

MHKO050019182009



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Decided on : 23. 07.2026
Duration : Y - M - D
16 - 08 - 00

IN THE COURT OF THE CIVIL JUDGE SENIOR DIVISION,
ICHALKARANJI

(Presided over by G. M. Nadaf)

REGULAR CIVIL SUIT No.18/2010
EXH. No. 280

1. **Meena Dagdu Chaye**)
Age - 45 yrs., Occu.- Housework,)
R/o.16/56, Dangare chal,)
Ichalkaranji, Tal.Hatkanangale,)
Dist. Kolhapur.)
2. **Suman Mahadev Ghaydar (Dead)**)
2-A **Sou Manda Ravindra Yamgarni**)
Age – 52 yrs.,)
Occu. - Agriculture & household)
R/o. Ward No.6, House No.898,)
Yamgarni Galli, Galatga,)
Tal.- Chikodi, Dist.- Belgaon)
- 2-B **Smt. Sangita Gajanan Kadate**)
Age – 45 yrs.,)
Occu. - Agriculture & household)
R/o. Ward No.6, House No.805,)
Kumbhar Galli, Budhgaon.)
- 2-C **Sou. Neeta Vaibhav Vhanugare**) **Plaintiffs**
Age – 39 yrs.,)
Occu. - Agriculture & household)
R/o. Ward No.5, House No.887,)
Bazar Peth, Budhgaon,)
Tal.- Miraj, Dist.- Sangli.)
Through Power of Attorney Holder)
Dagadu Dattatray Chaye)
Age – 58 yrs., Occu.- Weaver)
R/o.16/56, Dangre chal,)
Ichalkaranji, Tal.Hatkanangale,)
Dist.- Kolhapur.)

Versus

- | | | |
|--|---|-------------------|
| 1. Shri.Ananda Ramkrishna Mahajan |) | |
| Age – 60 yrs., Occu.- Agriculture, |) | |
| R/o.Birdev nagar, Rendal. |) | |
| 2. Shri.Dattatray Ramkrishna Mahajan (Dead) |) | |
| 2-A Shri. Vijay Dattatray Mahajan |) | |
| Age – 50 yrs., Occu. - Business |) | |
| R/o. Ramnagar, Rendal, |) | |
| Tal.- Hatkanangale, Dist.- Kolhapur. |) | |
| 2-B Shri. Ramdas Dattatray Mahajan |) | |
| Age – 45 yrs., Occu. - Business |) | |
| R/o. Ramnagar, Rendal, |) | |
| Tal.- Hatkanangale, Dist.- Kolhapur. |) | |
| 2-C Sou. Tulsa Mhetar |) | |
| Age – 40 yrs., Occu. - Household |) | |
| R/o. Ramnagar, Rendal, |) | |
| Tal.- Hatkanangale, Dist.- Kolhapur. |) | |
| 3. Shri. Raghunath Ramkrishna Mahajan |) | |
| (Deceased through legal heirs) |) | |
| 3-A. Smt. Bebitai Raghunath Mahajan |) | |
| Age – 50 Yrs., Occu.- Household, |) | |
| R/o. Zenda chowk, Rendal. |) | |
| Tal.- Hatkanangale, Dist.- Kolhapur. |) | |
| 3-B. Shri. Santosh Raghunath Mahajan |) | |
| Age – 32 Yrs., |) | |
| Occu.- Silver work & Agriculture, |) | |
| R/o. Zenda chowk, Rendal. |) | |
| 3-C. Shri. Nitin Raghunath Mahajan |) | Defendants |
| Age – 30 Yrs., |) | |
| Occu.- Silver work & Agriculture, |) | |
| R/o. Zenda chowk, Rendal. |) | |
| 3-D. Sou. Anita Pravin Mhetre |) | |
| Age – 28 Yrs., Occu.- Household, |) | |
| R/o. Jawaharnagar, Ward No.21, |) | |

