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	Registered on	: 09.10.2024
	Decided on	: 27.03.2026
	Duration	: 11Yrs 05Month 18Days.

**IN THE COURT OF CIVIL JUDGE JR.DIVN., AT MORSHI**  
( Presided over by Nivas K. Kharade )

**R.C.S. No.56/2014**

**Exh.No - 94**

Manda Sahebrao Mohane,  
Age - 48 Yrs., Occu : Cultivation,  
R/o. Ambada,  
Taq. Morshi, Dist. Amravati.

... **PLAINTIFF**

**VERSUS**

1. Smt. Ajani J. Ramchandra Kale,  
Age – 85 Yrs., Occu : Cultivation.
2. Bhimrao Vald Ramchandra Kale,  
Age – 65 Yrs., Occu : Cultivation,  
Both R/o. Ambada  
Tal. Morshi, Dist. Amaravati.
3. Pralhad Panjabrao Bramhane,  
Age – 32 Yrs., Occu : Labour,
4. Kailash Panjabrao Bramhane,  
Age – 30 Yrs., Occu : Labour,  
Def. No. 3 and 4 r/o Hiwarkhed,  
Taq. Morshi, Dist. Amravati.
5. Sau. Sangita Gajanan Khambre,  
Age – 30 Yrs., Occu : Labour,  
R/o. Fubgaon,  
Taq. Nandgaon Khandeshwar,  
Dist. Amravati.

... **DEFENDANTS**

**CLAIM** : Suit for declaration and partition & possession.

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Learned Adv. for the Plaintiff : Shri. M.B.Shriwas  
Learned Adv. for defendant no. 1 to 3 : Shri.  
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### **J U D G M E N T**

(Delivered on this 27<sup>th</sup> day of March, 2026)

Present suit is for partition and possession.

Briefly stated facts of the case that, all part and parcel of survey No. 22/01 admeasuring, 3. H, 39 R assessing Rs. 9.35 paise having well, electric pump 400 orange trees and 14 bamboo trees situated at Village Bhangra Taq. Morshi, Dist. Amravati. (hereinafter referred as suit property).

2. It is contention of the plaintiff that suit property was initially owned by their father deceased Ramchandra Kale. He died 40 years ago without disposing suit property. Defendant no. 1 is his wife. Plaintiff and Defendant no. 2 are his children. He was having daughter Manorama Bramhane. She was died 07 years ago. In her lifetime she relinquished her share in the suit property in favour of plaintiff and defendant no.2. Accordingly, name of the plaintiff and defendant no. 1 and 2 were mutated to the suit property.

3. During pendency of suit the plaintiff added heirs of deceased Manorama as defendant no. 3 to 5. It is contention of the plaintiff that deceased Manorama in her lifetime relinquished her share on 01.06.1980 without consideration in favoaur of plaintiff and defendant no. 1 and 2. Hence, defendant no. 2 to 5 are having no right in suit property. They were well aware about relinquishment by their mother in her lifetime. Said relinquishment deed is in possession of defendant no. 2 being executed said deed as per say of deceased Manorama. After relinquishment deed name of plaintiff no. 1 and 2 were mutated on 25.08.1981 by giving

notice to all parties.

4. it is contention of the plaintiff that, she alongwith defendant no. 1 and 2 are having share in the suit property. There was no partition between them. Suit property is possession of defendant no. 1 and 2. They are not showing accounts even not paying income to the plaintiff. Hence, the plaintiff wants partition of her share. Accordingly, on 10.09.2014 she issued registered notice through her advocate to defendant no. 1 and 2 demanding partition of her 1/3rd share. Said notice was received by defendant no. 1 and 2 however, failed to reply or partition. Hence, the plaintiff constrained to file present suit.

5. Defendant no. 1 died during pendency of suit. The plaintiff moved pursis Exh. 18 and informed that plaintiff and defendant no. 2 to 5 are heirs of defendant no. 1. Defendant no. 2 filed verified copy of will deed of defendant no. 1 on record. However, not sought relief.

