

MHBU160007082018



Received on	23/08/2018
Registered on	23/08/2018
Decided on	21/04/2026
Duration	07 Years – 07 Months - 29 Days.

**IN THE COURT OF JOINT CIVIL JUDGE JUNIOR DIVISION,  
AT. MOTALA. DISTT. BULDANA.**

(Presided over by: Satishkumar Shripatrao Gaikwad)

	<b>R.C.S. No. 34 of 2018</b>	<b>EXH. 70</b>
1.	Pratapsing Gajanan Ghoti, Age: 40 years. Occ.:- Agri.,	<b>...Plaintiffs.</b>
2.	Kartarsing Gajanan Ghoti, Age: 38 years. Occ.:- Agri.,	
3.	Revtabai Gajanan Ghoti, Age: 60 years. Occ.:- Agri., All R/o. – Taroda, Post. Kothli, Tq. Motala, Distt. Buldana.	

**-----VERSUS-----**

1.	Onkar Nihalsing Ghoti, Age: 51 years, Occ.:- Agri.,	<b>...Defendants.</b>
2.	Jagannath Nihalsing Ghoti, Age: 48 years, Occ.:- Agri., Both R/o. – Taroda, Post. Kothli, Tq. Motala, Distt. Buldana.	

3.	Ramnath Nihalsing Ghoti, Age: 46 years, Occ.:- Agri., Currently R/o. – Motala, Tq. Motala, Distt. Buldana.	
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**APPEARANCES**

For Plaintiffs       :-     Ld. Adv. S.A.Bhujbal.  
For Defendants     :-     Ld. Adv. Y.D. Patil.

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**J U D G M E N T**

(Delivered on:- 21/04/2026)

Present suit is instituted for partition and separate possession.

02 -           **Description of suit property is as follows:-**

The agricultural land bearing gat/block No. 19 ad-measuring 2. H. 83 R. which is situated at village Taroda, Tq. Motala, Distt. Buldana. It is bounded as towards East – agricultural land of Prakash Dhirbassi, towards West – Taroda to Motala tar road, towards North – agricultural land of Balchand Gajiram Rabde and towards South – agricultural lands of Gulab Dhangar and Chandrabhan Bassi. (It be referred as 'suit property' hereinafter).

03 -           **Brief facts of the plaintiff's case is as under:-**

One Gajanan Nihalsing Ghoti was father of plaintiffs No. 1 & 2 and husband of plaintiff No. 3. Gajanan was expired in the year 2006 at village Taroda. Deceased Gajanan was real brother of

defendants. Thus, the defendants are parental uncle of plaintiffs No. 1 & 2 and brother-in-laws of plaintiff No. 3. The suit property was originally belonged to one Nihalsing Ghoti. Nihalsing was father of defendants and deceased Gajanan. After demise of Nihalsing, deceased Gajanan and defendants inherited the suit property. After death of Nihalsing, no partition was effected among deceased Gajanan and defendants during lifetime of deceased Gajanan in respect of suit property. Deceased Gajanan frequently asked the defendants to partition the suit property. However, the defendants avoided the same. Presently, the defendants are illegally cultivating the suit property by avoiding to effect partition.

04 - The plaintiffs further pleaded that they requested the defendants to effect partition of suit property on various occasions. However, the defendants failed to do so. Thereupon, they got documents of the suit property in the year 2016. They learnt that a false and bogus mutation entries were effected by defendants pertaining to suit property in order to grab their share. Therefore, they asked the defendants in that regard. However, the defendants did not provide plausible explanation. At relevant time, the defendants No. 1 and 2 promised them to effect partition of the suit property. So also, the defendant No. 3 also told them that they will effect partition of the suit property in month of April or May, 2018. Therefore, they believed on the version of defendants. However, the defendants did not effect partition as promised. Thus, the defendants are avoiding to effect partition of suit

property. On 15/07/2018, they asked the defendant No. 3 to effect partition of suit property. However, the defendant No. 3 told them that you are crazy, you do not have any share in suit property and the suit property was partitioned among himself and defendants No. 1 & 2. The defendant No. 3 further told them that you will not do anything. Thus, they realised that the defendants are not interested to effect partition in order to grab their share. Therefore, they constrained to institute present suit. With this, they claimed partition and separate possession of suit property by mets and bounds. Lastly, they prayed to decree the suit.

