

MHAK010011442023



Received on : 23.06.2023
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Decided on : 07.03.2026
Duration : Yrs. Ms. Ds.
02 08 12

IN THE COURT OF DISTRICT JUDGE-3, AKOLA DIST. AKOLA
(Presided over by Rahul A. Shinde)

Regular Civil Appeal No. 79/2023

Exhibit - 12

- 1] **Janardhan Govinda Dhanokar**
Aged - 77 years, Occ.- Agril.
- 2] **Janardhan Sukhdeorao Dhanokar**
Aged - 63 years, Occ.- Agril.
- 3] **Vishvanath Sukhdeo Dhanokar**
Aged - 60 years, Occ.- Agril.
- 4] **Raghunath Sukhdeo Dhanokar**
Aged - 58 years, Occ.- Agril.
- 5] **Sau. Sushila Shriram Pachpor**
Aged - 54 years, Occ.- Household work
All R/o. Wadegaon, Tq. Balapur, Dist. Akola.
- 6] **Sau. Dropadabai Devidas Belsare,**
Aged - 81 years, Occ.- Household work
R/o. Near Rashtriya Shala,
Mothi Umari, Akola, Tq. and Dist. Akola

...Appellants.

[Original
defendants]

-Vrs.-

- 1] **Smt. Dropadabai Waman Dhanokar**
[Name deleted since died]
- 2] **Ku. Suman Waman Dhanokar**
Age - 59 years, Occ.- Agril.
- 3] **Prakash Waman Dhanokar**
Age - 51 years, Occ.- Agril.

...Respondents

[Original
plaintiffs]

4] **Santosh Waman Dhanokar**

Age – 46 years, Occ.- Agril.
All R/o. Dagaon, Tq. Balapur, Dist. Akola

5] **Sau. Sunanda Kamlakar Hadole**

Age – 57 years, Occ.- Household work
R/o. Jawala Bk. Tq. Shegaon, Dist. Buldhana

...Respondents

6] **Sau. Kusum Ramdas Palhade**

Age – 48 years, Occ.- Household work
R/o. Mothi Umari, Akola,
Tq. and Dist. Akola.

[Original
plaintiffs]

Ld. Advocate for the appellants : Shri. S.S. Ingle
Ld. Advocate for the respondents : Shri. S.T. Ingle

-: J U D G M E N T :-

(Delivered on 07th March, 2026)

This appeal takes an exception to Judgment and Decree dated 19.01.2023 passed by Ld. Civil Judge, Junior Division, Balapur, Dist. Akola in Suit R.C.S.No.04/2012.

02] The appellants are original defendants and the respondents are original plaintiffs. (The parties hereinafter referred as to as per their status in the suit before Ld. Trial Court.)

The factual matrix of plaintiffs' case in brief are as follows:-

03] The Suit Land Gat No. 110 admeasuring 2 H 29 R situated at village Wadegaon bounded as to East-Bhadwadi Rasta, West-field of Sunita Sable, North-Bhatwadi Rasta and South-field of Ramdas Sarap is the ancestral joint family property of plaintiffs and defendants. In fact, the suit land was originally owned by their

common ancestor namely Govinda Dhanokar. He died in the year of 1974. After his demise, his wife Rajosabai, sons Sukhdev, Waman, Janardhan i.e. defendant No.1 and daughter Dropadabai i.e. defendant No.6 have inherited the suit land. Rajosabai died on 22.04.1984 and therefore, her three sons and one daughter inherited her share out of the said joint family property. Sukhdev died on 11.04.1984 and his wife Anusaya and sons Jaggnath, Vishwanath, Raghunath i.e. defendant No. 2 to 4 and daughter Sushila i.e. defendant No.5 have inherited his undivided share out of the suit land. Similarly, Waman died in the year of 1980 and the plaintiff No.1 being his wife and plaintiff No.2 to 6 being his children have inherited his undivided share in joint family property. The suit land is not partitioned by metes and bounds till today. The plaintiffs and defendants are the joint owner and possessor of it. On 16.11.2011, the plaintiffs asked defendants for partition by issuing notice but the defendants failed to comply and it constrained plaintiffs to institute the suit seeking partition and separate possession of their respective share.