6. Defendant no. 1 and 2 appeared and contested the suit by filing written-statement Exh. 12. They admitted description of suit property and relationship between them. They denied that deceased Manorama relinquished her share in her lifetime. Her heirs are not parties, hence, suit is bad for non joinder of necessary parties. Defendant no. 1 and 2 time and again informed the plaintiff that deceased Manorama has not relinquished her share, hence, they are having 1/4th share each accordingly. They are ready for partition. However, the plaintiff denied 1/4th share and demanding 1/3rd share. Hence, Suit is not tenable. Further, after death of their father Ramchandra Kale, defendant no. 1 and 2 used to pay the plaintiff from income of suit property. The plaintiff not joined heirs of deceased Manorama as party. Hence, pray for rejection of the suit.

7. During pendency of suit the plaintiff joined heirs of deceased Manorama as defendant no. 3 to 5. Defendant no.5 failed to appear. Hence, suit proceeded without W.S against her. Defendant no. 3 and 4 appeared and contested the suit by filing written-statement Exh. 33. They admitted description of suit property and relationship between them. They denied that their mother in her lifetime relinquished her share.

8. It is the contention of defendant no. 3 and 4 that after death of their grandfather Ramchandra Kale their mother Manorama was also is legal heir and having share alongwith plaintiff and defendants. Their mother died 07 years ago. After her death defendant no. 3 to 5 are having share in the suit property. However, plaintiff and defendant no. 1 and 2 illegally mutated their names to the suit property without their mothers name. Said fact came to the knowledge of defendants after getting notice of present suit. Their mother deceased Manorama is the heir of deceased Ramchandra having 1/4th share. Hence, they are entitled for their mother share. Their mother never relinquished her share. Hence, the they are entitled for 1/4 share of their mother.

9. Heard learned advocate Shri. M.B.Shriwas for the plaintiff and learned advocate Shri. A.J.Chikhale and T.S.Tadas for the defendant no.2 at length. Defendant no. 2 to 5 remain absent. Hence, I have no opportunity to hear them.

10. My learned predecessor framed issues vide Exh.35. I have framed additional issue vide order below Exh. 84. Those are taken as it is for discussion alongwith findings thereon for the reasons thereof are as follows.

<u>Sr.No.</u>	<u>I S S U E S</u>	<u>F I N D I N G S</u>
1	Whether the plaintiff prove that she is having 1/3rd share.	In the Affirmative.
2	Whether the plaintiff entitle of partition of her 1/3rd share.?	In the Affirmative.
3	Whether the plaintiff proved that defendant no.1 and 2 are in wrongful possession of suit property. ?	In the Negative.
4	Whether the plaintiff entitled for mesne profit.?	In the Negative.
5	Whether the plaintiff prove that deceased Manorama relinquished her share in her lifetime in favour of plaintiff and defendant no. 1 and 2.	In the Negative.
6	What order and decree ?	As per final order

**:: REASONS ::-**

**ADMITTED FACTS:-**

11. Description of suit property and relationship between parties is not disputed. Their father Ramchandra died 40 years ago. Defendant no. 1 is wife. The plaintiff and deceased Manorama are his daughters, defendant no. 2 is his son. Defendant no. 3 to 5 are heirs of deceased Manorama. Further suit property initially owned by deceased Ramchandra.

**ISSUE NO. 5**

12. It is not disputed that suit property was initially owned by deceased Ramchandra. Further, plaintiff and defendant no. 2 to 5 are his heirs. The plaintiff with specific case that mother of defendant no. 3 to 5 i.e. deceased Manorama in her lifetime relinquished her share in favour of the plaintiff and defendant no. 1 and 2. Which is objected by the defendants. Hence, let us consider whether deceased Manorama in her

lifetime relinquished her share.