### **Defence of defendants**

05 - The defendants appeared and filed their written statement at Exh.12. They admitted their residential address and address of plaintiffs. They also admitted their relations interse. They admitted their relations with the plaintiffs and deceased Gajanan as well. They further admitted that deceased Gajanan expired in the year 2006 at village Taroda. Deceased Nihalsing was father of themselves and deceased Gajanan. They denied adverse averments of plaint.

06 - In additional statement, the defendants contended that the plaintiffs were never owners and possessors of suit property. Deceased Nihalsing was having 04 sons. Deceased Nihalsing got suit property from the Government. The suit property is class-II occupancy agricultural land. After demise of Nihalsing, his widow

namely Parobai was cultivating suit property with the help of family members. Parobai was having possession and ownership over suit property. Parobai effected partition of suit property among her sons in order to avoid further conflict among her sons. In said partition, the defendants No. 1 & 2 got 0. 61 R. each and the defendant No. 3 got 1 H. 61 R. as their share out of suit property. So also, the plaintiffs and defendants were having an agricultural land bearing gat No. 264 ad-measuring 1 H. 21 R. at village Kothli. Deceased Gajanan got major share in said agricultural land. However, the defendant No. 3 did not get share in said agricultural land as he got major share of suit property. Likewise, deceased Gajanan got major share in gat No. 264. Therefore, deceased Gajanan did not get share in suit property. Said partition was admitted to deceased Gajanan and defendants. Since then, the defendants became owners and possessors of their respective shares.

07 - The defendants further averred that the plaintiffs being legal heirs of deceased Gajanan were aware about said partition. Therefore, the plaintiffs themselves relinquished their share in their favour in respect of suit property. The concern Talathi effected mutation entry No. 469 on 13/09/2006. Moreover, the plaintiffs did not include necessary parties in present suit. Therefore, present suit is liable to be dismissed on the ground of non-joinder of necessary parties. Moreover, the plaintiffs did not institute present suit within 12 years from death of deceased

Gajanan. So also, the plaintiffs did not issues notice to them before institution of present suit. The plaintiffs did not affix requisite Court fee. The plaintiffs did not come before the Court with clean hands. The plaintiffs instituted present suit in order to harass them. The plaintiffs instituted present suit without any cause of action. With this, they prayed to dismissed present suit with costs.

### Issues

08 - Considering rival pleading of the parties, my Ld. predecessor framed issues at Exh.-13. After that, I framed three additional issues. I reproduced all the issues with my findings against each issue for the reasons discussed thereafter :-

Sr. No.	ISSUES	FINDINGS
1.	Do plaintiffs prove that, suit property is Joint Hindu Family Property of plaintiffs and defendant ?	Yes.
2.	Do plaintiffs prove that, partition of suit property has not taken place till date ?	Yes.
2-A.	Whether defendants prove that present suit is bared by law of limitation ?	No.
2-B.	Whether defendants prove that present suit is bad for non inclusion of all ancestral property in common hotch-pot and non-joinder of necessary parties ?	Yes.
2-C.	Whether defendants prove that deceased Parubai effected partition among defendants and deceased Gajanan Nehalsing Ghoti in respect of their ancestral properties ?	No.

3.	Do plaintiffs prove that, they have share in suit property ?  If yes, what is share of each plaintiff ?	Yes, but their share is not determined in absence of necessary parties.
4.	Are plaintiffs entitled for relief of partition and separate possession ?	No.
5.	What order and decree ?	Suit is dismissed with costs.

