

CNR No. MHGA090002722021  
R.C.S. No. 14/2021  
Jijabai +3 -Vs.-Motiram+2  
Judgment (Exh No.90)



Received on : 03.04.2021  
Registered on : 03.04.2021  
Decided on : 12.03.2026  
Duration:- Y: 04, M:11, D:09.

**IN THE COURT OF JOINT CIVIL JUDGE (JUNIOR DIVISION),**  
**CHAMORSHI AT GADCHIROLI**  
(Presided over by S. A.Bhaisare)

**Regular Civil Suit No. 14/2021**

**Exh. No.90**

1. **Jijabai Bhauji Madavi**  
Aged about : 62 Years, Occ.- Agriculture & Household  
R/o. Ramangatta, Po.- Thakari,  
Tah. Chamorshi, Distt. Gadchiroli
  2. **Yashwant Tulshiram Naitam,**  
Aged about : 59 Years, Occ.- Retired,  
R/o. Anandnagar Semana Bypass Road,  
Tah. & Distt. Gadchiroli
  3. **Sau. Sindhubai Sundarshaha Soyam,**  
Aged about : 50 Years, Occ.- Agriculture & Household,  
R/o. Illur, Po. Ashti,  
Tah. Chamorshi, Dist.- Gadchiroli
  4. **Sau. Nandabai (Nandubai) Banduji Urete,**  
Aged about : 47 Years, Occ.- Agriculture & Household,  
R/o. Rengewahi, Po. Markanda (K.),  
Tah. Chamorshi, Dist.- Gadchiroli
- .... Plaintiffs**

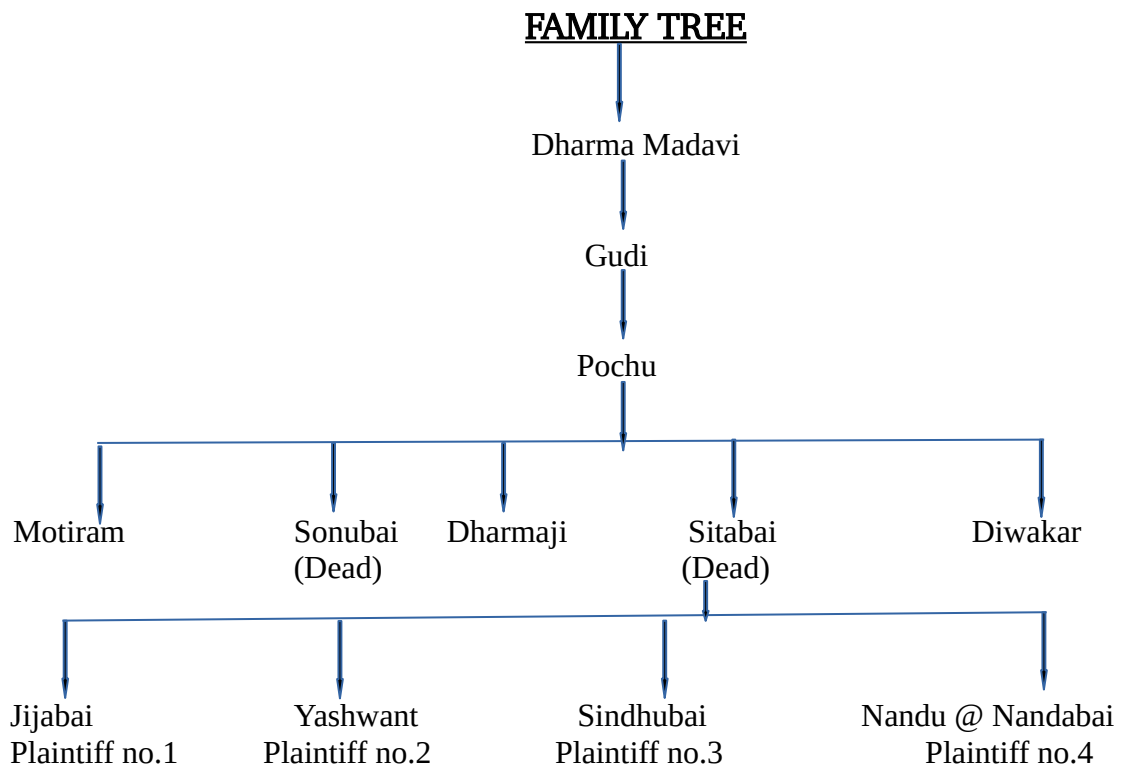
**-VERSUS-**

1. **Motiram Pochu Madavi (Abated As per Order Below Exh.01)**  
Aged about -75 Yrs., Occ.- Agriculture,