13. The plaintiff filed her evidence vide Exh. 37 and reiterated her pleading with specific evidence that deceased Manorama in her lifetime relinquished her share. During cross examination she admitted that said relinquishment deed was registered document. She obtained certified copy of the said document. Defendant no. 2 examined himself by filing evidence affidavit Exh. 66, during cross examination he admitted that deceased Manorama relinquished her share. The plaintiff and mutation entry no. 576 on record to corroborate her version.

14. The learned advocate for the plaintiff argued that deceased Manorama in her lifetime relinquished her share in the year 1980 accordingly, by mutation entry no. 576 name of the plaintiff and defendant no. 1 and 2 only are mutated to the suit property. Further, defendant no. 2 admitted that deceased Manoram relinquished her share. Hence, the plaintiff succeeded to prove that deceased Manorama has relinquished her share in her lifetime.

15. Per contra, learned advocate for defendant no. 2 argued that deceased Manorama never relinquished her share. Her heirs also not admitted that their mother relinquished share. Hence, she has not relinquished share.

16. After hearing both sides to prove relinquishment of share by deceased Manorama the plaintiff relied upon mutation entry no. 576 and admission by defendant no. 2. After perusal of mutation entry no. 576 it appears that said mutation entry was taken on the basis of document between Manorama at one part and the plaintiff and defendant no. 1 and 2 at other part. On the basis of said mutation entry name of Manorama was deleted and suit property was mutated in the name of plaintiff and

defendant no. 2.

17. From Mutation entry no. 576, it appears that it was on the basis of document. Apart from this, the plaintiff during cross examination admitted that said relinquishment deed was registered document. Even, she drawn its certified copies. Which indicates that relinquishment deed was executed on document which was registered. As per section 17 sub section (2) of the registration act, relinquishment should be by registered document. As per section 49 of the registration act, if document required by law to the registered and not registered then it does not affect immovable property comprised therein or confirm any power to adopt or be received as evidence as any transaction affect in such property.

18. In present case, the plaintiff with specific case that deceased Manorama relinquished her share by registered document. However, she has not produced said document on record. She is with case that said document is in possession of defendant no. 2. However, she obtained certified copies but, not opted for secondary evidence, even not filed copy on record.

19. Moving ahead to determine whether will deed mutation entry and admission by coparcener is sufficient to prove relinquishment by deceased Manorama. Mutation entries are only for fiscal purpose and does not transfer title. To the extent of admission by defendant no. 2 it is not an admission on account of deceased Manorama and her legal heirs. Apart from this, once as per registration Act section 17 (2) once relinquishment should be by way of registered document then non production of document or admission by one of the coparcener that is oral evidence is not sufficient. Further, as per section 91 and 92 of the Indian Evidence Act, evidence of contract grant or other disposition of property reduce to the form of document shall be given by document itself or secondary

evidence of its contents and oral evidence is explained. Hence, oral admission by defendant no. 2 to the extent of relinquishment of share by deceased Manorama cannot be accepted. The plaintiff failed to produce relinquishment deed on record. Hence, I am of the considered opinion that the plaintiff failed to prove deceased Manorama relinquished her share. Hence, accordingly I answer issue no. 5 in the negative.

#### **ISSUE NO. 1 TO 4**

20. Learned advocate for the plaintiff argued that suit property was initially in the name of deceased Ramchandra. He died long ago. Plaintiff and defendant no. 1 to 5 are only heirs. Defendant no. 3 to 5's mother deceased Manorama relinquished her share. Defendant no. 1 died on 14.02.2025. Hence, the plaintiff is entitled for one half share. Further, defendant no. 2 is in wrongful possession of suit property. Hence, pray for one half share and mesne profit.