### REASONS

#### Evidence of parties

09 - The plaintiffs examined two witnesses to establish their case. The plaintiff No. 1 (PW.1) examined himself at Exh. 15. One Sardarsing Gulabsing Rabde (PW.2) was examined at Exh. 31. After framing additional issues, the plaintiffs failed to lead their evidence. Hence, evidence of plaintiffs was closed by passing order below Exh.01. The plaintiffs in support of their oral evidence relied upon following documents :-

Sr. No.	Nature of Documents	Exh. No.
1.	Certified copy of 7/12 extract of suit property for year 2010-11,	Exh.19
2.	Certified copy of ownership certificate of suit property,	Exh.20

10 - On the other hand, the defendants examined one witness to disprove claim of the plaintiffs. The defendant No. 3

(D.W.1) was examined at Exh. 34. The defendants closed their evidence by filing evidence close pursis (Exh.67). The defendants adduced following documents :-

<b>Sr. No.</b>	<b>Nature of Documents</b>	<b>Exh. No.</b>
1.	Certified copy of mutation entry No. 469,	Exh. 28 & 36
2.	Certified copy of mutation entry No. 470,	Exh.29 & 37
3.	Certified copy of 7/12 extract of suit property,	Exh.30
4.	Certified copy of Gaon Namuna No. 8-A of suit property,	Exh.38 & 43
5.	Solvency certificates in respect of suit property,	Exh.39, 42 & 44
6.	Certified copy of ownership certificates of suit property in the names of defendants,	Exh.40, 41 & 45
7.	Certified copy of 7/12 extract of suit property in the name of defendant,	Exh.46, 48
8.	Certified copy of mutation entry No. 1133,	Exh.47
9.	Certified copy of 7/12 extract of gat No. 264,	Exh.49
10.	Certified copy of property cards of survey No. 212, 211 & 213,	Exh.50 to 52
11.	Certified copy of Namuna No. 8 of property No. 525,	Exh.53
12.	Certified copy of Namuna No. 8 of property No. 287,	Exh.54

11 - Heard Ld. Adv. S.A. Bhujbal for the plaintiffs and Ld. Adv. Y.D. Patil for defendants. So also, the plaintiffs filed written notes of arguments (Exh.68). The defendants also adduced written notes of arguments (Exh.69). I scanned written notes of arguments of both the parties.

### **Material Admitted Facts**

12 - In order to narrow down real controversy between the parties, it would apposite to mention undisputed and material facts of the case which are as follows:-

- i. Relation between the plaintiffs and defendants,
- ii. Relation of the plaintiffs with deceased Gajanan & Nihalsing,
- i. The suit property was belonged to deceased Nihalsing,
- ii. Gajanan, Parobai and Nihalsing were expired.

### **As to Issues No. 1, 2 & 2-C :-**

13 - These issues are inter-connected with each other, therefore, I discussed it together for the sake of brevity.

14 - It is sound law that evidence of parties is to be judged in the light of principle of preponderance of probabilities in civil cases. The plaintiffs asserted that the suit property is joint Hindu family property of themselves and defendants. Likewise, the defendants asserted that they become owners of suit property in view of partition. It is well settled position in civil cases that one who asserts he/she has to prove. Therefore, the burden lies on the plaintiffs and defendants to prove their respective assertions. Once, the plaintiffs and defendants discharge their burden then the onus shift on the adverse party.

15 - The plaintiffs filed affidavit of plaintiff No. 1 (PW.1) at Exh.15 in lieu of examination-in-chief. The plaintiff No. 1 (PW.1)

reiterated contents of plaint. Therefore, I did not reproduce it. Ld. Adv. Y.D. Patil cross-examined the plaintiff No. 1 (PW.1). He stated that his birth date is 05/09/1978. He served as Sarpanch of village of Taroda. The suit property is Class-II occupancy agricultural land. The suit property was belonged to his grandfather Nihalsing. Deceased Nihalsing resided at village Taroda. House property of deceased Nihalsing is located at village Taroda.

