


MHGO080008512021	Presented on : 04-08-2021
	Registered on : 04-08-2021
	Decided on : 09-04-2026
	Duration : 4 Y 08 M 05 D.

**IN THE COURT OF JOINT CIVIL JUDGE (J.D.), TIRORA, DISTRICT
GONDIA**
(Presided over by Amit S. Agrawal)

REGULAR CIVIL SUIT NO. 56/2021**Exh. No. 72**

1.	Karnabai Mulchand Raut Age: 47 Year Occupation : Household R/o Karanja Tah. Dist. Gondia	Plaintiff.
<u>VERSUS</u>		
1.	Mohanlal Bakaram Patle Age: 62 Year , Occupation : Agriculture	
2.	Gendlal Bakaram Patle (Died)	
3.	Ranglal Bakaram Patle Age: 50 Year, Occupation : Labour R/o Rustampar Post Sukkdi (Dak) Tah. Tirora Dist. Gondia	
4.	Malanbai Gopichand Raut Age: 55 Year, Occupation : Household R/o Vijaytola Post-Dawaniwada Tah Dist. Gondia	
5.	Aasanbai Chhannulal Raut (Died)	
5-A.	Radhesyam Gajanan Bhonde Age: 60 Year, Occupation:- Labour	
5-B.	Bharat Gajanan Bhonde	

	Age: 18 Year, Occupation:- Education 5-A and 5-B R/o. Belati (Buz.), Post. Kawalewada Tah. Tirora Dist. Gondia	
5-C.	Jija Surendra Patle Age: 28 Year, Occupation : Household R/o. Mangali, Post Sihora, Tah. Tumsar Dist. Bhandara	
6.	Lushanbai Bhaiyalal Raut Age: 28 Year, Occupation : Asha worker R/o. Indora (Nimgaon), Tah. Tirora, Dist.Gondia	
7.	Ramratan Asharam Kohre Age: 42 Year, Occupation : Labour R/o. Raipur, Post-Dasgaon, Tahsil and Dist- Gondia	
8.	Shankar Modku Bisen Age: 42 Year, Occupation : Agriculture R/o. Atari, Post. Boda, Tah- Tirora Dist. Gondia	
9.	Khelanbai Gendlal Patle Age: 57 Year, Occupation : Household	
10.	Suresh Gendlal Patle Age: 41 Year, Occupation : Agriculturist	
11.	Mahesh Gendlal Patle Age: 38 Year, Occupation : Agriculturist 9 to 11 R/o. Atari, Post. Boda, Tah- Tirora Dist. Gondia	
12.	Babita Ganraj Chachane Age: 35 Year, Occupation : Household R/o. Bora, Tah. Tirora, Dist. Gondia	Defendants

**SUIT FOR PARTITION, SEPARATE POSSESSION AND
DECLARATION**

Learned Counsel Shri. N.P.Shende for the plaintiff.

Learned Counsel Shri. A.P.Yadao for the defendant No.8.

Learned Counsel Smt. M.R. Rahangdale defendant No.1, 6 and 7

Learned Counsel Smt. Pallavi Ukey defendant No.5-A to 5-C

J U D G M E N T
(Delivered on 09/04/2026)

1] This is a suit for partition, separate possession and declaration.

Facts of case as emerging from record are briefly stated as under :-

2] The plaintiff and defendant no. 1 to 7 are the common ancestral of deceased Bakaram son of Bhiku Patle, who was owner and possessor of agriculture land bearing Gat No. 655 admeasuring 1.03 HR (Land revenue Rs. 4.25/-, Class- I, TS No. 03) situated at Mauza Atri, Tah.. Tirora, Dist-Gondia and same as bounded as under :-

East- Land Gat No. 661 of Modku Bisen,

West- Land Gat no. 656/1 of Suresh Rahangdale

North- Land Gat No. 654 of Modku Bisen,

South- Land Gat No. 661 of Modku Bisen,

(herein after referred to as '**suit land** ' for sake of convenience).