04] Pursuant to suit summons issued, the defendant No. 1 to 6 appeared before the Court and resisted the claim of plaintiffs by filling written statement at Exh.18. They have denied whole contentions of plaintiffs in toto. They have specifically denied the contention of plaintiffs regarding genealogy of said family and also that the suit land is ancestral joint family property. They also denied the cause of action to file the suit and the contention of plaintiffs with regard to their undivided share in the suit land. As per their contentions, during lifetime of Govinda Dhanokar he has executed

deed of *Vyavstha-patra* in favour of Rukhmabai Sakharam Mali on 11.06.1933 and the mutation entry is effected in her name in the revenue record. Besides that, Govinda has also executed registered gift deed in favour of Anusaya Bhagwan pertaining to field survey No. 36 admeasuring 4 Acre on 13.05.1948. The mutation entry to that effect is also recorded in the revenue record. Therefore, Govinda already has disposed off the suit land Gat No. 110, old survey No.36 in his lifetime and therefore at the time of his death and presentation of present suit no joint family property was available for partition. The plaintiffs have not impleaded the said persons who have interest in the suit land and therefore the suit is bad in law for non-joinder of necessary party. Moreover, the plaintiffs have not brought all joint family properties in common hotch-potch. Therefore, the suit is bad in law for partial partition. Moreover, the purchasers are also not impleaded as a party in the suit. Not only that but the plaintiffs in spite of having knowledge of *Vyavastha-patra* and gift deed not filed suit within period of three years and therefore it is barred by law of limitation. On this count, they prayed to dismiss the suit.

05] The Ld. Trial Court considering the rival contentions of both the parties has framed issues at Exh.19. The plaintiffs in order to substantiate their contentions have relied on documents at Exh. 21 to 30. The plaintiffs further relied on testimony of plaintiff no.2 as P.W. 1 at Exh.13. Per contra, the defendants failed to adduce any oral and documentary evidence to substantiate their defence.

06] The Ld. Trial Court after considering the oral and documentary evidence on the record held that the plaintiffs have

proved that the suit land is their ancestral joint family property which is not partitioned by metes and bounds. Therefore, the Ld. Trial Court by holding that the plaintiffs collectively have 1/4th share in the suit land has decreed the suit. Being aggrieved by said judgment and decree the defendants have preferred this appeal.

07] It is contention of defendants that the Ld. Trial Court without according any opportunity to adduce the evidence and giving right of hearing passed the said judgment. In fact, the Ld. counsel for defendants was present for the argument on 07.01.2023 but on the said date the matter is adjourned. Thereafter, on 19.01.2023 the Ld. counsel for plaintiffs completed their further arguments and without giving any right of hearing to defendants the Ld. Trial Court has passed impugned judgment on the same day. Therefore, there is violation of principle of natural justice. Therefore, he prayed to remand the matter back for giving proper opportunity to adduce the evidence and right of hearing to defendants. Therefore, on the said count he prayed to set aside the impugned judgment.

08] Per contra, it is the contention of plaintiffs that the impugned judgment and decree is proper, legal and correct. As per the submission on behalf of plaintiffs, since from inception, the defendants were playing tactics to prolong the matter and deliberately remaining absent before the Court. Initially, they avoided to file written statement and after passing of no written statement order by moving application they got set aside said order and filed written statement belatedly. Not only that the plaintiffs have filed