16 - The plaintiff No. 1 (PW.1) further admitted that he has two brothers namely Pratapsing & Kartarsing and one sister namely Sunita. His sister is alive. His father had three brothers and four sisters. His paternal aunts names are Bhurabai, Gurabai, Bandarabai and deceased Zamiyabai. His father died in the year 2006. At that time, he was major. He admitted that the suit property is mutated in the names of defendants and plaintiffs. He admitted that he himself and others relinquished their shares as partition was effected among themselves.

17 - The plaintiff No. 1 (PW.1) further admitted that he did not issue notice to the defendants prior to institution of present suit. He did not challenge mutation entry No. 469 in the Tahsil Court or in any other Court. He admitted that gat No. 264 is mutated in the name of defendant No. 1. His father also got share from gat No. 264. He borrowed loan of Rs. 50,000/- on gat No. 264. He repaid said amount by selling his share. He did not include all the properties of deceased Nihalsing in present suit. He further

admitted that he did not add his sisters and parental aunts in present suit. He denied further suggestions.

18 - Sardarsing (P.W.2) deposed that he knows the plaintiffs and defendants. The plaintiffs are Class-I heirs of deceased Gajanan. The defendants are real brothers of deceased Gajanan. The suit property is joint family property of plaintiffs and defendants. Therefore, the plaintiffs are having share in it. No partition was effected among the plaintiffs and defendants in respect of suit property. Deceased Nihalsing was not having any other property except suit property. The defendant No. 3 is teacher. Therefore, it is moral and legal obligation of the defendant No. 3 to give shares to the plaintiffs from suit property and to look after them. Despite of it, the defendants incorrectly and illegally mutated their names in revenue record of suit property. Thus, the defendants are trying to grab suit property by avoiding to effect partition of suit property. He himself and relatives persuaded the defendants to effect partition and separate possession of share of the plaintiffs from the suit property. However, the defendants are not ready to effect partition. The defendants are threatening to the plaintiffs.

19 - Ld. Adv. Y.D. Patil cross-examined the Sardarsing (P.W.2). He admitted that deceased Nihalsing was having 04 children. The plaintiff No. 1 is having one sister. Deceased Nihalsing was having an agricultural land adjacent to public road

and one house property at village Taroda. He further admitted that the plaintiffs and defendants are having joint family agricultural land bearing gat No. 264 at village Kothali. The plaintiffs and defendants reside separately. He does not know more details about the internal family affairs of plaintiffs and defendants. He denied adverse suggestions.

20 - The defendants filed affidavit of defendant No. 3 (D.W.1) at Exh.34 in lieu of examination-in-chief. It is replica of written statement. Ld. Adv. S.A. Bhujbal cross-examined the defendant No. 3 (D.W.1). He admitted that the suit property is their ancestral property. A oral partition was effected among the defendants and deceased Gajanan during lifetime of their mother Parobai. No one was present at the time of partition. Said partition was effected in the year 1991-92. However, their names were not mutated in Revenue record in respect of their respective shares. The suit property was not divided among the defendants and deceased Gajanan in the year 1991-92. At present, the names of defendants are mutated in Revenue record of suit property.

21 - He further admitted that gat No. 264 was ancestral property of himself, defendant No. 1 & 2 and deceased Gajanan. However, he did not adduce a document in that behalf. At present, the plaintiffs and defendants are not owners and possessors of gat No. 264. He did not adduce relinquishment-deed executed by the plaintiffs. He unable to adduce relinquishment-deed. Said

relinquishment-deed is not registered in the office of Sub-Registrar. Mutation entries No. 469 and 470 were effected after demise of Gajanan. He negated further suggestions.