**The case of the plaintiff in nutshell is as under :-**

2. Sitabai Tulshiram Naitam was the mother of plaintiffs. She died on 27/05/2017. She was the sister of defendants. Pochu Gudi Madavi was the father of deceased Sitabai and defendants. Pochu was the owner of suit properties. The family tree is described below:



3. Sonubai died issueless. Sitabai and defendants became the owners and possessors of suit properties by way of succession. After the death of Sitabai, the plaintiffs became the owner and possessors of undivided suit properties. In the month of June-July 2020, the plaintiffs learned that the defendants executed some false documents to deny their ownership and share in the suit properties. The suit properties is not partitioned. Plaintiff no.3 Sindhubai sent a notice dated 31/12/2020 to the defendants requesting them for partition and separate possession of suit properties within 15 days from the date of

receipt of notice. The defendants received the notice on 02/01/2021, but they failed to comply with the notice. Hence, the present suit.

4. Summons were served on the defendants. They appeared before the Court. Defendants filed their written statement at Exh.12.

5. **The case of defendants in brief is as under :-**

a. Sitabai, Sonubai and defendants are the children of Pochu Gudi Madavi. Sitabai and Sonubai had relinquished their share in the ancestral suit properties bearing Survey number 107 admeasuring 1.95 HR, Survey number 108 admeasuring 2.41 HR, Survey number 109 admeasuring 1.76 HR in favour of defendants by executing a relinquishment deed dated 01/02/1996.

b. The defendants acquired the suit properties bearing Survey number 248/2 admeasuring 1.71 HR, Survey number 248/3 admeasuring 1.20 HR, Survey number 107/3 admeasuring 0.50 HR, Survey number 107/2 admeasuring 0.50 HR from Zunga Soma Madavi *vide* registered Will dated 11/03/1996.

c. In respect of suit properties bearing Survey number 305 admeasuring 0.10 HR and Survey number 99 admeasuring 0.18 HR, many people have built houses over them. However, the plaintiffs have neither mentioned this fact nor added them in the suit.

d. Sitabai and defendants have partitioned the suit properties bearing Survey number 30/1, 30/2, 30/3, 30/4, 30/5 and the same is recorded in revenue records. The plaintiffs have no right to claim

partition of the suit properties. Lastly, they prayed to dismiss the suit with costs.

6. My Learned Predecessor has framed following issues at Exh.13 for their determination which are reproduced by me as below. My findings on them with reasons thereon are as follows:

Sr. no.	Issues	Finding
1.	Whether plaintiffs prove that, they are entitled for partition and separate possession in the suit properties? If yes, then what extent?	Partly Yes, the plaintiffs are entitled to 1/12 <sup>th</sup> share each and the defendant no.2 and 3 are entitled to 1/3 <sup>rd</sup> share each in the suit properties bearing Survey no. 107, 108, 109, 305 and 99
2.	Whether defendants prove that, the suit properties are ancestral properties?	Survey no. 107, 108, 109, 30/1, 30/2, 30/3, 30/4, 30/5, 305, 99 are ancestral properties
3.	Whether defendants prove that, suit properties Survey no.30/1, 30/2, 30/3,30/4 and 30/5 were already partition between them, late Sitabai and Sonubai?	Yes
4.	Whether defendants prove that, late Sitabai and Sonubai had relinquished their shares in Survey no.107, 108 and 109 in their favour on 01.02.1996 by executing relinquished deed?	No

5.	Whether defendants prove that, in view of relinquished deed they mutated their names in revenue record ?	No
6.	Whether defendants prove that survey no. 248/2, 248/3, 107/3, 107/2 are received by them from their uncle Zunga Soma Madavi by will deed ?	Redundant
7.	Whether plaintiffs are entitled for reliefs prayed for ?	Partly Yes
8.	Whether suit is bad for non-joinder of necessary party ?	No
9.	What order and decree?	The suit is partly decreed.