affidavit of chief-examination at Exh.13 immediately but the defendants avoided to cross-examine the plaintiff and consequently on 28.08.2019 the Ld. Trial Court has passed the order of no-cross. Thereafter, the Ld. counsel for defendants filed no instruction pursis and the Ld. Trial Court issued notices to defendants on Court motion. In spite of service of notices, the defendants failed to appears and consequently on 14.11.2022 the Ld. Trial Court closed the evidence of defendants. Thereafter, in spite of much chance, the defendants not appeared before the Court and not proceeded with the matter and consequently on 19.01.2023 the Ld. Trial Court passed the impugned judgment and decree. Therefore, ample opportunity to adduce the evidence and reasonable right of hearing is already given to defendants. Moreover, the Ld. Trial Court after considering the oral and documentary evidence on the record and by appreciating it in proper perspective passed the impugned judgment. Therefore, it is in tune with law and not requires any interference with the hands of this Court. On this count, they prayed to dismiss the appeal.

09] Heard Ld. Counsel for both the sides at considerable length. Perused written notes of arguments filed by both the sides at Exh.10 and 11.

10] The points, arise for determination, along-with findings thereon as follows:-

Sr. No.	Points	Findings
1.	Do defendants prove that the Ld. Trial Court has not accorded them proper right of hearing and opportunity to adduce evidence?	... In The Negative.

- | | |
|---|---|
| 2. Whether the suit land is ancestral joint family property? | ... In The Affirmative |
| 3. Whether the plaintiffs are having undivided share in the suit land? | ... In The Affirmative. |
| 4. Whether the suit land is not partitioned by metes and bounds? | ... In The Affirmative. |
| 5. Whether the suit is bad in law for non-joinder of necessary party? | ... In The Negative. |
| 6. Whether plaintiffs are entitled for partition and separate possession? If yes, what share? | ... In The Affirmative.

(1/4 th share collectively) |
| 7. What order ? | As per final order. |

-: REASONS :-

AS TO POINT NO. 1:

11] It is the main contention of defendants that, the Ld. Trial Court without according proper right of hearing and opportunity to adduce evidence passed the impugned judgment. In order to prove the said fact, the Ld. counsel for defendants has invited my attention to the record and proceeding of said suit. I have minutely scrutinized the same. It appears that the suit is of the year 2012. Initially, though pursuant to service of suit summons defendants appeared before the Court on 07.03.2012 but till 10.10.2012 they had not filed any written statement and consequently Ld. Trial Court had passed the order of no written statement. Thereafter, on 13.12.2012, the plaintiffs have filed their affidavit of chief-examination at Exh.13 and thereafter the matter was kept for cross-examination. Thereafter, the

Ld. counsel for defendants not cross-examined the plaintiff till 16.09.2013. Per contra, the defendants moved application at Exh.17 seeking permission to file written statement which came to be granted.

12] Therefore, from this it clearly appears that though the suit is filed on 27.01.2012 and defendants appeared before the Court on 07.03.2012 but till 16.09.2013 the defendants even not filed their written statement. Therefore, it clearly shows that since from inception the defendants were absolutely reluctant to diligently proceed with present matter. It also appears that thereafter on 06.12.2013 the Ld. Trial Court had framed issues and the matter posted for evidence of plaintiffs. Thereafter, on 29.04.2016 the further chief-examination of plaintiff No.2 is recorded and matter posted for his cross-examination. Thereafter, in spite of much chance, the matter could not be proceeded for further stage and in the meantime on 21.11.2016 the plaintiffs informed the Court about death of plaintiff No.1. Thereafter, matter adjourned for some days for compliance of bringing legal heirs on record and the matter again posted for cross-examination.

13] Thereafter, again and again the matter adjourned and finally on 28.08.2019, the Ld. Trial Court has passed the order of no-cross as defendant fails to cross-examination the plaintiff No.2. Thereafter, on 10.11.2021 the plaintiffs have closed their evidence. On the same day, the Ld. counsel for defendants by moving pursis at Exh. 51 informed the Court that the clients are not giving any instruction and therefore he has returned their documents.

Thereafter, the Ld. Trial Court had issued notices to defendants by Court motion of 15.06.2022. Pursuant to said notices, the Ld. counsel for defendant No.1 appeared before the Court but other defendants failed to appear. Thereafter, on 21.09.2022 the Ld. counsel for defendants sought adjournment and matter kept on 14.11.2022. On the said date, the said defendants again remained absent and therefore the Ld. Trial Court closed their evidence.

