

Received on : 30/12/2011.

Registered on : 30/12/2011.

Decided on : 10/04/2012.

Duration : Years Months Days

: --- : 03 : 10 :

IN THE COURT OF JT. CIVIL JUDGE, JUNIOR DIVISION,

TAL. KARJAT, DIST : AHMEDNAGAR.

(Presided over by S.V. Dindokar)

REGULAR CIVIL SUIT No. 335/2011

Exh.No.31

PLAINTIFFS

- 1] Vitthal Rajaram Labade
Age : 30 yrs., Occu. : Agriculture,
- 2] Mainabai Rajaram Labade
Age : 50 yrs., Occu.: Agriculture,
Both R/o. Takali Khandeshwari,
Tal. Karjat, Dist. Ahmednagar.

Versus

DEFENDANTS

- 1] Rajaram Shridhar Labade
Age : 55 yrs., Occu.: Agriculture,
- 2] Dattatray Rajaram Labade
Age : 35 yrs., Occu.: Agriculture,
- 3] Sonali Dattatray Nalawade
Age : Major, Occu.: Agriculture,

- 4] Ishwar Dhondiba Pawar
Age : Major, Occu.: Agriculture,
- 5] Wajir Ibrahim Pathan
Age : Major, Occu.: Agriculture,
- 6] Laxmn Zumbar Bhise
Age : Major, Occu.: Agriculture,
- 7] Kisan Sambhu Wadavkar
Age : Major, Occu.: Agriculture,
- 8] Maruti Sambhu Wadavkar
Age : Major, Occu.: Agriculture,
- 9] Raosaheb Tukaram Wadavkar
Age : Major, Occu.: Agriculture,
- 10] Bhausahab Tukaram Wadavkar
Age : Major, Occu.: Agriculture,
- 11] Baburao Rambhau Giri
Age : Major, Occu.: Agriculture,
- 12] Sagar Maruti Tambe
Age : Minor, Occu.: Nil
- 13] Saurabh Maruti Tambe
Age : Minor, Occu.: Nil
Deft.No. 12 & 13 being minor
through their legal guardian
Anjana Maruti Tambe
Age : Major, Occu.: Agriculture,
- 14] Vijaya Popat Dhavale
Age : Major, Occu.: Agriculture,
- 15] Samindra Chandrakant Wadavkar
Age : Major, Occu.: Agriculture,
All r/o. Takali Khandeshwari,
Tal. Karjat, Dist. Ahmednagar.

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The learned advocate Kum. U.S. Kawale, for the plaintiffs.

Defendants No. 1 to 3 : Exparte.

Defendants No. 4 to 15 : Dismissed in default.

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SUIT : FOR PARTITION.

: J U D G M E N T :

(Dictated and pronounced in open Court on : 10/04/2012.)

1] This is a suit for partition.

2] Description of property :

1A] All that piece and parcel of below mentioned agricultural lands situated at mouje Takali Khandeshwari, Taluka Karjat, District Ahmednagar.

<u>S. No.</u>	<u>Area</u>	<u>Assess- ment</u>		<u>Boundaries</u>			
		<u>Rs.</u>	<u>Ps.</u>	<u>East</u>	<u>South</u>	<u>West</u>	<u>North</u>
Out of 198	0.40	0.20	As per Government record.....			
Out of 212	0.42	0.23	As per Government record.....			

(Judgment)

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<u>S. No.</u>	<u>Area</u>	<u>Assess- ment</u>	<u>Boundaries</u>
<u>91+92</u> 2 whole	0.53	0.84As per Government record.....

1B] All that piece and parcel of below mentioned agricultural lands situated at mouje Takali Khandeshwari, Taluka Karjat, District Ahmednagar.

<u>S. No.</u>	<u>Area</u>	<u>Assess- ment</u>	<u>Boundaries</u>
	<u>H. R.</u>	<u>Rs. Ps.</u>	<u>East</u> <u>South</u> <u>West</u> <u>North</u>
Out of 24/1	0.60	0.50As per Government record.....
Out of <u>91+92</u> 3	0.30	0.50As per Government record.....

1C] All that piece and parcel of below mentioned house property situated at mouje Takali Khandeshwari, Taluka Karjat, District Ahmednagar.

Grampanchayat property No. 342

Description of property : 43 X 20 in 20 Tins and
43 X 31 open space.

Area : 860 + 1333

(Hereinafter, the above property is referred to as “**Suit Properties**” for the sake of brevity.)

