the Karta of the joint Hindu family. He was expired on 02.03.2004. The plaintiff no.1 is the mother of plaintiff no.2 and defendant no.3. The deceased defendant no.1 was son of plaintiff no.1 and deceased Madanlal. Defendant no.1 was expired on 16.12.2008. Defendant no.1A to 1C are legal heirs of defendant no.1. Deceased Madanlal was serving in Maharashtra police department. Madanlal changed his surname from Varma to Tasgaonkar. As per the Gazette dated 30.06.1971, therefore, plaintiff, defendant nos.2 and 3 having their surname as

Tasgaonkar. The defendant no.1 has named as a Varma in all official record. Madanlal was purchased suit property in the name of his elder son defendant no.1 towards the family arrangement on 12.11.1986. Madanlal paid entire consideration amount of Rs. 40,000/- by issuing two cheques bearing no.682412, dated 06.10.1986, 682414 dated 12.11.1986 for Rs.10,000/- and 30,000/- from his saving account of State of Bank of India.

3. Madanlal purchased suit property in the name of defendant no.1 by way of sale-deed from Suryakant and Dipak Muttha. As per the sale-deed, the name of defendant no.1 was recorded in the 7/12 extract and possession also handed over to him. Defendant no.1 was out of India for his hotel business, therefore, he was residing there for considerable time. The family of deceased Madanlal was of joint Hindu family. Defendant nos.1A to 1C were residing at Ahmednagar. Defendant no.1B and 1C studied at Ahmednagar. All expenditure of their education and livelihood were borne by deceased Madanlal.

4. There was understanding between the parties that suit property though purchased in the name of defendant no.1 was joint Hindu family property. Therefore, each member of joint Hindu family of Madanlal having a share in the suit property. Defendant no.1 had agreed the said fact. Defendant nos.1A to 1C have no any objection to said fact. Defendant no.1 was assured all family members to record their names in 7/12 extract of the suit property but due to out of India, defendant could not record the

names of the family members.

5. Madanlal was expired on 02.03.2004. Defendant no.1 was settled at New Delhi. He was doing hotel business. He was not in position to come at Ahmednagar and record the names of family members in the record of rights. Defendant no.1 was expired on 16.12.2008 at New Delhi. Defendant nos.2 and 3 have requested to defendant no.1A to enter their names to record of rights along with defendant nos.1 to 3 but she did not record their names. Therefore, plaintiffs, defendant no.1 to 3 each having 1/5<sup>th</sup> share in the suit property.

6. The consideration amount of the suit property was paid by deceased Madanlal. Taxes of the suit property were also paid by plaintiff on every year. Defendant no.1 has not deposited tax to revenue authority. He had not visited the suit property in his life time. The plaintiff no.1 had take care of the suit property after demise of Madanlal. Plaintiffs came to know that defendant no.1A had entered his name and name of the defendant no.1C in the right of record of the suit property vide M.E.no.4191. Defendant no.1B having a share but her name is not recorded in the record of rights. Defendant no.1A does not want to give share to the plaintiff and defendant nos.2 and 3. Defendant no.1A tried to alienate the suit property.

7. Defendant no.1A executed registered sale-deed on 24.01.2012 for consideration amount of Rs.21,46,000/- for herself

and general power of attorney holder of defendant no.1C in favour of defendant no.4 and 5. The plaintiff has issued public notice in 'Daily Samachar' on 02.10.2011 and registered les-pendency before Sub-Registrar on 22.11.2011. But the defendant no.1A handed over the possession of the suit property to defendant nos.4 and 5. Therefore, the plaintiff wants declaration that the sale-deed executed in favour of defendant nos.4 and 5 is illegal and not binding upon the plaintiff. Hence, the plaintiff filed this suit for declaration, partition, separate possession and permanent injunction.

**CASE OF THE DEFENDANTS :**

8. The defendant nos.2 and 3 admitted the suit of plaintiff by filing pursis at Exh.32 and 12.

Defendant no.1A and 1C have resisted the suit by filing their written-statement below Exh.67. It is the contentions of defendant nos.1A & 1C that the plaintiff had not paid court fees stamp and filed suit without any cause of action. They admitted their relationship with the plaintiff. The suit property is self-acquired property of deceased defendant no.1. Defendant no.1 had purchased suit property for his self earning. Madanlal had not paid any amount for purchasing the suit property. The plaintiff never incurred expenses of livelihood and education of defendant nos.1B & 1C. Plaintiffs have never request to enter the defendant's name in suit property. Mutation entry no.4191 was effected in the name of defendant no.1A and 1C after due procedure of law.

9. Defendant no.1B has relinquished her right in the suit property in favour of defendant no.1A and 1C after executing registered relinquishment deed on 24.01.2012 before Sub-Registrar office, Ahmednagar. Defendant no.1A and 1C sold out suit property on 24.01.2012 to defendant no.4 and 5. They have sold suit property prior to receipt of summons. Therefore, plaintiff filed this false suit. Hence, they prayed to dismiss the suit.