### **ARGUMENTS OF PLAINTIFF**

7. Learned advocate Shri PB Borawar appearing for the plaintiffs has argued as per their pleadings. The defendants have neither produced relinquishment deed nor will in respect of suit properties. There are material admissions in the cross-examination of defendant's witness no.2. The residents/occupants of houses over Survey no. 305 and 99 are not necessary parties and so, the suit is not bad for non-joinder of necessary party. The plaintiffs have proved their case by way of oral and documentary evidence. The plaintiffs are entitled for reliefs as prayed for. Hence, the suit deserves to be decreed. To buttress his submission, he relied upon the following judgments of Hon'ble Superior Courts.

1. *Bhimabai v. Arthur Import and Export Company, 2019 (3) ALL MR 975 (S.C.)*
2. *Chandrabhaga Kolhe v. Suryabhan Shende, 2023 (5) Mh.L.J 399*

### **ARGUMENTS OF DEFENDANT**

8. *Per contra*, the learned advocate Shri D.V Donadkar appearing on behalf of the defendants have urged that the suit is abated against defendant no.1. The deceased Sitabai and Sonubai relinquished their share in the suit properties bearing Survey no. 107, 108 and 109 in favour of defendants and it was recorded in revenue record at Exh.75. The revenue record at Exh.75 is of the year 1996 i.e 30 years old. The mother of plaintiffs never challenged it. No registration is required as per S.17 of the Registration Act. Zunga Soma Madavi executed a registered Will dated 11/03/1996 in respect of suit properties bearing Survey no. 248/2, 248/3, 107/3 and 107/2 in favour of defendants. It is reflected in the revenue record at Exh.77.

9. He further contended that several people have constructed houses on suit property bearing Survey no. 305 and 99. The names mentioned in the 7/12 extract of Survey no.305 and 99 have an interest in the suit properties. They are not added in the suit. The suit is bad for non-joinder of necessary parties. The suit properties bearing Survey no.30/1, 30/2, 30/3, 30/4 and 30/5 are equally partitioned between Sitabai, Sonubai and defendants. The same is recorded in the revenue record at Exh.74. It is admitted by the plaintiff witnesses in cross-examination. It is a family arrangement and requires no registration. The mutation entries have a presumptive value as per

S.35 of the Indian Evidence Act. The plaintiffs should have challenged the entries within reasonable time. The parties are estopped by denying the fact. In support of his contention, he relied upon the judgments of Hon'ble Superior Courts.

1. *Kale v Deputy Director, 1976 SCC (3) 119*
2. *Shardaben Patel v. Lh of Natvarbhai Patel, First Appeal no.5014 of 2022*

Lastly, he prayed to dismiss the suit.

### **REASONS**

10. To prove the claim of plaintiffs, they examined following witnesses and produced following documents.

Sr. No.	Name	Relevancy	Witness	Exh.No.
1.	Sindhubai Sundarshaha Soyam	Plaintiff no.3	P.W.-1	18
2.	Sundarshaha Doluji Soyam	Husband of Plaintiff no.3	P.W.-2	53
3.	Tulshiram Urkuda Madavi	Sarpanch, Gram Panchayat, Illur	P.W.-3	54

Sr.No.	Documents	Exh.No.
1	Copy of Death Certificate	22
2	Intimation Letter	23
3	Postal Receipts	24 to 26
4	Acknowledgments	27 to 29
5	Copy of 7/12 extracts of suit properties	30 to 42

11. The plaintiff closed their evidence by filing pursis at Exh. 58.

12. Defendants have examined following witnesses and produced following documents.

Sr. No.	Name	Relevancy	Witness	Exh.No.
1.	Diwakar Pochu Madavi	Defendant no.3	D.W.-1	60
2.	Sachin Diwakar Gurnule	Talathi	D.W.-2	74