3] It is the contention of the plaintiffs that, the defendant No. 1 is father of the plaintiff No.1 and the plaintiff No. 2 is mother of the plaintiff No. 1, whereas defendant No. 2 is brother of defendant No.1. It is the contention of the plaintiffs that, survey No. 2/2 area 0.42 R. land was purchased by the defendant No. 1 from Tukaram Bayaji Wadavkar. Similarly, 0.53 R. land from S.No. 91+92/2 and 0.37 R. land from S.No. 198 are purchased in the name of defendant No. 1. All these properties are purchased from the joint family income of plaintiffs and defendants in the name of defendant No. 1. Accordingly, M.E.No. 2628, 2339, 2703 were effected. Similarly, S.No. 24/1 and S.No.91/92/3 and house property No. 342 was purchased in the name of defendant No. 2 being elder son of defendant No. 1. Accordingly, M.E.No. 3571 and 3702 were effected. Similarly, house property No. 342 was purchased by the defendant No. 1 in the name of defendants No. 2 and 3. Thus, all these properties are joint family properties of plaintiff and defendants and defendant No. 1 and 2 avoided the share of the plaintiffs. Hence, plaintiffs have filed the suit for partition.

4] Defendants No. 1 to 3 are served with suit summons, but failed to appear in the suit. Hence, suit was proceeded exparte against them. Plaintiffs failed to take steps against defendants No. 4 to 15. Hence, suit was dismissed against defendants No. 4 to 15 by passing order on Exh. 1.

5] I have heard the learned advocate Kum. U.S. Kawale, for the plaintiffs.

6] Following points arise for my determination, and I have recorded my findings thereon for the reasons noted below.

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Does plaintiffs prove that, suit property S.No. 198, 212 and 91+92 are purchased in the name of defendant No. 1 from joint family income ?	<i><u>..In the affirmative.</u></i>
2)	Does plaintiffs prove that, S.No. 24/1 and 91+92/3 were purchased by defendant No. 1 in favour of the defendant No. 2 from joint family income ?	<i><u>..In the affirmative.</u></i>

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
3)	Does plaintiffs prove that, house property No. 342 is purchased in the name of defendants No. 2 and 3 by defendant No. 1 from the joint family income ?	<u>..In the affirmative.</u>
4)	What order & decree ?	<u>..As per final order.</u>

: REASONS :

7] Plaintiffs have filed form 8-A at Exh. 10 and 13, 7x12 extracts at Exh. 11, 12, 14, 15, 16 and M.E.No. 2628 at Exh. 18, 2339 at Exh. 39, 2703 at Exh. 20, M.E.No. 3571 at Exh. 21, and M.E.No. 3702 at Exh. 22.

8] **AS TO POINTS No. 1 to 3 :**

In order to prove points No. 1 to 3, plaintiff No. 2 Mainabai Rajaram Labade has testified at Exh.6 and pleaded that, the suit property 1A are purchased in the name of defendant No. 1 from the joint family income and the suit property 1B are purchased in the name of defendant No. 2 from the joint family income. Similarly, the suit property 1C is purchased in the name of defendant No. 2 and 3 from the joint family income of the plaintiffs and defendants and for that purpose plaintiffs have filed 7x12 extract, form 8A and

mutation entries and from the plain perusal of all these documents it makes quite clear that, the name of defendant No. 1 and defendant No. 2 and their names are duly entered in the revenue record as owner. However, defendant No. 1 to 3 have failed to appear in the suit though they were duly served vide Exh. 23, 24 and 25 and as such, the suit was proceeded exparte against them. Therefore, they have not filed any documentary evidence and failed to adduce oral evidence in their defence. Thus, the testimony of P.W. 1 remains unchallenged. Hence, I hold that, the suit properties are purchased from the joint family income of the plaintiffs and defendants and as such, I answer to points No. 1 to 3 in the affirmative and proceed to pass the following order.

: O R D E R :

- (1) Suit is decreed with costs.
- (2) Plaintiff No. 1, defendants No. 1 and 2 are entitled 1/3rd share each relating to suit properties.
- (3) The Collector, Ahmednagar, or its authorized representative shall effect partition in respect of suit properties in between the plaintiff No.1, defendants No. 1 & 2 as per Order-XX, Rule-18 (1) of The Code of Civil Procedure, subject to the provisions of Maharashtra Land Revenue Code, or any other law for time being in force and possession be given to them as per their respective shares, as per the above order.

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- (4) Commission be executed for effecting partition relating to partition of suit house property.
- (5) Preliminary decree be drawn up accordingly.

Date : 10/04/2012.
Karjat.

(S.V. Dindokar)
Jt. Civil Judge, Junior Division,
KARJAT.