3] It is averred in the plaint that the aforesaid suit land is the ancestral property of deceased Bakaram Patle. He died long ago, leaving behind his wife, three son and five daughters. Accordingly, there names were mutated in 7/12 extract of suit land. Thereafter, the wife of deceased Bakaram Patle namely Rukma Patle was also died on 31-07-

2001. Therefore, plaintiff and defendant no. 1 to 7 are the only legal heirs of aforesaid deceased person. The defendant no. 1 to 3 are the son. Whereas, the plaintiff, defendant no. 4 to 6 and mother of defendant no. 7 are the daughters.

4] It is further averred that, all the daughters of deceased Bakaram Patle are married and therefore, after his death of deceased his sons i.e. defendant no. 1 to 3 remaining possession of suit land. Thereafter, defendant no. 3 shifted to another village namely Rustumpur and settled there permanently. As such the defendant no. 1 and 2 were and are in possession of suit land and taking benefits of the same. After death of mother, the defendant no. 1 to 3 have not taken care of there sisters and did not perform their "Choli Bangli" as per Hindu customs but considering the blood relations, they have neglected said the same.

5] It is averred that the month of June 2020 there was family programme and they all gathered, but defendant no. 1 and 2 did not talk with plaintiff and told her that she is not their sister and she is not having any share in ancestral land of deceased Bakaram Patle. The plaintiff was not happy with said gesture of defendant Nos. 1 and 2, therefore, on 07/07/2020 he approached revenue department for obtaining documents of suit land. After verification of said document she got shocked and surprised to see the name of defendant No.8 in 7/12 extract of suit land. Thereafter, on 04/11/2020 she obtained duplicate copy of sale deed from office of Sub-registrar wherein she came to know that on 11/04/2000 the defendant Nos. 1, 3 and their mother Rukhama have sold 0.11 H.R. land out of suit land to defendant No.8 for consideration of Rs. 12,960/-. It is averred that the defendant Nos. 1 and 3 had misguided their mother

Rukhama and obtained her signature fraudulently. The said transaction was done behind back of plaintiff and without partition, therefore, same is not binding on her share.

6] It is averred that, thereafter, the plaintiff asked defendant Nos. 1 and 2 to effect the partition and to separate her possession but they did not pay any heed. Therefore, she issued legal notice dated 27/03/2021 to defendant Nos. 1 to 7, but they failed to comply said notice. Hence, she filed present suit demanding her 1/8th share and separate possession from suit land.

7] The suit summons were served to defendant No.1, 6, 7 and legal heirs of deceased defendant No.2 i.e. defendant Nos. 9 to 12, but they failed to opposed suit by filing their written statement. Therefore, suit proceeded without written statement of defendant Nos. 1,6, 7 and 9 to 12 vide order dated 01/10/2022.

8] The defendant Nos. 3 to 5 appeared in the suit, but they have admitted the suit vide pursis at Exh. 11. During pendency of suit the defendant No. 5 died and his legal heirs i.e. defendant Nos. 5-A to 5-C also admitted the suit vide pursis at Exh. 43.

9] The defendant No.8, who is purchaser of 0.11 HR from suit land vide sale deed dated 11/04/2000, opposed suit vide written statement at Exh. 29. It is contended that the suit filed by plaintiff is not maintainable. He has purchased 0.11 HR land from suit land from defendant No.1, 3 and their mother deceased Rukhama for valuable consideration of Rs. 12,960/-. He purchased said portion because it was

adjacent to his agriculture land. Since date of sale he is in possession of the said land and his name is mutated in revenue record. However, suit is filed after 21 years and same is barred by law of limitation. It is further contended that the suit land is already partitioned between plaintiff and defendant Nos. 1 to 7 and they all are in cultivating possession of their respective share. Therefore, plaintiff has no right to ask for partition and suit is liable to dismiss with cost of Rs. 30,000/-.