Sr.No.	Documents	Exh.No.
1	Mutation Entry of survey no.30	61 & 75
2	Mutation Entry of survey no.107, 108 and 109	62 & 76
3	Mutation Entry of survey no. 107 and 248	63 & 77
4	7/12 extract of survey no. 107	64
5	7/12 extract of survey no. 248	65
6	Mutation Entry of survey no. 107/1 and 248/1	78

13. The defendants closed their evidence by filing pursis at Exh. 79.

14. Before probing into the controversy, it is necessary to mention undisputed facts to confine the scope of dispute.

- a) Plaintiffs are the children of deceased Sitabai.
- b) Defendants, Sitabai and Sonubai are the children of Pochu Gudi Madavi.
- c) Sitabai died on 27/05/2017.
- d) Sonubai is no more.

- e) The suit properties bearing Survey no. 107, 108, 109, 30/1, 30/2, 30/3, 30/4, 30/5, 99 and 305 are ancestral properties.
- f) The receipt of notice dated 30/12/2020 by the defendants is not disputed.

**AS TO ISSUE NO. 2 TO 6:-**

(As all these issues are interlinked to each other, I prefer to discuss them together for the sake of convenience and brevity).

15. The evidence of PW-1 Sindhubai is nothing but replica of pleadings of plaintiff. She deposed that the suit properties were owned and possessed by Pochu Gudi Madavi. They are ancestral in nature.

16. In her rigorous cross-examination by the defendant, she admitted the following facts:

- a) She is not aware of any transaction of the suit properties between her mother Sitabai, Aunt Sonubai and defendants.
- b) Zunga Soma Madavi was the uncle of defendants no.1 to 3. Zunga was the owner of the suit properties bearing Survey no. 248/2, 248/3, 107/3 and 107/2.
- c) After the death of Zunga, the defendants became the owner of his properties.
- d) Permanent house structures are constructed over Survey no.305 and 99. No empty space is left over it.
- e) She has not added the persons mentioned in the 7/12 extract of Survey no. 99 at Exh.36.
- f) Survey no. 30/1, 30/2, 30/3, 30/4, 30/5, 107, 108 and 109 are already partitioned amongst deceased Sitabai, deceased Sonubai

and defendants. Separate 7/12 extracts were prepared after partition.

g) They were partitioned during the lifetime of Sitabai and Sonubai.

17. P.W-2 Sundarshaha is the husband of P.W-1 Sindhubai. He deposed in his evidence that the suit properties belonged to father of P.W-1. Sonubai and Defendant no.2 died issueless. After the death of Pochu, Sitabai and defendants became the owners of suit properties by way of succession. On death of Sitabai, the plaintiffs became the owners of the same. The defendants prepared false revenue records to defeat the right of plaintiffs. The suit properties are not partitioned yet.

18. Having regard to his cross-examination, he admitted that he is not aware of any transaction between deceased Sonubai, deceased Sitabai and defendants. The original owner of suit properties bearing Survey no. 248/2, 248/3, 107/3 and 107/2 was Zunga Soma Madavi. Separate 7/12 extracts were prepared of suit properties bearing Survey no. 30/1, 30/2, 30/3, 30/4, 30/5 in the names of children of Pochu.

19. D.W-1 Diwakar reiterated the contents of his pleadings in his evidence. Adverting to his cross-examination, he admitted that deceased Sitabai and deceased Sonubai had an equal share in the ancestral suit properties. Both Sonubai and defendant no.1 Motiram died issueless.

20. D.W-2 Sachin is the Talathi of Taluka Ashti. He deposed in his evidence regarding mutation number 182 (Exh.75), mutation number 92 (Exh.76), mutation number 191 (Exh.77).

21. Learned advocate for the defendant has argued that suit is abated against defendant no.1 Motiram.

22. However, D.W-1 has admitted that defendant no.1 died issueless. There is nothing on record to show that he has a wife. As such, it is clear that defendant no.1 Motiram had no legal heirs at the time of his death. Hence, the suit is not abated against him.

23. P.W-1 and P.W-2 have admitted that Zunga Soma Madavi was the owner of the suit properties bearing Survey no. 248/2, 248/3, 107/3 and 107/2. Thus, it cannot be said that the said properties were owned by the grandfather of plaintiffs namely, Pochu Gudi Madavi. By no stretch of imagination, it cannot be inferred that they are ancestral properties of mother of plaintiffs and defendants. Hence, I answer issue no.2 accordingly.