22 - In pursuance of above evidence, Ld. Adv. S.A. Bhujbal for the plaintiffs submitted that one Nihalsing was original owner of the suit property. After demise of Nihalsing, the defendants and deceased Gajanan inherited the suit property. After demise of Gajanan, the plaintiffs being Class-I heirs of Gajanan inherited the his share in suit property. The names of plaintiffs and defendants are mutated as owners and possessors of the suit property in Revenue record. The plaintiffs adduced certified copy of 7/12 extract (Exh.19) on record in that regard. Thus, he submitted that the plaintiffs successfully proved that the suit property is Hindu joint family property of the plaintiffs and the defendants.

23 - He further submitted that no partition was effected among plaintiffs and defendants in respect of suit property. The defendants in collusion with Revenue officer effected mutation entries No. 469 and 470. As per mutation entry No. 469, the plaintiffs relinquished their share in respect of suit property. However, the defendants failed to produce relinquishment-deed on record. On the basis of said mutation entry, the defendants in collusion with Revenue officer deleted name of the plaintiffs from Revenue record. After that, the defendants effected partition of suit property among themselves vide. mutation entry No. 470. Thus,

both mutation entries are false and bogus. Hence, it is abundantly clear that partition was not effected among plaintiffs and defendants. Furthermore, the defendants did not adduce a document on record which shows that deceased Parobai effected partition among defendants and deceased Gajanan in respect of their ancestral properties. Hence, the defendants failed to prove fact of previous partition. With this, he submitted the plaintiffs discharged their onus.

24 - Per contra, Ld. Adv. Y.D. Patil for defendants contended that Nihalsing was having two agricultural lands i.e. suit property and gat No. 264 ad-measuring 1 H. 21 R. which is located at village Kothali. After demise of Nihalsing, Parobai used to cultivate suit property with the help her family members. Parobai effected partition of their ancestral properties among her sons in order to avoid future conflict. In said partition, the defendants No. 1 & 2 got 0. 61 R. each and the defendant No. 3 got 1 H. 61 R. as their share out of suit property. So also, deceased Gajanan got major share in gat No. 264. Therefore, deceased Gajanan did not get share in suit property. Said partition was admitted to deceased Gajanan and defendants. Since then, the defendants became owners and possessors of suit property. After demise of Gajanan, the plaintiffs relinquished their shares from the suit property vide. mutation entry No. 469. Thus, the plaintiffs do not have any concern with suit property. Names of defendants are mutated in respect of their shares in Revenue record. The defendants adduced 7/12 extract in

that regard. So also, the plaintiff No. 1 (P.W.1) admitted the same in his cross-examination. Therefore, the defendants successfully proved fact of previous partition. In support of this contentions, the defendants relied on following authority :-

- i. Bhagirathi & Anr. Vs. Pundlikappa decided by Hon'ble Karnataka High Court reported in RSA No. 200113/2015 on 17/11/2022,**
- ii. B.L. Sreedhar & Ors. Vs. V.K. Munirreddy & Ors. decided by Hon'ble Supreme Court reported in 2002 (7) SLT 135.**

25 - I considered rival submissions of both the parties. I have gone through evidence on record. Both the parties admitted that Nihalsing was original owner of the suit property. Defendants and deceased Gajanan are sons of deceased Nihalsing. Deceased Gajanan was father of plaintiffs No. 1 & 2 and husband of plaintiff No. 3. In the set of these admitted fact, I proceed to evaluate evidence of both the parties.

26 - The plaintiffs submitted that the suit property is Hindu joint family property of themselves and defendants. They further submitted that the partition was not effected. To prove said facts, the plaintiffs relied on oral evidence of plaintiff No. 1 (P.W.1) and Sardarsing (P.W.2) and certified copy of 7/12 extract (Exh. 19). Perusal of certified copy of 7/12 extract (Exh. 19) reveals that the names of plaintiffs and defendants are mutated as owners for the 2010-11. So also, defendant No. 3 (D.W.1) admitted in his cross-examination that the suit property is their ancestral property.