10] My Ld. Predecessor was pleased to frame issues at **Exh.49**. I have perused plaint, written statement and evidence on record along with documents. Heard Ld. Advocate appearing for plaintiff and defendant. I have recorded my findings to said issues with reasons as under :-

Sr. No.	ISSUES	FINDINGS
1.	Whether the plaintiff proves that, the suit property is ancestral property herself and defendant Nos. 1 to 7 ?	Yes.
2.	Whether the plaintiff proves that she has undivided share in suit property? If yes, what share?	Yes. Shares as per final order
3	Whether plaintiff proves that defendant No.1 and 3 have illegally sold 0.11 H.R. land vide sale deed dated 11/04/2000 to defendant No.8?	No.
4	Whether defendant No.8 proves that he is bonafide purchaser for the value paid?	Yes.
5	Whether the suit is withing limitation?	Yes.
6	Whether plaintiff is entitled for partition, separate possession of her share and declaration as prayed for?	Yes.
7	What order and decree ?	As per final order.

REASONS

11] In support of her case, the plaintiff Karanbai examined herself as (PW-1) at Exh. 52. She further examined Bhuvanlal Patle (PW-2) at Exh. 60 and Basatulal Parihar (PW-3) at Exh. 61 and relied on following documents in support her case and closed her evidence vide pursis (Exh. 63) :-

i)	Legal notice dated 27/03/2021	Exh. 53
ii)	Copies of postal receipts of notice send to defendant Nos. 1 to 7	Exh.54 collectively
iii)	Postal acknowledgment of receipt of notice to defendant No.4, 6 and 7	Exh.55 collectively.
iv)	7/12 extract of Gat No. 655	Exh. 56
v)	Gav Namuna 8-A Gat No. 655	Exh. 57
vi)	Map issued by Talathi	Exh. 58
vii)	Boundaries certificate issued by talathi	Exh. 59

12] In defence, the defendant No. 1 Mohanlal Patle has examined himself as (DW.1) at Exh. 25 an defendant No. 8 Shankar Bisen (DW-2) at Exh. 65 and they relied on original copy of sale deed dated 11/04/2000 at Exh. 70. They closed their evidence vide pursis at Exh. 71.

<u>AS TO ISSUE NO. 1</u>	Whether the plaintiff proves that, the suit property is ancestral property herself and defendant Nos. 1 to 7 ?
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13] This is a suit for partition and consequential reliefs. Therefore, foremost question arises is whether the suit land is ancestral properties or not. Before discussing said question, it is necessary to distinct the undisputed facts, so that discussion can be shorten. In present case, defendant Nos. 1 , 6, 7 and 9 to 12 (defendant No.2) have not opposed suit by filing written statement and defendant Nos. 3 to 5 have admitted

the contents of suit. Considering the pleadings, evidence on record and line of cross examination, it is clear not in dispute that the plaintiff and defendant Nos. 1 to 7 are brothers and sisters having common ancestor namely Bakaram Bhiku Patle who died prior to year 2000. It is also not in dispute that the widow Rukhamabai Bakaram Patle was died on 21/07/2001 leaving behind plaintiff and defendant Nos. 1 to 7. The plaintiff has stated on affidavit that the suit land bearing Gat No. 655 is an ancestral property and said fact is not disputed by defendant Nos. 1 to 7. Even the purchaser defendant No.8 has not disputed that suit land is an ancestral property. No doubt the defendant No.8 is coming with case that the suit land was already partitioned prior to execution of sale deed however, the said defence makes it clear that the suit land is an ancestral property. Moreover, the 7/12 extract at Exh. 56 shows that after death of Bakaram and his wife, the names of plaintiff and defendant Nos. 1 to 7 were mutated on suit land. As such, I have no hesitation to conclude that the suit land is ancestral property of plaintiff and defendant Nos. 1 to 7. Resultantly, **I proceed to answer issue No.1 in affirmative.**

