

Presented on	17-04-2009
Registered on	21-04-2009
Decided on	20-07-2020
Duration	Year Month Days 11 03 03

IN THE COURT OF JOINT CIVIL JUDGE JUNIOR DIVISION
AT GEORAI

(PRESIDED OVER BY SHRI S.M.GHUGE)

REGULAR CIVIL SUIT NO.145/2009

Exh.No.83

(CNR No.MHBI110024422009)

- 1] Sumanbai w/o. Shivajirao Raut)
Age - 40 Years, Occupation - Household)
R/o. Aardhmasala Tq.Georai Dist.Beed)
Now at Pandharwadi, Tq.Georai Dist.Beed)
- 2] Parubai w/o. Baburao Dabhade (Died))
Age - 70 Years, Occupation - Household)
R/o. Manyarwadi Tq.Georai Dist.Beed)
Now at Pandharwadi, Tq.Georai Dist.Beed)

..Plaintiffs

Versus

- 1] Tatya s/o. Baburao Dabhade (Died))
Age - 77 Years, Occupation – Agriculture)
R/o. Manyarwadi Tq.Georai Dist.Beed.)
- 2] Rajendra s/o. Tatya Dabhade)
Age - 30 Years, Occupation – Agriculture)
R/o. Manyarwadi Tq.Georai Dist.Beed)

...Defendants

CLAIM :- Suit for partition and separate possession.

APPEARANCES:-

Ld. Adv. Shri. S.B.Bahir for Plaintiffs.

Ld. Adv. Shri.Hitnalikar for Defendant No.1.

Ld. Adv. Shri. M.L.Waware for Defendant No.2.

J U D G M E N T

(Delivered on this 20th Day of July, 2020)

The suit is for partition and separate possession.

02. The subject matter of the suit consist two agricultural lands and two house which are situated within the local limits of village Manyarwadi Tq.Georai Dist.Beed.

ANNEXURE – A

Description of agricultural land

Survey No.	Total Area	Assessment Rs. Ps.	Disputed area	Four Boundaries
419/A	2 H 67 R	3=61	2 H 67 R	–
422/D	0 H 71 R	2=57	0 H 30 ½ R	East – Land of Uttam Sakharam Ghadge West – Land of Gairan South – Laxman Babu Bhandwalkar North – Shahurao Devrao Dabhade

ANNEXURE – B

Description of house properties

Sr. No.	House Number	Area Length X Width	Four Boundaries
1	House No.2/1	35 X 27	East – Open space for well West – Road South – Gairan North – Land of Salubai Aaba Dabhade

2	House No.193	18 X 80	East – Survey No.422/D West – Road South – Gairan North – Road
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Above mentioned agricultural land and house properties mentioned in Annexure-A and B are hereinafter called as the “suit property”.

03. The sum and substance of present suit is that, the plaintiff No.1 is daughter of plaintiff No.2 and defendant No.1. The defendant No.1 with the help of adoption adopted defendant No.2 as a adopted son without consent or permission of plaintiff No.2. Plaintiff No.2 is the wife of defendant No.1. They have alleged that, the said adoption deed was took place without following due process of law, therefore said adoption deed is invalid in the eyes law. On the basis of said illegal adoption deed, defendant No.2 in collusion with Talathi had mutated his name into record of rights of the suit properties i.e. survey No.419/A. In fact the suit properties are ancestral Hindu joint family property of plaintiffs and defendant No.1. It is stated that, no partition took place between plaintiff's and defendant No.1 by meets and bounds.

04. It is pleaded that plaintiffs have 1/3rd undivided share in suit property. On 05/04/2009 the plaintiffs have demanded their share in suit property to defendants. However defendants have flatly denied to give their share. Therefore plaintiff's constrain to file present suit.

05. The defendant No.1 resisted the suit by filling written statement at Exh.20. The defendant denied all the contention of plaintiffs. He submitted that, plaintiffs and defendants are not the member of Hindu joint family. All the suit properties except survey No.422/D at Manyarwadi are ancestral properties. The suit property i.e. survey No.422/D is purchased by him therefore the said property is self acquired property. Suit properties i.e. house bearing No.2/1, 193 as well as survey No.422/D in all these properties plaintiff received $\frac{1}{2}$ (half) share by way of will deed. He also contended that, plaintiff No.2 received Rs.11,000/- from defendant No.1 on 22/12/1987 and relinquished all her right regarding to maintenance and other way as a wife. Defendant No.1 execute will deed bearing registration No.4282 on 18/10/2002 and by way of said will deed $\frac{1}{2}$ (half) portion in all agricultural landed property and house properties were given to plaintiff No.1.

