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CNR: MHGO0400001082021

DD MM YY

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, AMGAON**

**DIST- GONDIA**

(Presided over by Atul R. Joshi)

**Regular Civil Suit No.108/2021**

**Exhibit-35**

1. Renuka Bharat Shende,  
Age-65 years, Occ- Agriculturist,  
R/o-Amgaon, Dist-Gondia
2. Bhagrathabai Bhagwat Shende,  
Age-63 years, Occ- Agriculturist,  
R/o-Salekasa, Dist-Gondia.
3. Sitabai Tekchand Shiwankar,  
Age-58 years, Occ- Agriculturist,  
R/o-Amgaon, Dist-Gondia
4. Gitabai Dashrath Muneshwar,  
Age-55 years, Occ- Agriculturist,  
R/o-Amgaon, Dist-Gondia
5. Ethabai Sukhdeo Tarone,  
Age-52 years, Occ- Agriculturist,  
R/o-Salekasa, Dist-Gondia
6. Jankibai Ruplal Gaidhane,

Age-42 years, Occ- Agriculturist,  
R/o-Amgaon, Dist-Gondia

.....**PLAINTIFFS**

**Versus**

1. Sitaram Modku Kore,  
Age-55 years, Occ- Agriculturist,  
R/o- Jamakudo Tal-Salekasa,  
Dist.-Gondia.
2. Tulsiram Modku Kore,  
Age-52 years, Occ- Agriculturist,  
R/o- Jamakudo Tal-Salekasa,  
Dist.-Gondia.

.....**DEFENDANTS**

.....  
**APPEARANCES:**

Shri. P.P. Ther, learned Advocate for the plaintiff  
Shri. G. C. Sakhare, learned Advocate for defendant

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

The suit for partition and separate possession and mesne profit.

**The suit land is described as follows: -**

2. The agricultural land bearing Gat no.106 area 1.49 HR situated at village Jamakudo, Taluka-Salekasa, District-Gondia and bounded as follows: -

East- Land of Sukhchand and Rambaran Raut

West- Land of Rambaran Raut

North- Road

South- Pond

Shall hereinafter collectively referred to as the 'suit property'.

**The case of the plaintiff in brief is as follows: -**

3. The suit land is the ancestral property of the parties to the suit. The common ancestor Modku has six daughters and two sons. In the year 2016, the plaintiffs asked the defendants to partition the land. But the defendants refused to give share. On the pretext of making partition deed the defendants obtained the signature of the plaintiffs on the unregistered relinquishment deed. On the basis of the false and bogus relinquishment deed the defendants removed the name of the plaintiffs from the revenue record of the suit property.

It is further pleaded by the plaintiff that they moved to the SDM, Deori on 12/01/2021 against the wrongful removal of their names from the 7/12 extract. Then SDM court allowed their application and directed to correct the revenue record. The defendants have wrongfully earned the profit from the ancestral land and denied share of the plaintiffs. Hence, the suit.

**Written statement**

4. Defendants filed written statement at **Exh.11-A**. According to him, on 22/07/2019 the plaintiffs have made relinquishment deed of their share in favor of the defendants. Therefore, the defendants have no right in the suit property. He prayed to dismiss the suit.

5. In order to establish the claim, the plaintiff has examined himself at Exh.13.

6. **In order to establish the claim, the plaintiff has relied upon the following documents: -**

<b>Sr. No</b>	<b>Nature of document</b>	<b>Exhibit no.</b>
1	Certified copy of 7/12 extract	16
2	Certified copy of mutation entry	17

7. The plaintiff closed his evidence vide purshis Exh.24.

8. The defendant examined himself at Exh 33. He closed his evidence vide purshis Exh.34.

9. Heard the advocate for the plaintiff and defendant. Perused the entire material available on the record. The issues are framed below Exh.12. The issues are reproduced and recorded my finding thereon for the reasons stated hereinafter.

<b>Sr. No</b>	<b>Issues</b>	<b>Finding</b>
1	Do the plaintiffs prove that the suit properties are the ancestral property of the parties?	Yes
2	Whether the plaintiffs are entitled to partition and separate possession of their share? If yes, what will be the share of each plaintiff?	Yes
3	Whether the plaintiff is entitled for the relief prayed for?	Yes
4	Whether the plaintiffs are entitled for the relief mesne profit?	No
5	What order and decree?	As per final order

## **REASONS**

**Issues No.1 to 3**

10. All the issues are interlinked hence they are taken up together for discussion to avoid repetition of facts and evidence. In order to prove the claim, the plaintiff **Renuka (PW-01) Exh.13** deposed in consonance with her pleadings in the plaint. She deposed that, the suit property is the ancestral property of the parties and each of them have 1/8 share in the suit property.