24. At the cost of repetition, it needs to be mentioned that the defendants have admitted in their pleadings that the suit properties bearing Survey no. 107, 108, 109, 30/1, 30/2, 30/3, 30/4, 30/5, 305, 99 are ancestral properties.

25. The learned advocate for the plaintiffs has argued that no partition deed is produced or proved by the defendants to substantiate

that the suit properties bearing Survey no. 30/1, 30/2, 30/3, 30/4, 30/5 have already been partitioned.

26. *Per contra*, it is the contention of learned advocate for the defendant that it was a family arrangement. It is backed by mutation entry at Exh.74. He relied upon the judgment of Hon'ble Gujarat High Court in *Shardaben Patel v. Lh of Natvarbhai Patel, First Appeal no.5014 of 2022*.

27. On careful reading of Shardaben (supra), the Hon'ble Gujarat High Court has held that,  
*"In exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a Court, it may be accepted."*

28. However, on perusal of mutation entry at Exh.74, it appears that the partition deed was executed on Rs.20 stamp paper. The partition was not executed orally. Also, there is no specific pleading of the defendants in respect of oral partition of Survey no. 30. Hence, the judgment of Shardaben (supra) is not beneficial to the defendants considering the facts of the present case.

29. P.W-1 has admitted that the suit properties bearing Survey no. 30 is already partitioned amongst deceased Sitabai, deceased Sonubai and defendants during the lifetime of Sitabai and Sonubai. In pursuance of partition, separate 7/12 extracts were prepared of Survey no. 30/1, 30/2, 30/3, 30/4, 30/5 at Exh.38 to 42. It is reflected in mutation entry at Exh.61 and 75. It reveals that the

partition is finally evinced in the same manner as if it had been affected by a decree of a Court. Admissions are the best evidence. Hence, mere non-production of partition deed would not be deleterious to the defendants in view of admissions of PW-1. The defendants have proved that there was partition in suit properties bearing Survey no. 30/1, 30/2, 30/3, 30/4, 30/5 amongst defendants, late Sitabai and Sonubai. Hence, I answer issue no. 3 as affirmative.

30. The learned advocate for the plaintiff has argued that relinquishment deed is not produced on record. Mere entries in revenue record would not replace the requirement of production of document. They neither create title nor extinguish it. He relied upon the judgment of Hon'ble Supreme Court in ***Bhimabai v. Arthur Import and Export Company, 2019 (3) ALL MR 975 (S.C.)*** wherein their Lordship has observed that,

*“The mutation entries neither create nor extinguish title in land property. It only enables the person to pay the land revenue.”*

31. He also relied upon the judgment of Hon'ble Bombay High Court in ***Chandrabhaga Kolhe v. Suryabhan Shende, 2023 (5) Mh.L.J 399***. The Hon'ble High Court has held that,

*“Unless the will deed or relinquishment deed is placed on record and duly proved, it is not admissible and cannot be read in evidence.”*

32. As against this, the learned advocate for the defendant has argued that the mutations entries have presumptive value. The family arrangement needs no registration. He relied upon the judgment of

Hon'ble Supreme Court in *Kale v Deputy Director, 1976 SCC (3) 119* wherein the Hon'ble Supreme Court has held that,

*“The family arrangement may be oral and in such case no registration is required. But, if the terms of the family arrangement are reduced into writing, registration would be necessary.”*

33. In the case of Chandrabhaga (*supra*), the relinquishment deed was produced and plaintiff claimed that it was executed fraudulently. However, in the present case, no relinquishment deed is produced at all. Also, it is not the case of plaintiff that relinquishment deed is executed fraudulently. Thus, the facts of the present case are different from the facts of cited case law. Hence, it is not helpful to the plaintiff.