Considering this admission and evidence adduced by the plaintiffs, it is seen that the plaintiffs discharged their onus in respect of the suit property is ancestral property of themselves and defendants.

27 - The defendants took defence that deceased Parobai effected partition of their ancestral properties among the defendants and deceased Gajanan. To prove said defence, the defendants examined defendant No. 3 (D.W.1) in present matter. The defendants adduced certified copies of 7/12 extract (Exh. 30, 46 & 48) and mutation entries No. 469 and 470 (Exh. 28 & 29). In present matter, the defendants neither pleaded year of previous partition in their written statement nor in affidavit of defendant No. 3 (D.W.1). Moreover, the defendants also did not plead mode of partition. The defendant No. 3 (D.W.1) stated in cross-examination that oral partition was effected by Parobai among her sons in the year 1991-92 in respect of their ancestral properties. Thus, the defendants disclosed year of partition and mode of partition in cross-examination of defendant No. 3 (D.W.1). However, I am of the opinion that the defendants ought to have specifically plead facts of previous partition and mode of partition in their written statement and affidavit, specially when said facts were within their knowledge. Moreover, the defendant No. 3 (D.W.1) admitted that their names were not mutated in Revenue record in respect of their shares. Considering said admission, it appears that the oral partition was not acted upon.

28 - The defendant No. 3 (D.W.1) admitted that the suit property was not partitioned among the defendants and deceased Gajanan in the year 1991-92. From this particular admission, it is seen that the defendant No. 3 (D.W.1) did not support their defence. This particular admission washed out defence of the defendants.

29 - The defendants contended that deceased Gajanan got major share in gat No. 264. Therefore, deceased Gajanan did not get share in suit property. In support of this contention, the defendants adduced certified copy of 7/12 extract (Exh.49). Perusal of it shows that neither name of deceased Gajanan nor plaintiffs were appeared in it. In fact name of defendant No. 1 was mutated in respect of agricultural land ad-measuring 1 H. 21 R. It appears that plaintiff No. 1 (P.W.1) admitted that deceased Gajanan got share from gat No. 264 and he sold said share towards repayment of loan. However, there is lack of documentary evidence on record which shows that deceased Gajanan got major share in gat No. 264. Thus, I am humbly dis-agree with the contentions of defendants.

30 - Perusal of certified copy of 7/12 extract (Exh. 48) reveals that the names of defendants are mutated as owners in respect of an agricultural land ad-measuring 0 H. 61 R., 0 H. 61 R. and 1 H. 61 R. respectively for years 2017-18. Thus, it appears that the suit property is mutated in the names of defendants at present.

It is seen that names of defendants were mutated on the basis of mutation entry No. 470 (Exh.29). Perusal of it shows that the defendants partitioned the suit property among themselves on the basis of partition-deed in the year 2007. However, the plaintiffs did not produce said partition-deed on record. Thus, the names of defendants are mutated on the basis of partition-deed in view of mutation entry No. 470 pertaining to their respective shares.

31 - Perusal of mutation entry No. 469 (Exh. 28) reveals that the plaintiffs relinquished their right from the suit property in the year 2006. The plaintiff No. 1 also admitted in his cross-examination that they relinquished their share as partition was effected. However, he did not specifically admit that the plaintiffs relinquished their share in respect of suit property. On the contrary, the plaintiff No. 1 specifically denied that he got share from gat No. 264, therefore, he relinquished his share by mutation entry No. 469.

32 - Moreover, mutation entry No. 469 (Exh. 28) does not depict mode of relinquishment of share of the plaintiffs. In that regard, the defendant No. 3 (D.W.1) admitted that he unable to produce relinquishment-deed on record. Moreover, said relinquishment-deed is not registered one. Thus, it appears that the defendants are silent about mode of relinquishment-deed in present matter. Considering said admissions, it is hard to believe that the plaintiffs relinquished the share from the suit property.