	House No. 2180, Ichalkaranji,	)	
	Tal.- Hatkanangale, Dist.- Kolhapur.	)	
4.	Shri. Vasant Ramkrishna Mahajan	)	
	Age – 53 yrs., Occu. - Weaver,	)	
	R/o. Zenda Chowk, Rendal.	)	
5.	Shri. Mahadev Ramkrishna Mahajan	)	
	Age – 51 yrs., Occu.- Silver work,	)	
	R/o. Zenda Chowk, Rendal.	)	
6.	Shri. Vishnu Ramkrishna Mahajan	)	
	Age – 49 yrs., Occu.- Silver work,	)	
	R/o. Zenda Chowk, Rendal.	)	
7.	Smt. Bhagirathi Krishna Karde	)	
	Deleted as per order below Exh. 186	)	
8.	Shri. Vishwas Krishna Karde (Dead)	)	
8-1.	Aakkatai Vishwas Karde	)	
	Age – 64 yrs., Occu.- Household,	)	
	R/o. Hatmag society, Zenda Chowk,	)	
	Rendal, Tal.- Hatkanangale,	)	
	Dist.- Kolhapur.	)	
8-2.	Ganesh Vishwas Karde	)	
	Age – 47 yrs.,	)	
	Occu.- Agriculture & silver work,	)	
	R/o. Main road, Ramnagar,	)	
	Rendal, Tal.- Hatkanangale,	)	
	Dist.- Kolhapur.	)	
8-3.	Ramesh Vishwas Karde	)	
	Age – 46 yrs.,	)	
	Occu.- Agriculture & silver work	)	
	R/o. Zenda Chowk, Rendal,	)	
	Tal.- Hatkanangale, Dist.- Kolhapur.	)	
8-4.	Rohini Dattatray Mohite	)	Defendants
	Age – 45 yrs., Occu.- Household,	)	
	R/o. Surabhi Colony, Sangli road,	)	
	Ichalkaranji, Tal.- Hatkanangale,	)	
	Dist. Kolhapur.	)	

9. **Shantabai Shrikant Jadhav**)
Age – 48 yrs. Occu.- Housework,)
R/o. Zenda Chowk, Rendal.)
10. **Collector (Through State of Maharashtra)**) **Defendants**
Kolhapur, Dist.Kolhapur.)
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APPEARANCES:

Learned Advocate for Plaintiffs	-	Shri. I.M. Jamadar
Learned advocate for Defendants No.1 to 6	-	Shri. A. K. Kapase
Defendant No.7	-	Deleted
Learned advocate for defendants No.8 to 09	-	Shri. P.V. Kulkarni
Defendant No. 10	-	Ex-parte

J U D G M E N T
(Delivered on 23.07.2026)

This is suit for partition, separate possession and also for declaration of civil death. Initially, R.C.S.No. 18/2010 has been decided on 16.2.2016. Thereafter original defendant preferred appeal bearing R.C.A.No. 26/2016 before Hon'ble District Judge- 1, Ichalkaranji. The application below Exh. 25 allowed in that appeal and matter is remanded for afresh hearing.

2. Briefly facts of plaintiffs' case are as under :-

Landed property bearing Gat No.1244 admeasuring 2H.51R, pot-kharab 0-69R out of which half share and C.S.No.1069, 1070, 1071, 1072 and 1073 out of which half share situated at village Rendal, Tal.-Hatkanangale, Dist.-Kolhapur, more particularly described in plaint para No.1-A and 1-B ((hereinafter referred to as "suit property").