34. On perusal of mutation entry no.92 at Exh.76, it reveals that Sitabai and Sonubai had relinquished their share in the suit properties bearing Survey no. 107, 108 and 109 in favour of the defendants by executing a relinquishment deed on a Rs.20 stamp paper. As such, the family arrangement was reduced into writing and thus, it required registration. It was not an oral family arrangement. Hence, the caselaw of Kale (*supra*) is not helpful to the defendant. Admittedly, the relinquishment deed is not produced on record. The defendants have failed to prove it as per the provisions of Indian Evidence Act. So, it cannot be said that late Sitabai and Sonubai have relinquished their shares in the suit properties bearing Survey no. 107, 108 and 109 by executing a relinquishment deed. On perusal of revenue record of Survey no. 107, 108 and 109 at Exh. 30 to 32, the

names of defendants are mutated over them. However, there is no material to show that they are mutated in pursuance of relinquishment deed. In this premise, I answer issue no. 4 and 5 in negative.

35. As already discussed above in paragraph 23, the suit properties bearing Survey no. 248/2, 248/3, 107/3 and 107/2 are not the ancestral properties of the plaintiffs and defendants. No relief can be granted in respect of those suit properties whatsoever. So also, the present dispute is not between defendants and legal heirs of Zunga Soma Madavi. Hence, the issue no.6 as redundant.

#### **AS TO ISSUE NO.8**

36. The Exh.35 and 36 underscore the 7/12 extract of Survey no. 305 and 99 containing several names other than parties. Admittedly, they are not added as parties in the suit. The same is admitted by P.W-1. However, as per the story of defendant, they are merely the residents of houses constructed over Survey no.305 and 99. It is not the case of defendant that they are co-sharers or coparceners of the ancestral suit property Survey no.305 and 99. In a suit for partition, mere residents of demarcated plots/houses or construction of permanent houses over the suit property does not make one a coparcener in the ancestral suit property. There is nothing on record to show that they are legal heirs of Pochu or co-sharers of suit property. As such, they are not necessary parties without whose presence no effective decree could be passed. Hence, the suit is not bad for non-joinder of necessary parties. Accordingly, I answer issue no.8 in negative.

**AS TO ISSUE NO. 1, 7 AND 9**

37. In view of pleadings, evidence and reasons stated hereinabove, the plaintiffs have failed to prove that the suit properties bearing Survey no. 248/2, 248/3, 107/3 and 107/2 are ancestral properties of plaintiffs and defendants. Thus, no relief could be granted in respect of those properties.

38. Although the suit properties bearing Survey no. 30/1, 30/2, 30/3, 30/4, 30/5 are ancestral properties of plaintiffs and defendants, P.W-1 has specifically admitted in her cross-examination that the aforesaid properties have been partitioned and separate 7/12 extracts were prepared in furtherance of the partition. In light of this admission, no relief could be granted to the plaintiffs in respect of these properties.

39. In respect of suit properties bearing Survey no. 107, 108, 109, 305 and 99, the plaintiff have proved that they are ancestral properties of themselves and defendants. They are entitled for partition and separate possession of suit properties bearing Survey no. 107, 108, 109, 305 and 99. Thus, the plaintiffs are entitled to 1/12<sup>th</sup> share each and the defendant no.2 and 3 are entitled to 1/3<sup>rd</sup> share each in the suit properties bearing Survey no. 107, 108, 109, 305 and 99. Hence, I answer issue no. 1 and 7 as partly affirmative. Resultantly, in answer to issue no.9, I pass the following order:

**ORDER**

1. The suit is partly decreed.

2. It is declared that the plaintiffs are entitled to 1/12<sup>th</sup> share each and the defendant no.2 and 3 are entitled to 1/3<sup>rd</sup> share each in the suit properties bearing Survey no. 107, 108, 109, 305 and 99 only.
3. Precept be sent to District Collector, Gadchiroli for effecting partition and separate possession in respect of agricultural suit properties bearing Survey no. 107, 108, 109, 305 and 99 as per S. 54 of the Code of Civil Procedure, 1908.
4. Parties to bear their own costs.
5. Preliminary decree be drawn up accordingly.

(Pronounced and dictated in open Court.)

Sd/-

(S.A.Bhaisare)

Jt. Civil Judge, (Jr.Dn.),

Chamorshi

Place: Chamorshi

Date.12.03.2026