06. He further contended that, the suit property bearing No.422/D having ad-measuring area 30.5-R sold by defendant No.2 to one Kadaji Namdev on 01/02/1992. The said property again purchased by defendant No.1 on 04/01/1993. Therefore, the said property is self acquired property of defendant No.1. Therefore, defendant No.1 prayed for dismissal of suit with costs.

07. The defendant No.2 resisted the suit by filling written statement at Exh.63. Defendant No.2 denied all the contention of plaintiff in plaint except, defendant No.1 executed adoption deed in

favour of defendant No.2. He submitted that, the adoption deed executed as per consent of plaintiff No.2. Defendant No.1 given divorced to plaintiff No.2 on 22/12/1987. Therefore, defendant No.2 prayed for dismissal of suit with costs.

08. On the basis of pleadings affirm by one party and denied by the other my learned predecessor framed issues at Exh.49. I have recorded my findings thereon for the reasons to follow.

	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether the plaintiffs prove adoption of the defendant No.2 is not valid ?	In the affirmative.
2.	Whether the plaintiffs prove that suit properties are ancestral and joint family properties of the defendant No.2 and them ?	In the affirmative to the extent of plaintiffs and defendant No.1.
3.	Whether the plaintiffs prove that mutation in the name of defendant No.2 is void ?	Redundant.
4.	Whether plaintiffs are entitled to partition and separate possession of the suit property ?	In the affirmative. Plaintiff No.1 is entitled to get entire suit property due to demise plaintiff No.2 and defendant No.1.
5.	What order and decree ?	As per final order.

: REASONS :

09. In order to prove the suit claim, the plaintiffs examined plaintiff No.1 as PW-1 at Exh.52, PW-2 Abu Suryabhan Dabhade at Exh.53 and PW-3 Sadashiv Babu Dingare at Exh.54 and PW-4 Bapurao Ravan Dhage. Apart from oral evidence plaintiff relied on following documentary evidence.

Sr.No.	Name of document	Exhibit Number
1]	7/12 extract of survey No.419/A situated at Manyarwadi	7
2]	7/12 extract of survey No.422/D situated at Manyarwadi	8
3]	Copy of PTR of House No.2/1 situated at Manyarwadi	9
4]	Copy of PTR of House No.193 situated at Manyarwadi	10
5]	Mutation (Ferfar) entry No.7	11
6]	Copy of death certificate of Paruai Tatyaba Dabhade	46/1
7]	Copy of death certificate of Tatyaba Dabhade	46/2
8]	Copy of succession certificate	46/3
9]	Copy of adoption deed	71/1
10]	Mutation (Ferfar) entry No.1327	80/1

10. Defendant not entered into witness box. Defendant not examined plaintiff witnesses except Bapurao Ravan Dhage (PW-4). Defendants filed documentary evidence i.e. certified copy of decree in R.C.S.No.965/2014 at Exh.66/1.

AS TO ISSUE NO.1 :-

11. Plaintiff No.1 Sumanbai (PW-1) deposed in evidence that the defendant No.1 prepared adoption deed in absence of defendant No.2 and without her consent. The ceremony of adoption is never performed by defendants as per Hindu rituals.

12. Abu (PW-2) and Sadashiv (PW-3) are deposed in their evidence that, defendant No.2 never adopted by defendant No.1. No adoption ceremony carried out in their village.

13. Bapurao (PW-4) deposed that, the adoption deed bearing registration No.280/1987 was executed by Deorao Dabhade and Rahibai Dabhade in favour of only Tatyabai Baburao Dabhade. According to Bapurao (PW-4) deposed that, he brought record of 280/1987 of dated 12/02/1987 as per that document only Tatyabai Dabhade is the executor. It means the plaintiff No.2 who is the wife of Tatyabai Dabhade (DW-1) was absent for execution of alleged adoption deed. Moreover, other witnesses also deposed that, in their village at any point of time adoption ceremony of defendant No.2 not performed as per the Hindu rituals.