11. During her cross examination it is revealed that, her father common ancestor had two wives. The defendants did not complete the cross examination in spite of sufficient opportunity. Hence, the further cross examination was closed. The defendants did not bring anything on record from the cross examination to disbelieve the case of the plaintiff.

12. The defendant **Sitram (DW-01) Exh.33** deposed in consonance with his pleadings in the written statement. He deposed that, the common ancestor Modku has two wives. The plaintiffs have relinquished their share in the name of the defendants. He denied the share to the plaintiffs.

13. During his cross examination it is revealed that, he has prepared a document to remove the name of the plaintiffs from the 7/12 extract. The said document was challenged before SDM, Deori. The order passed by the SDM court was in favor of the plaintiffs. He has preferred appeal against the said order but the Collector, Godia has dismissed the appeal. He admitted the suit land is ancestral property of the plaintiffs and him. His father never partitioned the suit property. He deposed that, the plaintiffs did not ask him their share therefore he did not give them share. He specifically answered that if the plaintiffs could have sought partition he would have given them their shares.

14. I have perused the documents filed by the plaintiff below Exh.16 to 17 in the nature of the 7/12 extract and mutation entry. They are the certified copies of the public documents. The defendant has not disputed those

documents. Hence, there is no hurdle to believe those documents Exh.13 to 17. The documents filed on the record show that the suit property is jointly owned by the plaintiff and defendant. The claim of the plaintiff is supported by documents on the record.

15. The contention of the defendants is that, the plaintiffs made relinquishment deed of their shares in the suit properties. The defendants never filed any such deed on record. The burden of proving the existence of such deed is on the defendants. The defendants admitted in their cross examination that the name of the plaintiff is present on the 7/12 extract of the suit property and they are also the shareholders.

16. Considered the entire evidence on the record. The case of the plaintiff is proved on the basis of the oral as well as documentary evidence. The plaintiffs are the co-sharers of the suit property. The defendant could not prove that the plaintiffs are the children of the second wife of the common ancestor and thereby they are not entitled for the share. The defendants have filed nothing on record to substantiate their pleadings.

17. In view of the abovementioned facts and evidence, it is proved on the balance of the possibilities and probabilities that the suit property is ancestral family property. The relations of the parties are not in dispute. There is no other living heir to the deceased except the parties. Hence, the plaintiffs are entitled to partition and share in the property. Hence, I answer the issue no.1, 2 and 3 in the affirmative and record my finding thereon as 'Yes'.

#### **Issue No.4**

18. As far issue of mesne profit is concerned, the plaintiffs and the defendants are equally entitled for the possession and enjoyment of the property. The common possession of the parties is shown on the 7/12 extract of the suit property. The plaintiffs claimed that the defendants alone earned the

profit from the suit property. The plaintiffs could not prove that they were absolutely excluded from the enjoyment of the property. The defendants are also co-sharers of the property. It is not proper to hold that they were in enjoying illegal possession over the property. Moreover, there is nothing on record to show that the defendants have earned profit while being in wrongful possession. There is no sufficient evidence on record to grant mesne profit. Hence, I answer the issue no. 4 in the negative and record my finding thereon as 'No'.

### **Issue No.5**

19. The plaintiffs have established their claim as per the principle of balance of possibilities and probabilities. In view of the affirmative findings on issue no.1,2 and 3 the plaintiffs are entitled to the relief of as prayed in the suit property. As far as respective shares are concerned, the parties are Hindu and they are co-parceners of the property. The suit properties are property of a Hindu male. He died intestate leaving behind him six daughters and two sons as living class -I heirs. The wife of Modku Gaurabai is also no more. The defendants have admitted this fact in the cross examination. The name of Gaurabi is present on 7/12 extract but both the parties have admitted that she is dead. Hence, there are only 8 shareholders living as per pleading of the plaintiff and Adv. Ther. As per the provisions of the Hindu Succession Act, the property needs to be equally divided on each head. Hence, the plaintiffs and defendants each are entitled for the 1/8 share in the suit property. Hence, the following order is passed in response to issue no.5.

### **ORDER**

1. The suit is decreed.

2. The suit property **Gat no 106 area 1.49 HR** situated at village Jamakudo, Taluka-Salekasa, District-Gondia is liable to partitioned among the parties.
3. The each of the plaintiffs and each of the defendants are entitled for separate 1/8 share in the suit property.
4. The suit property is agricultural property hence the precept be sent to Collector, Gondia for final decree proceeding as per section 54 of the Code of Civil Procedure.
5. Parties to bear their own costs.
6. Decree be drawn up accordingly

Date: 02/05/2026

(Atul R. Joshi)  
Jt. Civil Judge, J.D.,  
Amgaon