AS TO ISSUE NO. 5	Whether suit is within limitation?
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14. The plaintiff has stated in plaint and evidence affidavit that she demanded partition and her share for the first time in the year 2020. It is further stated that the plaintiff came to know about sale deed 11/04/2000 on 04/11/2020 when she obtained its duplicate copy from Sub-registrar officer, Tirora. Thereafter, she issued legal notice on 27/03/2021 and filed present suit on 03/08/2021. The defendant Nos. 1 to 7 have not opposed said fact. The defendant No.8 contended that the

sale deed executed in his favour on 11/04/2000 and there is delay of about 21 years. However, it is pertinent to note that plaintiff has not challenged said sale deed and therefore, there is no question of limitation in that regard. So far as partition is concerned the suit is well in within limitation. Hence, **I answer issue No. 5 in Negative.**

<u>AS TO ISSUE NO. 2</u>	Whether the plaintiff proves that she has undivided share in suit property? If yes, what share?
<u>AS TO ISSUE NO. 3</u>	Whether plaintiff proves that defendant No.1 and 3 have illegally sold 0.11 H.R. land vide sale deed dated 11/04/2000 to defendant No.8?
<u>AS TO ISSUE NO. 4</u>	Whether defendant No.8 proves that he is bonafide purchaser for the value paid?
<u>AS TO ISSUE NO. 6</u>	Whether plaintiff is entitled for partition, separate possession of her share and declaration as prayed for?

15. The issue Nos. 2 to 4 and 6 are inter-connected and their individual findings have bearing on others issues, therefore, said issues are hereby taken together for discussion so as to avoid repetition and contrary findings. Since the suit is for partition and in view of findings of as to issue No.1 it is clear that the suit land is ancestral property, the first question requires to be determined is whether plaintiff is having undivided share in suit land. In this context, plaintiff has averred and stated in her evidence affidavit (Exh. 52) that suit land is not yet partitioned. To support of her evidence, she filed evidence of affidavit Bhuvanlal Patle (PW-2) and Bastulal Parihar (PW-3). They both have stated that the plaintiff and defendant Nos.1 to 7 are the legal heirs of deceased Bakaram and they are having their undivided share in suit land.

No doubt, the defendant No.1 Mohanlal Patle (DW-1) and defendant No.8 Shankar Bisen (DW-2) have stated in their evidence affidavit that partition was already took placed. However, it is significant to note that the other legal heirs i.e. defendant Nos. 2 to 7 are not coming with said defence. Therefore, the contention of defendant No.1 and 8 regarding earlier partition is not supported by any documentary evidence and appears to be doubtful. On the contrary, the defendant Nos. 3 to 5 have admitted the suit by filing pursis at Exh. 11. The 7/12 extracts of suit land at Exh. 56 shows that the plaintiff and defendant Nos. 1 to 7 are jointly cultivating suit land. In this background, I do not find any reason to disbelieve the case of plaintiff that the suit land is yet to be partition.

16. It is undisputed fact that plaintiff and defendant Nos. 4 to 6 are the daughters, defendant no. 7 is son of predeceased daughter and defendant Nos. 1 to 3 are the sons of deceased Bakaram Patle. **Section 6 of the Hindu Succession Act 2005** provides that in joint hindu family, the daughter of coparceners shall by birth become coparcener and have same rights and liabilities as of son. Moreover, in view of observations made by Hon'ble Supreme Court in case of **Vinita Sharma Vs. Rakesh Sharma AIR 2020 SC 3717**, it is now settled position of law that the daughter is entitled to equal property right as of son under Section 6 of Hindu Succession Act 2005, **irrespective of the fact that father was alive or not on 9th September 2005**. The only exception provided under said section is any disposition or alienation including partition and testamentary disposition of property which had taken place before 20th day of December 2004. However, the said disposition or alienation ought to have been made by coparcener before opening of succession. In present

case, the succession opens on death of coparcener i.e. Bakaram Patle and there is nothing on record to show that he has made any disposition or alienation during his lifetime. The sale deed dated 11/04/2000 (Exh. 70) was executed by his widow and two sons therefore, same would not come under such exception.