Moreover, it is seen that the names of the plaintiffs were deleted from the 7/12 extract of suit property by mutation entry No. 469.

33 - In view of aforesaid discussion, it is seen that the name of plaintiffs and defendants are mutated in 7/12 extract of suit property for year 2010-11. Thereafter, the names of plaintiffs were deleted from 7/12 extract while mutation entry No. 469. However, the defendants did not adduce relinquishment-deed on record. Moreover, the defendants neither plead nor lead evidence in respect of mode of relinquishment. Thus, I am of the view that it is not proved that the plaintiffs relinquished their shares in respect of suit property. Furthermore, it is gathered from mutation entry No. 470 that the defendants partitioned suit property among themselves on the basis of partition-deed. However, said partition-deed is not produced by the defendants. Furthermore, said fact is contrary to the fact of previous partition which was effected in the year 1991-92 by deceased Parobai.

34 - Furthermore, the defendants neither pleaded nor lead in evidence about year and mode of partition. Moreover, the defendant No. 1 admitted that partition was not effected among the defendants and deceased Gajanan. He further admitted that oral partition was not acted upon. Considering all these aspects, I found theory of previous partition is doubtful.

35 - The defendants adduced two citations as mentioned supra. Bhagirathi (Supra) case is related with mutation entry. In

present matter, both mutation entries were effected in absense of documents. Hence, I do not find proper on both mutation entries. Therefore, ratio laid down in Bhagirathi (Supra) is not applicable in present case. Furthermore, B.L. Sreedhar (above) case law is respect of rule of estoppel. However, there is lack of credible evidence on record regarding relinquishment of share by the plaintiffs. Therefore, dictum of B.L. Sreedhar (above) is not squarly applicable to present case.

36 - It is admitted fact that Nihalsing was original owner of suit property. The parties further admitted that the defendants, deceased Gajanan and Parobai inherited suit property after demise of Nihalsing. It is also admitted facts that Gajanan was died and the plaintiffs are Class-I heirs of deceased Gajanan. Therefore, the plaintiffs inherited share of deceased Gajanan after his demise. Hence, I am of the view that the plaintiffs successfully proved that suit property is joint Hindu family property of themselves and defendants. Moreover, the plaintiffs succeeded to prove that no partition effected among themselves and defendants. Per contra, the defendants failed to prove that Parobai effected partition among defendants and deceased Gajanan. Accordingly, I answered to issues No. 1 & 2 in affirmative and issue No. 2-C in negative.

**As to Issues No. 2-A & 2-B :-**

37 - These issues are inter-connected with each other, therefore, I discussed it together for the sake of brevity.

38 - These issues were framed at the instance of the defendants. The defendants contended that the plaintiffs instituted present suit after lapse of 12 years. Therefore, present suit is barred by law of limitation. The defendants further contended that the plaintiffs neither include all ancestral properties nor added necessary parties in present suit. In support of this contentions, the defendants relied on following authority :-

**i. Kenchegowda Vs. Siddegowda decided by Hon'ble Supreme Court reported in (1991) 4 SCC, wherein it held that the partition suit is maintainable when all the joint family properties not made the subject matter of the suit nor co-shares impleaded.**

**ii. Avula Jayarami Reddy Vs. Yerrabothula Nagarathamma decided by Hon'ble Andhra Pradesh High Court reported in 2012 (1) ALT 356 (AB), wherein it held that suit for partition is bad for non-joinder of necessary parties. If all the parties having share in the joint family properties are not made as parties, the suit is liable to be dismissed.**

39 - I considered these contentions. I have gone through aforesaid citation. It is admitted fact that Gajanan was died in the year 2006. The plaintiffs instituted present suit on 23/08/2018. The defendants mentioned exact death date of Gajanan. Thus, it appears that the plaintiffs instituted present within 12 years from death date of Gajanan. Hence, I am of the view that present suit is within law of limitation. Accordingly, I answered to issue No. 2-A in negative.