10. Defendant no.4 has filed his written-statement below Exh.64. Defendant no.5 has accepted the written-statement of defendant no.4 by filing pursis below Exh.77. They submitted that suit filed by the plaintiff is not within the limitation. They have never complained about the alleged joint family till filing of suit. There was no joint family of deceased defendant no.1 and his father Madanlal. Defendant no.1 has separate source of income. He had purchased suit property from his self income. Therefore, his name was recorded to the record of rights. Plaintiff, defendant no.2 and 3 have knowledge that suit property was self-acquired property of defendant no.1. Therefore, he never tried to record their names in the right of record of the suit property. Plaintiffs have paid taxes on behalf of the defendant no.1 as he was residing out of station. Defendant no.1 and 2 have no any concern or possession over the suit property.

11. Defendant no.1A and 1B intending to sell the suit property. Defendant no.4 and 5 purchased the suit property. They have verified the sale-deed dated 12.11.1986. The name of the

defendant no.1 was recorded in the right of record. After his demise, the name of defendant no.1A and 1B came on record as a legal heirs. Therefore, defendant nos.4 and 5 are bonafide purchasers of the suit property. Hence, they prayed to dismissed the suit.

12. Defendant no.1B failed to appear in the suit, hence, the suit was proceeded exparte against him. During pendency of the suit, plaintiff no.1 was expired on 02.01.2018.

13. The Ld. Trial Court considered the evidence of both the parties, documents filed on record and pleadings of both the parties, finally dismissed the suit. Hence, the present appeal is filed by the plaintiffs on various grounds.

It is the submission of appellant that the Judgment and decree passed by Ld. Trial Court is wrong, illegal and deserves to be set-aside. The Ld. Trial Court has not properly framed issues and given wrong findings. The Ld. Trial Court has not considered legal aspect of the matter. The Ld. Trial Court erred in holding that the plaintiff failed to prove the suit property is the joint Hindu family property. The Ld. Trial Court erred in holding that defendant no.1A to 1C, 4 and 5 proved that suit property is the self-acquired property of defendant no.1. The Ld. Trial Court ought to have considered that the plaintiff is entitled for declaration, partition and permanent injunction. The Ld. Trial Court ought to have considered that the sale-deed dated 24.01.2012 executed in favour of defendant no.4 and 5 is illegal and not binding upon their

shares. The Ld. Trial Court has not considered the evidence of the parties properly. The Ld. Trial Court ought to have held that the plaintiff has proved on record that the suit property is joint family property and is entitled for partition. The Ld. Trial Court has not considered the cross-examination of defendant no.1A Shobha that she admitted that the consideration amount was paid from saving account of Madanlal by way of cheques. On all various grounds, the appellant prayed to allow the appeal and decreed the suit in his favour.

14. After service of notice at Exh. 29 to 31 to the respondent nos.1A to 1C, they failed to appear, hence, matter was proceeded exparte against them.

15. After service of notice to respondent nos.2 and 3, they appeared before the Court through their advocates and filed their written reply to the appeal at Exh.23 and 26. They have given no objection to allow the appeal.

16. After service of notice to respondent nos.4 and 5, they appeared before the Court through their advocates and filed their reply at Exh.36. They submitted that they have bonafide purchasers of the suit property. They purchased suit property by way of registered sale-deed from defendant no.1A and 1C. Therefore, this is a self-acquired property of defendant no.1A and 1C, therefore, the plaintiff is not entitled for relief of declaration, partition, possession and permanent injunction. Therefore, the Judgment and

decree passed by the Ld. Trial Court is legal and proper and no need to interference. Hence, they prayed to dismiss the Appeal.

17. Heard Ld. Advocate for the appellant and Ld. Advocate for the respondent at considerable length.

18. In view of the pleadings of both the parties, appeal memo and considering the documents filed on record, following points arise for my determination and I answer those points along with reasons as under-

<b><u>Sr. No.</u></b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Does the plaintiff prove that suit property is the joint family property ?	...No.
2	Does the defendant no.1A, 1C, 4 and 5 prove that suit property is the self-acquired property of deceased Vijay defendant no.1 ?	...Yes.
3	Does the plaintiff is entitled for partition as relief claimed in the suit property ?	...No.
4	Does the plaintiff proves that the sale-deed dated 24.01.2012 executed in favour of defendant no.4 and 5 is illegal ?	...No.
5	Whether Judgment and decree passed by the Ld. Trial Court requires interference ?	...No.
6	What order and decree ?	..Appeal is dismissed with costs.

**: REASONS :**

**ADMITTED FACT :**

19. The relation between plaintiff and defendant nos.1 to 3 is admitted fact.

**AS TO POINT NOS. 1 TO 4 :**

20. All these points are interlinked with each other, hence, taken together for discussion to avoid repetition of the evidence.

It is the case of the plaintiff that suit property is joint family property of the parties. The defendant no.1A, 1C, 4 and 5 contended that the suit property is the self-acquired property of deceased defendant no.1. To prove the case of the plaintiff, plaintiff relied the evidence of Laxman Pethkar PW2 and the certificate Exh.114 issued by him. It reveals that the deceased Madanlal having saving account in the State Bank of India, Branch Kedgaon, Ahmednagar and maintain the cheque book, containing the cheque no.682401 to 682420 were issued to him on 01.08.1986. Perused the record, there is no documents on record to show that the suit property was joint family property of the plaintiff and defendant nos.1 to 3.