14. As per contention of defendants that, plaintiff No.2 was given consent for alleged adoption. Moreover, defendant No.1 given divorced to plaintiff No.2 on 22/12/1987 and said marriage was dissolved. On scrutiny of evidence it appears that, alleged adoption deed was executed on 10/02/1987 and alleged separation come into

force from 22/12/1987. It means on the date of execution of alleged adoption deed there marriage was in existence. Plaintiff No.2 is legally wedded wife of defendant No.1 at time of execution of alleged adoption deed.

15. In the instant case fact is that, alleged adoption deed was executed on 10/02/1987. The alleged divorced took place on 22/12/1987. As per the Hindu Adoptions And Maintenance Act before execution of adoption deed parties should have fulfilled all pre-requisite condition mentioned in the Sec.7 of the Hindu Adoptions And Maintenance Act.

16. As per section 6 and 7 of The Hindu Adoptions And Maintenance Act, 1956 :

Sec.6 : *Requisites of a valid adoption-*

No adoption shall be valid unless- (i) the person adopting has the capacity, and also the right, to take in adoption; (ii) the person giving in adoption has the capacity to do so; (iii) the person adopted is capable of being taken in adoption; and (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

Sec.7 : *Capacity of a male Hindu to take in adoption-*

Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

(Explanation-If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.)

17. According to Hindu Adoption and Maintenance Act for valid adoption there should be consent of real parents and adoptive parents. In the instant case main controversy is that, whether adoptive mother (PW-2) was present at the time of execution of adoption deed. On perusal of adoption deed it reveals that, it bears signature of Devrao Baburao Dabhade, Rahibai Devrao Dabhade who are the real parents of adoptive son. The alleged adoption deed also bears signature of Tatyaba Baburao Dabhade (DW-1) and two witnesses. On minute scrutiny it reveals that, the alleged sale-deed not bearing the signature of adoptive mother. Therefore, it is crystal clear that, the plaintiff No.2 was absent for execution of adoption deed. It means essential condition for valid adoption was not fulfilled according to Hindu Adoption and Maintenance Act. Therefore, plaintiff succeed to prove that the defendant not complied all requisite condition which are mentioned in Sec.7 of Hindu Adoption and Maintenance Act. Hence, alleged adoption is not valid as per law. Therefore, my finding as to issue No.1 is in the affirmative.

AS TO ISSUE NO. 2 :-

18. From the evidence of plaintiff it reveals that, the suit properties were lying in the name of defendant No.1 prior to 1987. On perusal of mutation entries (Ferfar) it appears that, the agricultural

land bearing survey No.419/A situated at Manyarwadi is mutated in the name of defendant No.2 on the basis of adoption deed. Now at this juncture we have to find out whether the suit properties are ancestral properties of plaintiff.

19. As per evidence of plaintiff defendant No.1 is the real uncle of defendant No.2. There was partition between defendant No.1 and his brothers. Defendant No.1 married with plaintiff No.2. From the said wedlock they have one daughter i.e. plaintiff No.1. On perusal of record it is crystal clear that, the marriage between plaintiff No.2 and defendant No.1 is in existence. It is admitted fact that the plaintiff No.1 is the daughter of defendant No.1 and plaintiff No.2. It means the sole daughter is the legal heir of defendant No.1 and plaintiff No.2. Now defendant No.2 claiming share in suit properties as a member of Hindu joint family, on the basis of adoption deed.

20. Once it is proved that, the alleged adoption deed is invalid then there is no question of claiming any share in the suit property by way of said adoption. In the instant fact alleged adoption is not performed as per law. Therefore, no right to the defendant No.2 for claiming as a member of Hindu joint family. Therefore, only sole daughter i.e. plaintiff No.1 is the legal heir of defendant No.1 and plaintiff No.2.

21. In this scenario the defendant No.1 and plaintiff No.2 are already died as per record. Therefore, the share in the ancestral

property will go in the hands of plaintiff No.1.

22. On perusal of record filed by plaintiffs i.e. 7/12 extract of survey No.419/A at Exh.No.7, 7/12 extract of survey No.422/D at Exh.No.8, copy of PTR of House No.193 and copy of PTR of House No.2/1 situated at Manyarwadi shows that, property of Survey No.419/A lies in the name of defendant No.2 and rest of the properties are lying in the name of defendant No.1. The property of survey No.419/A mutated in the name of defendant No.2 on the basis of alleged adoption deed. The said alleged deed is invalid in the eyes of law. The finding as regarding to the issue of validation of adoption deed is already given in issue No.1. Therefore, the property transfer in the name of defendant No.2 is not valid. Therefore, defendant No.2 is not entitled to get share in the survey No.419/A situated at Manyarwadi even though the property lies in his name.