14] From this, it clearly appears that, after passing of no-cross order on 28.08.2019, the Ld. Trial Court has given ample opportunity to defendants to appear before the Court and to take further steps. Not only that but the Court had issued suo-moto notices to the defendants and in spite of service of said notices, the defendants not promptly appeared before the Court and on appearance have not taken any effective steps to set aside no-cross order and for permission to adduce the evidence. Not only that but after closer of their evidence on 14.11.2022, the defendants continued with their act of remaining absent before the Ld. Trial Court on 08.12.2022, 14.12.2022 and 19.01.2023 when the matter was posted for final argument. Therefore, from this it clearly appears that the Ld. Trial Court has accorded ample opportunity to defendants to cross-examine the plaintiff, to adduce the evidence and to argue the matter. In spite of it, the defendants acted negligently and has shown their reluctant towards the said matter.

15] Therefore, considering the said conduct of defendants I am of the opinion that the Ld. Trial Court has given them proper opportunity to adduce the evidence and to argue the matter.

Therefore, I found no substance in the contention of defendants that the Ld. Trial Court hurriedly without giving any right of hearing and right to adduce evidence passed the impugned judgment. Hence, for the said reason, I answer *point No.1 in the negative*.

As to point Nos. 2 to 6 :-

16] Now, turning to the merits of the case, it is pertinent to note here that it is the contention of plaintiffs that the suit land is their ancestral joint family property which is not partitioned by metes and bounds till today. In order to prove the said fact, the plaintiffs have relied on testimony of plaintiff No.2 in which she has testified all the facts in consonance with the recitals of the plaint. She has specifically testified that the suit land was originally owned by Govinda. He has three sons namely Sukhdev, Waman, Janardhan i.e. defendant No.1 and daughter namely Dropadabai i.e. defendant No.6. Rasobai was his wife. After his demise, they all have inherited the suit land. She further testified that Rasobai died on 22.04.1984 and her three sons and daughter inherited her undivided share. She further testified that after demise of Sukhadev the defendant No. 2 to 5 being his children and Anusaya being his wife inherited his undivided share. She further testified that after demise of Waman they all plaintiffs being his legal heirs inherited his undivided share. Therefore, in nutshell she has testified that they have inherited the suit land from their common ancestors Govinda Dhanokar. The said testimony of plaintiff No.2 remained unshaken and therefore I have no hesitation to rely the same.

17] The plaintiffs further to substantiate their contentions have relied on documents at Exh. 26 to 30. On perusal of the same, it clearly appears that the suit land Gat No.110 was originally owned by Govinda Dhanokar and his name is recorded in the 7/12 extract. After his demise, Sukhdev, Waman, Dropadabai and Janardhan have inherited the suit land and the mutation entry No. 5100 at Exh.26 substantiates the said fact. Not only that but after the death of Sukhadev his wife Anusaya and children defendant No. 2 to 5 have inherited his undivided share out of the suit land and the same is effected in revenue record vide mutation entry No. 5102. Similarly, the mutation entry No. 1103 at Exh.29 also clearly shows that after demise of Waman all the plaintiffs have inherited his undivided share. Therefore, the said revenue documents which are having presumptive value of correctness are sufficient to prove that the suit land was originally owned by Govinda Dhanokar and after his demise the plaintiffs and defendants through their respective ancestors inherited the same.

18] Therefore, the said oral and documentary evidence on record is sufficient to prove that the suit land is ancestral joint family property of plaintiffs and defendants as they have inherited the same from their common ancestor. There is nothing on the record to prove that the said suit land is partitioned by metes and bounds at any time. Per contra, the joint names of plaintiffs and defendants in the 7/12 extract are sufficient to show that the suit land is not yet partitioned.