21. Per contra, learned advocate for defendant no. 2 argued that deceased Manorama has not relinquished her share. Defendant no. 1 though died has executed will deed of her share in favour of defendant no. 2. Accordingly, he filed will deed on record. Hence, defendant no. 2 is entitled for one half share and plaintiff and heirs of deceased Manorama are entitled for 1/4th share each.

22. It is not disputed that suit property was initially owned by deceased Ramchandra. He died long ago. Plaintiff and defendants are his only heirs. Defendant no. 1 died during pendency of suit. Defendant no. 2 argued that defendant no. 1 bequeathed her share in his favour and filed verified copy of will deed on record. It is necessary to mention here that suit is for argument since long after first argument this Court framed issue regarding relinquishment by deceased Manorama. Thereafter, the plaintiff

filed pursis regarding death of defendant no. 1. Thereafter, defendant no. 2 filed will deed on record. Thereafter, defendant no. 2 sought adjournments and finally argued case. He does not sought relief in respect of will deed in his pleading and only argued about will deed. Said will deed is not proved. Hence, cannot be taken into consideration.

23. Sum and substance of above discussion that deceased Manroama has not relinquished her share. Defendant no. 2 failed to prove will deed executed by defendant no. 1 in his favour. Parties admitted their relationship. Suit property was initially owned by deceased Ramchandra. Defendant no. 1 died during pendency of suit. Once defendant no. 1 failed to prove will deed her share will devolve upon plaintiff and remaining defendants. Hence, the plaintiff and defendant no. 2 are entitled for 1/3rd share each and defendant no. 3 to 5 are entitled for 1/3rd share. Accordingly i answer issue no. 1 and 2.

24. Moving ahead the plaintiff pray for mesne profit being defendant no. 2 in wrongful possession of suit property. After perusal of pleading the plaintiff pray for 1/3rd share in lifetime of her mother. On the contrary, defendant no. 2 with specific case that, plaintiff was entitled for 1/4 share in lifetime of his mother and was ready for partition. The plaintiffs case of relinquishment of share by deceased Manorama is not succeeded. She entitled for 1/3rd share after death of defendant no.1. Hence, I am of the considered opinion that defendant no.2 is not in wrongful possession. Hence, the plaintiff is not entitled for mesne profit. Accordingly, I answer issue not. 3 and 4 in the negative.

#### **ISSUE NO. 6**

25. Suit property was initially owned by deceased Ramchandra. Who died long ago. Plaintiff and defendants are only his heirs. The plaintiff failed to prove relinquishment of share by deceased Manorama.

Defendant no. 2 failed to prove will deed by defendant no. 1 in his favour. Hence, the plaintiff and defendant no. 1 are entitled for 1/3rd share each and defendant no. 3. to 5 are entitled for 1/3rd share. Before parting it is necessary to consider about cost. The plaintiff initially sought 1/3rd share in lifetime of her mother on the contrary defendant no. 1 and 2 were ready for 1/4th share. The plaintiff entitled for 1/3rd share after death of her mother defendant no.1. Hence, defence of the defendants is proper. In turn, the plaintiff does not entitled for cost. Hence, in answer to issue no. 6, I pass following order.

### ORDER

- 1 The suit is partly decreed.
- 2 It is declared that plaintiff and defendant no. 2 are having 1/3<sup>rd</sup> share each in suit property and defendant no.3 to 5 are having 1/3<sup>rd</sup> share in suit property i.e. survey no. 22/1, Defendant no. 2 to 5 are entitled to their share as above on payment of Court Fees as per rules.
- 3 In respect of suit properties survey No. 22/1 decree shall be sent to the Collector, Dist. Amaravati to effect partition of the suit land and to put the plaintiff in possession of 1/3<sup>rd</sup> share vide sec. 54 of the Code of Civil Procedure, 1908.
- 4 Decree be drawn up accordingly.

( Pronounced and dictated in open Court.)

Date : 27.03.2026.

**sd/-**  
(N.K. Kharade)  
Civil Judge Junior Division,  
Morshi.