23. On perusal of mutation entry No.1397 at Exh.81/1 it reveals that, the suit property bearing survey No.419 exclusively and and half portion in survey No.422 allotted to defendant No.1. The said entry were made out in revenue record on 13/03/1978. It means out of suit property survey No.419 ad-measuring 2-H 67-R and survey No.422/D ad-measuring 71-R are agricultural land are the ancestral property because both these properties were received by defendant No.1 by way of partition. On perusal of copy of PTR of house No.193 at Exh.9 and copy of PTR of house No.2/1 at Exh.10 shows that, both house properties lies in the name of Defendant No.1.

24. Defendant denied that the house properties are ancestral. Defendant only contended in pleading but not put his leg into witness box neither given any document which shows that, the house properties are self acquired property of defendant No.1. Defendant also submitted in his pleading that, defendant No.1 executed will deed in favour of defendant No.2 and plaintiff No.1. On perusal of record nowhere found any document as regarding to alleged will deed of defendant No.1. Therefore no force in the contention of defendant because they have made in the form of bare words. Defendant No.2 contended that, suit property in survey No.422/D were sold to Namdev Kadale by him in 1992 and thereafter the said property purchased by defendant No.1. Therefore, the said suit property is self acquired property of defendant No.1. As regarding to this contention of defendant No.2 fails to prove that there was transaction between defendant No.2 and Namdev as well as Namdev and Defendant No.1. Plaintiff through her evidence brought on record that, the suit properties bearing survey No.422/D is the ancestral property of defendant No.1 with the help of Exh.81/1 which shows that, there was partition between defendant No.1 and his brother namely Deorao and from that partition mutation entry No.1397 were made out in revenue record on 13/03/1978 and suit property bearing survey No.419 exclusively and half portion in survey No.422 allotted to defendant No.1.

25. Defendant No.2 in his pleading and argument raise the issue that the survey No.422/D is the self acquired property of defendant No.1, but for that purpose they have not adduced any

evidence. Therefore, no force in the contention of defendant No.2 that, the suit property in survey No.422 is self acquired property of defendant No.1. Moreover, defendant raise the issue in his argument that, plaintiff No.1 entered into compromise agreement in R.C.S.No.965/2014 but on perusal of decree in R.C.S.No.965/2014 it appears that, the said suit was for permanent injunction. Therefore, no force in the submission of defendant No.2 that, there was compromise between the parties.

26. Defendant No.1 admitted in his pleading that, the house properties i.e. house property No.2/1 and 193 are his ancestral properties. Once a particular fact is admitted by a party then there is no necessity to prove said fact by other party. In the instant case defendant No.1 admitted that, house property No.2/1 and 193 are the ancestral properties therefore plaintiffs no need to prove the said fact. Considering all above discussion and minute scrutiny of Exh.81/1 the suit properties bearing survey No.419 and 422/D are the ancestral properties of plaintiff No.1. Therefore, the all suit properties are ancestral properties of plaintiff No.1. Hence, my finding as to issue No.2 in the affirmative to the extent of plaintiffs and defendant No.1.

AS TO ISSUE NO. 3 :-

27. As per contention of defendant No.2 that, the mutation entries in revenue record are true and correct. All these entries are carried out after the execution of alleged adoption deed. The alleged adoption deed were carried out on 10/02/1987. In the instant case

there is controversy of the parties on the point of validity of adoption deed which carried out on 10/02/1987. I have already recorded my finding as to issue No.1 in the affirmative and decided that, alleged adoption deed is invalid as per Sec.7 of Hindu Adoption and Maintenance Act.

28. This issue totally regarding revenue authorities. For seeking the appropriate remedy parties at liberty to claim before appropriate forum. Moreover, in view of the affirmative finding to issue No. 1 this issue needs no consideration and therefore become redundant. Hence, finding as to issue No.3 is Redundant.

AS TO ISSUE NO. 4 :-

29. I have already given my finding regarding to nature of suit property in issue No.2. It is also clear that, the adoption dated 10/02/1987 is invalid therefore, defendant No.2 is not adopted son of plaintiff No.2 and defendant No.1 as per Sec.7 of Hindu Adoption and Maintenance Act. Therefore, defendant No.2 is not member Hindu Joint Family. On minute scrutiny of evidence it also reveals that, the plaintiff No.2 and defendant No.1 were died during pendency of suit. Therefore, except plaintiff No.1 no one is legal heir to the defendant No.1 and plaintiff No.2. Hence, it is crystal clear that, the plaintiff No.1 is the sole legal heir of plaintiff No.2 and defendant No.1.