17. In light of aforesaid facts, evidence and discussion thereon, it is evident that the suit land is ancestral property and same is yet to be partitioned. Therefore, plaintiff and defendant Nos. 1 to 7 are having undivided share being class- I legal heirs of deceased Bakaram Patle.

18. So far as extent of their share is concern, the same will depend upon findings as to issue Nos. 3 and 4 i.e. whether sale deed dated 11/04/2000 is legal and whether defendant No.8 is bonafide purchaser. Therefore, said issues are hereby discussed prior to calculating shares. In this context, it is pertinent to note that, it is not in dispute that the widow Rukhama and defendant Nos. 1 and 3 have sold 0.11 HR land out of 1.03 HR (103 R) suit land to defendant No.8 vide sale deed dated 11/04/2000 (Exh. 70). As per **Section 10 of Hindu Succession Act 2005**, after death of Bakaram, his widow Rukhama, three sons and five daughters were having $1/9^{\text{th}}$ equal share in suit land which comes to **11.444 R each** out of 103 R (1.03 HR). Therefore, as per **Section 44 of Transfer of Property Act**, the widow Rukhama and defendant Nos. 1 and 3 can sale their undivided share which is surely more than 0.11 R sold by them vide sale deed dated 11/04/2000. Therefore, said sale transaction cannot said to be illegal. Moreover, the recitals of said sale deed shows that they have represented the defendant No.8 purchaser that suit

properties is partitioned and they are selling their own share. Accordingly, the defendant No.8 has purchased said portion by paying consideration of Rs. 12,960/-. There is nothing on record to show that at relevant time, the defendant No.8 was aware that the suit land property is not partitioned. Therefore, I have no hesitation to held that the sale deed dated 11/04/2000 is legal. Thus, the defendant No.8 is bonafide purchaser. However, said sale deed will not binding on share of remaining co-owners and the portion of land involved in said sale deed is required to be deducted from the share of seller's share. **Resultantly, I answer issue No.3 in negative and issue No. 4 in affirmative.**

19. Now, it is clear that after death of Bakaram his widow Rukhama, plaintiff and defendant Nos. 1 to 7 were having 1/9th equal share. The suit land was total admeasuring 1.03 HR (103R), therefore, 1/9th share would be **11.444 R each**. Out of that Rukhama and defendant Nos.1 and 3 have sold 0.11 R land therefore same is liable to be deducted from their respective share. Accordingly, **0.0366 R** land will be deducted from share of widow Rukhama and defendant Nos. 1 and 3. It is also pertinent to note that, the widow Rukhama is died on 31/07/2001 leaving behind plaintiff and defendant Nos.1 to 7 as her class-I legal heirs. Therefore, her share i.e. **11.4034 R (11.44 R – 0.0366 R)** will be divided equally between plaintiff and defendant Nos. 1 to 7 by operation of **Section 15 and 16 of Hindu Succession Act 2005**. Thus, plaintiff and defendant Nos. 1 and 7 will additionally get 1/8th equal share in aforesaid share of deceased Rukhama, which will come to **1.426 R each** in addition to 11.444 R each. Thus, final shares of plaintiff and defendant Nos. 1 to 7 will be as per following table:-