21. It is the contentions of the plaintiff that suit property was purchased by deceased Madanlal in the name of defendant no.1. Admittedly the sale-deed filed by the appellant on record in the year 1986 shows that the suit property is purchased by Vijaykumar Madanlal Varma in his name from Suryakant

Harakchand Muttha and Dipak Harakchand Muttha by way of registered sale-deed. At the time of purchasing suit property, the defendant having 37 year age and shows that he was in service. In that sale-deed, the signature of his father is not mentioned. The father never challenged the entry and sale-deed in any court of law. After perusing the suit property, the mutation entry no.9372 Exh.87 came to be effected. After demise of the defendant no.1, the name of defendant nos.1A and 1C were recorded to the record of right vide M.E. no.41911 (Exh.89).

22. Defendant no.1A submitted that suit property was purchased by her husband by way of his self income. She admitted that consideration amount was paid from saving account of her father-in-law by way of two cheques. But this admission is not sufficient to establish that there was a joint Hindu family of deceased Madanlal and defendant no.1 in the year 1986. The defendant no.1 was major on 30.04.1971 and he was out of India for hotel business. Deceased Madanlal accepted Special POA Exh.96 in respect of suit property from defendant no.1 for the litigation pending before the Consumer Forum Ahmednagar. Defendant no.1A to 1C produced the copy at Exh.131 of case no. 320/1997 shows the decision of Consumer Forum. It reveals that defendant no.1 was filed complaint against the vendor and executed the power of attorney in favour of his father. If the suit property was joint Hindu family, then there was no necessity to execute POA in favour of Madanlal. The plaintiff has not adduced any evidence to show that Madanlal had sufficient income from

pension to purchase suit property. Defendant no.1 was residing out of India and he had not changed his name. After change of surname by his father and family members.

23. Defendant nos.1A and 1C examined Subhashish Saha as DW2, Branch Manager of State Bank of India, Kedgaon deposed that letter Exh.133 was issued after perusing the record which shows that Bank statement from June 1986 to February 1987 of saving account of Madanlal was discarded as the Bank policy. But they failed to file any documents in respect of payment made by Madanlal for consideration of suit property. There is no any reason mentioned by plaintiff why he purchase the suit property in the name of defendant no.1. It knows that the defendant no.1 was residing out of India. The power of attorney of defendant no.1, it reveals that suit property is not joint family property, therefore, the plaintiff failed to establish that the suit property was purchased by Madanlal and it was his joint family property.

24. Plaintiff failed to prove that the suit property was joint family property of plaintiff and defendant nos.1 to 3. They are not entitled to any share in the suit property. They have not adduced any evidence in respect of sale-deed dated 24.01.2012 (Exh.98) is illegally executed in favour of defendant nos.4 and 5. There is no evidence on record to show that defendant no.1A has illegally executed sale-deed (Exh.98) in favour of defendant nos.4 and 5 and not binding on their share.

25. Plaintiff failed to prove that the suit property is the joint family property and the defendant no.1A executed sale-deed (Exh.98) after receipt of suit summons. Therefore, the plaintiff is not entitled for the relief of declaration, partition, possession and permanent injunction. The appellant is failed to prove the ground levelled in appeal. there is no any documentary evidence on record to show that the suit property is purchased in the name of defendant no.1 by Madanlal from the fund of joint family. There is no evidence on record to show that the defendant no.1A and 1C have no any right to sell the suit property in the name of defendant nos.4 and 5. Hence, the plaintiff is failed to establish his case and also not entitled to relief claimed. Therefore, I record my finding the point nos.1 to 4 accordingly.

**AS TO POINT NO.5 :**

26. As the above discussed, the plaintiff is failed to prove that the suit property is joint family property of Madanlal and they having 1/5<sup>th</sup> share in the suit property. The plaintiff is also failed to prove that the sale-deed executed in favour of defendant nos.4 and 5 is illegal and not binding upon the plaintiff. Therefore, the order passed by the Ld. Trial Court is legal, proper and correct and no need to interfere. Hence, I answer point no.5 in negative and in answer point no.6, I proceed to pass following order;

<b>: <u>ORDER</u> :</b>	
<b>1</b>	Appeal is dismissed with costs.

<b>2</b>	The Judgment and decree dated 18.01.2019 passed by the 2 <sup>nd</sup> Jt. Civil Judge, Senior Division, Ahmednagar, in Special Civil Suit No. 293/2011 is hereby confirmed.
<b>3</b>	The copy of this Judgment and R & P be sent back to the 2 <sup>nd</sup> Jt. Civil Judge, Senior Division, Ahmednagar.
<b>4</b>	Decree be drawn-up accordingly.
	(Judgment dictated, delivered and pronounced in the Open Court).

**Date : 05.05.2026.**  
Ahmednagar.

**( Rajesh M. Tayade )**  
District Judge-5,  
Ahmednagar.