40 - The defendants pleaded that the plaintiffs did not include necessary parties and all ancestral properties in present suit. However, the defendants failed to mention specific names of the parties and details of properties in written statement and affidavit of defendant No. 3. The defendants adduced property cards (Exh. 50 to 52) and Namuna 8 (Exh.53 & 54). Perusal of property cards (Exh. 50 to 52) shows that plot No. 212 is mutated in the name of plaintiff No. 1, plots No. 211 & 213 are mutated in the name of Lalitabai Motising Pachore. After gone through Namuna 8 (Exh.53 & 54) depicts that property No. 525 is mutated in the name of defendant No. 3 and property No. 287 is mutated in the name of deceased Gajanan. However, the defendants did not plead that said properties are belonged to deceased Nihalsing. Thus, the aforesaid documents adduced by the defendants is of no use in absence of pleading.

41 - The defendants relied on cross-examination of plaintiff No. 1 (PW.1). He admitted in his cross-examination that he is having one sister namely Sunita and 04 paternal aunts names are Bhurabai, Gurabai, Bandarabai and deceased Zamiyabai. He further admitted that he did not add his sister and parental aunts in present suit. It is well position that the daughters are coparcener and having right in ancestral and Hindu joint family property. Therefore, Sunita and parental aunt of plaintiff No. 1 are necessary parties in present suit. Hence, it is imperative on the part of plaintiffs to include Sunita and parental aunt in present suit. The

plaintiff No. 1 (PW.1) further admitted that he did not include all the properties of deceased Nihalsing in present suit. Sardarsing (PW.2) also admitted that house property of deceased Nihalsing is located at village Taroda. However, it appears that the plaintiffs did not include house property of Nihalsing in present matter. General rule of partition is that where suit for partition is brought by the plaintiffs then it should embrace the whole joint family properties. Moreover, it is also sound fact that suit for partial partition is maintainable in case of the exception. The plaintiffs failed to show exception to said General rule. The facts admitted need not be proved. Thus, the defendants succeeded to prove that present suit is bad for non inclusion of all ancestral property in common hotch-pot and non-joinder of necessary parties. Hence, I answered to issue No. 2-B in affirmative.

**As to Issues No. 3 & 4 :-**

42 - These issues are inter-connected with each other, therefore, I discussed it together for the sake of brevity.

43 - The plaintiffs claimed that they are having share in suit property. The plaintiffs further sought relief of partition and separate possession in suit properties. However, the plaintiffs failed to mention that they are entitled how much share. Admittedly, the plaintiffs along-with Sunita are entitled for share of deceased Gajanan. As discussed above, the plaintiffs did not add necessary parties i.e. Sunita, Bhurabai, Gurabai, Bandarabai and deceased

Zamiyabai. In such premises, I am of the opinion that it is not proper to determine share of plaintiffs in absence of necessary parties. Accordingly, I answered to issue No. 3 in affirmative.

44 - Moreover, the plaintiff did not include all ancestral property in common hotch-pot in present suit. Hence, I am of the view that the plaintiffs are not entitled for the reliefs of partition and separate possession as prayed. Hence, I answered to issue No. 4 in negative.

**As to Issue No. 5 :-**

45 - Considering facts and circumstance of present case, evidence on record and ratio laid down in Kenchegowda (supra) & Avula (above), I am of the view that present suit deserves to be dismissed with costs. Resultantly for answering to issue No. 5, I pass following order :-

**Order**

1. The suit is dismissed with costs.
2. Decree be drawn accordingly.
3. Pronounced and dictated in open Court.

Date :- 21/04/2026

Place :- Motala

( Satishkumar Shripatrao Gaikwad)  
Jt. Civil Judge Jr. Div.,  
Motala, Distt. Buldana.