Heir	Original share from father i.e. Bakaram,	Inheritance from mother i.e. Rukhama	Minus sell adjustment	Final Net share (Appox)
Plaintiff (daughter)	11.444 R	+ 1.426 R	Nil	12.870 R
Defendant No.1 (Seller son)	11.444 R	+ 1.426 R	- 0.0366 R	12.833 R
Defendant No.2 (legal heirs defendant Nos. 9 to 12 together)	11.444 R	+ 1.426 R	Nil	12.870 R
Defendant No.3 (Seller son)	11.444 R	+ 1.426 R	- 0.0366 R	12.833 R
Defendant No. 4 (daughter)	11.444 R	+ 1.426 R	Nil	12.870 R
Defendant No. 5(daughter) (legal heirs defendant Nos. 5-A to 5-C together)	11.444 R	+ 1.426 R	Nil	12.870 R
Defendant No. 6 (daughter)	11.444 R	+ 1.426 R	Nil	12.870 R
Defendant No. 7 (only son of predeceased daughter)	11.444 R	+ 1.426 R	Nil	12.870 R

20] In light of aforesaid discussion, it is clear that the plaintiff and defendant Nos. 1 to 7 are entitled for partition and separate possession of their respective share as shown in aforesaid table. **Accordingly, I answer to issue Nos. 2 and 6 in affirmative.**

AS TO ISSUE NO.7 :-	<u>What order and decree</u>
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21] In view of my findings as to issue No. 1 to 6 the suit filed by

plaintiff is entitled to be decreed. Hence, I answer to issue no. 7, I proceed to pass following order :-

ORDER

1)	The suit is hereby decreed.
2)	It is hereby declared that, the portion of 0.11 HR land out of Gat No. 655 sold by defendant Nos. 1 and 3 vide sale deed dated 11/04/2000 is not binding on share of plaintiff and defendant Nos. 2, 4 to 7.
3)	It is hereby declared that, the plaintiff is having share of 12.870 R in Gat No. 655 situated at Mouza Atri Tah. Dist-Gondia.
4)	It is hereby declared that, the defendant No1. is having share of 12.833 R in Gat No. 655 situated at Mouza Atri Tah. Dist-Gondia.
5)	It is hereby declared that, the defendant No. 9 to 12 together (legal heirs of defendant No.2) are having share of 12.870 R in Gat No. 655 situated at Mouza Atri Tah. Dist-Gondia.
6)	It is hereby declared that, the defendant No.3 is having share of 12.833 R in Gat No. 655 situated at Mouza Atri Tah. Dist-Gondia.
7)	It is hereby declared that, the defendant No.4 is having share of 12.870 R in Gat No. 655 situated at Mouza Atri Tah. Dist-Gondia.
8)	It is hereby declared that, the defendant No.5-A to 5-C together (legal heirs of defendant No.5) are having share of 12.870 R in Gat No. 655 situated at Mouza Atri Tah. Dist-Gondia.

9)	It is hereby declared that, the defendant No.6 is having share of 12.870 R in Gat No. 655 situated at Mouza Atri Tah. Dist-Gondia.
10)	It is hereby declared that, the defendant No.7 (son of deceased daughter Holanbai) is having share of 12.870 R in Gat No. 655 situated at Mouza Atri Tah. Dist-Gondia.
11)	Percept be sent to the Collector, District- Gondia to effect the partition of the suit land in accordance with above declaration and provisions of law to put the plaintiff and defendant nos. 1, 3, 4, 5-A to 5-C, 6, 7 and 9 to 12 in possession of the same to the extent of their respective share therein, vide Section 54 of the Code of Civil Procedure.
12)	The Collector, District- Gondia make take necessary steps as per provisions of The Partition Act 1893 for proper distribution of share.
13)	Decree be drawn accordingly.
14)	Parties to bear their own cost.
	(Dictated and pronounced in open court)

Date :- 09/04/2026

(A. S. Agrawal)
Jt. Civil Judge Junior Division,
Tirora.

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	S. M.Marathe
Name of the Court	Shri. A. S. Agrawal, Jt. C.J.J.D., Tirora, Dist- Gondia
Date of Order & Judgment	09/04/2026
Order/Judgment Signed by the P.O. On	09/04/2026
Judgment/Order uploaded on	09/04/2026