19] It is the contention of defendants that Govinda Dhanokar in his lifetime has disposed off the property by executing *Vyavstha-patra* and gift deed of the year 1933 and 1948. But, the defendants have not adduced any evidence to prove the said fact. Moreover, the revenue documents also do not show execution of any such documents. Therefore, I have no hesitation to hold that the defendants have failed to prove that Govinda Dhanokar in his lifetime has disposed off the suit land.

20] Hence, in view of above discussion, I am of the considered opinion that the suit land is ancestral joint family property of plaintiffs and defendants which is not partitioned till today. The plaintiffs with the help of notice at Exh.23 have proved that on 16.11.2011 they have demanded partition to defendants but they not complied it. Therefore, the inaction on the part of defendants is sufficient to show their refusal for the partition and it is the cause of action for the plaintiffs to file the suit and to seek the partition. Though the defendants have contended that the purchasers are not impleaded as a party in the suit but the said contentions are absolutely vague and no such any purchaser of suit land is proved by defendants. Therefore, the suit is not bad in law for non-joinder of any necessary parties. Per contra, it appears that all the members of joint family are impleaded as a party in the suit.

21] Therefore, in my considered opinion, considering ancestral and joint family property nature of suit land and considering the cause of action to the suit, the plaintiffs are entitled for partition and separate possession of their share. Now the question

remained about the share of plaintiffs and defendants in the suit land. Admittedly, Govinda Dhanokar was the common ancestor of plaintiffs and defendants who died in the year 1974 leaving behind him his wife Rajosabai, three sons Sukhadev, Waman and Janardhan and one daughter Dropadabai. Admittedly, Rajosabai died on 22.04.1984. Therefore, definitely considering the ratio laid down by Hon'ble Apex Court in the case of *Vineeta Sharma Vs. Rakesh Sharma* [(2020) 9 SCC 1], the benefit of amended provision of Section 6 of Hindu Succession Act needs to be given to the daughter Dropadabai as the property is available for the partition on the date of commencement of said provision. Therefore, in such situation Sukhadev, Waman, Dropadabai and Janardhan are having 1/4th undivided share each in the suit land. Therefore, the legal heirs of deceased Sukhdev and Waman will get said 1/4th undivided share of their ancestors. Therefore, in such way, the plaintiffs jointly entitled for 1/4th share as well as the defendant No.2 to 5 are jointly entitled for 1/4th share in the suit land. Similarly, the defendant No.1 and defendant No.6 each are entitled for 1/4th share in the suit land. Therefore, I have no hesitation to hold that the plaintiffs are jointly entitled for 1/4th share out of suit land and for the partition and separate possession of it.

22] Therefore, the Ld. Trial Court has properly appreciated the oral and documentary evidence on record and rightly held that the plaintiffs are collectively entitled for 1/4th share out of suit land and for the partition and separate possession of it. Therefore, the said impugned judgment is in tune with evidence on record and

settled principle of law. Therefore, I do not found any legal infirmity in the impugned judgment and therefore it not requires any interference in the appeal. Hence, the appeal is liable to be dismissed. Hence, for the said reason, I answer *point No. 2, 3, 4 and 6 in the affirmative, point No.5 in the negative* and in answer to point No.7, I proceed to pass following order :-

- ORDER -

- 1] The appeal is dismissed.
- 2] The Judgment and Decree dated 19.01.2023 passed by Ld. Civil Judge, Junior Division, Balapur, Dist. Akola in Suit R.C.S.No.04/2012 is hereby confirmed.
- 3] No order as to costs.
- 4] Record & Proceedings and copy of this judgment be sent to Ld. Trial Court forthwith.

Date :07/03/2026.
Place : Akola.

(Rahul A. Shinde)
District Judge-3, Akola.

Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno	:- S. D. Tekade, Stenographer, Grade-II.
Court Name	:- District Judge-2, Akola
Date of Order/Judg.	:- 07.03.2026
Signed by Presiding on	:- 11.03.2026
Uploaded on	:- 11.03.2026