30. As per the ratio laid down by Honorable Supreme Court in the case of **Prakash & Ors vs. Phulawati & Ors. in Civil Appeal No.7217 of 2013 dated 16 October, 2015.** Court has dealt with the

question of retrospective application of Section 6 (1) of the Hindu Succession Amendment Act, 2005 (“Amendment Act”), which grants equal rights to sons and daughters of a coparcener, in his share of ancestral property.

31. Section 6 of the Hindu Succession Act as it stood prior to the 2005 Amendment and as amended : Section 6 of the Hindu Section 6 on and from the Succession Act commencement of the Hindu Succession (Amendment) Act,

Devolution of interest in coparcenary property. When coparcenary property.- (1) On and a male Hindu dies after the from the commencement of the commencement of this Act, Hindu Succession (Amendment) Act, having at the time of his death 2005, in a Joint Hindu family an interest in a Mitakshara governed by the Mitakshara law, the coparcenary property, his daughter of a coparcener shall,-

interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:	(a) by birth become a coparcener in her own right in the same manner as the son;
PROVIDED that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act	(b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hind Mitakshara coparcener shall

and not by survivorship.	be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or
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32. I have already given my finding that, agricultural land bearing survey No.419 and 422/D are the ancestral properties. As per death certificate below Exh.46/1 and Exh.46/2 plaintiff No.2 and defendant No.1 are died during pendency of suit respectively. It is true that the said property would be devolved into same proportion to defendant No.1 and plaintiff No.1 and 2. Now as per record defendant No.1 and plaintiff No.2 are no more. Moreover, on perusal of succession certificate below Exh.46/3 plaintiff No.1 is the only legal heir of plaintiff No.2. Therefore, plaintiff No.1 is the sole owner of entire ancestral property i.e. agricultural land bearing survey No.419 and 422/D.

33. On perusal of record it appears that, house properties situated at Manyarwadi bearing House No.2/1 and 193 are lies in the name of defendant No.1. Defendant No.1 is no more. According to hereditary law after demise of father and mother property lies in their name transfer in the name of their legal heirs. In the instant case plaintiff No.1 is only legal heir of defendant No.1 and plaintiff No.2. Therefore, plaintiff No.1 is the sole owner of house properties situated at Manyarwadi bearing House No.2/1 and 193.

34. The evidence brought on record by the plaintiffs clearly shows that the plaintiff No.1, 2 and defendant No.1 are the co-owners of the suit property. Therefore, the plaintiffs and defendant No.1 are entitled to get 1/3rd share in entire suit property. I have already decided plaintiff No.2 and defendant No.1 are no more therefore, share of deceased devolved to their legal heir. Plaintiff No.1 is the sole legal heir therefore, entire suit properties devolved to her. Therefore, my finding for issue No.4 is in the affirmative and plaintiff No.1 is entitled to get entire suit property due to demise of plaintiff No.2 and defendant No.1.

AS TO ISSUE NO. 5:-

33. The cumulative effect of the findings recorded as to issues No. 1 to 4 is that the plaintiff's have partly proved their suit claim. Consequently suit deserves for partly decreed. So far as the costs of the suit is concerned, I find that it is not just and proper to saddle costs of the suit on unsuccessful party considering the nature of the suit and relationship between the parties. I, therefore, in answer to issue No.5 proceed to pass the following order.

:: ORDER ::

1)	The suit is partly decreed.
2)	Plaintiff No.1, 2 and defendant No.1 are entitled to get 1/3rd share in the suit properties. Due to demise of plaintiff No.2 and defendant No.1 their shares devolve to plaintiff No.1. Plaintiff No.1 entitled to entire share in the suit property (i.e. house property bearing

	No.2/1 and 193 as well as agricultural lands in survey No.419/A and 422/D situated at Manyarwadi Tq.Georai Dist.Beed) by way of partition.
3)	The partition of the suit property be effected by The Collector or his authorized sub ordinates deputed by him in his behalf as per Section 54 of The Code of Civil Procedure.
4)	Decree be drawn up accordingly.
	[Dictated and pronounced in an open Court.]

Date : 20/07/2020.

Place : Georai.

(S.M.Ghuge)

Jt. Civil Judge (J.D.), Georai.