3. The suit properties are ancestral properties of plaintiffs and defendants No.1 to 6. One Balaso was the original propositus who had two sons viz., Pundlik and Ramkrishna. The plaintiffs are legal representative of Pundlik whereas defendants No.1 to 6 are legal representatives of Ramkrishna. Pundlik expired leaving behind widow Geetabai, two sons Madhukar, Prakash and two daughters Meena and Suman (plaintiffs). Ramkrishna expired leaving behind defendants No.1 to 6. After demise of Geetabai on 21-5-1979 plaintiff's names were recorded in the record of right to the extent of half share. Defendants No.1 to 6 are the real cousin brothers of the plaintiffs. They had given the property bearing Block No.1244 to defendants No.1 to 6 for cultivation on crop share basis. However, defendant No.1 to surreptitiously got recorded their names in record of right and also to crop statement detrimental to the right of the plaintiffs. Ramkrishna had sold the property bearing city survey No.1069 to one Krishna Karde and therefore his legal heirs defendants No.7 to 9 are added in the present suit. Madhukar expired issueless on 9-8-1993 and Prakash is absconding since last 20 years. Defendants denied the share of plaintiffs which constrain plaintiffs to file the present suit for partition, separate possession of their share and also for declaration of civil death of their brother Prakash. Hence prayed to decree the suit with costs.

4. Defendants No. 1 to 6 filed a written statement and counter-claim (Exh. 63), denying that the suit properties were joint family properties or that the plaintiffs had a half share. They also denied that the plaintiffs were the legal heirs of Pundlik. While admitting that Madhukar died issueless and Prakash was absconding,

they denied having illegally or surreptitiously obtained mutation of their names before the Circle Officer. The defendants contended that the suit properties originally belonged jointly to Pundlik and Ramkrishna, but the properties allotted to Pundlik were sold by him. After Ramkrishna's death, the remaining suit properties exclusively belonged to the defendants, and the plaintiffs had no right or interest. They asserted that the plaintiffs' names in the revenue records were only nominal. They further relied on earlier tenancy and possession proceedings to establish Ramkrishna's exclusive ownership of Block No.1244. According to them, Pundlik had mortgaged the property, left the village in 1956, died in 1960, and the suit was not maintainable without impleading Prakash as a party.

5. The defendants contended that, the plaintiffs are not the legal heirs of Pundlik and, therefore, have no right, title, or interest in the suit property. They further stated that Pundlik had sold C.S. No. 1067 through registered sale deeds dated 13-09-1956 to Chandsaheb Nadaf and others, and one of the purchasers subsequently transferred the property to Rajaram Petkar, demonstrating that Pundlik had already alienated his share. Similarly, he sold the property bearing city survey No.1067 admeasuring 39 sq.mtr to one Eknath Petkar and Eknath Petkar sold the said property to Rajaram Petkar bearing grampanchayat House No.1068/2. Similarly, property bearing city survey No.1069 admeasuring 700 sq.ft., house property is sold by Pundlik to Krishna Karde. Property bearing C.S.No.1070 is allotted to Ramkrishna during partition which he was using as court yard and as a road to approach property bearing city survey No.1068, 1073 and 1072. Furthermore, property bearing city survey No.1071

admeasuring 88.02 sq.mtr. area allotted to the share of Ramkrishna which was in the form of dung-pit, in which he has constructed the two storied house. Similarly, property bearing city survey No.1072 is allotted to Ramkrishna in partition which is in possession of defendant No.3. Similarly, property bearing city survey No. 1073 admeasuring 30.07 sq.mtr. is sold by Pundlik to Eknath Petkar and Eknath Petkar sold the said property to defendant No.2 by registered sale deed dated 29-4-2002 where he constructed the R.C.C structure i.e two storied building which was exclusively belong to defendant No.2. Similarly, Pundlik has sold 5 Anna 4 pai share in R.S.No.137/15 to one Maruti Bhosale by sale deed dated 9-9-1950. Accordingly, M.E.No.3499 was effected in record of right. Similarly, Pundlik has also sold the 3 Anna 10 pai share in R.S.No.132/26 to Sadashiv Petkar by registered sale deed dated 31-12-1952 and accordingly M.E. No.3431 was recorded in record of right. Similarly, he sold 8 anna share in R.S.No.132/7 and 10 pai share in R.S.No.132/23 to one Lingappa Mahajan by registered sale deed dated 5-8-1953. Accordingly, M.E. No.3415 was recorded in record of right. Similarly, he has sold 5 anna 4 pai share in R.S.No.154/18 to one Shankar Mahajan by sale deed dated 23-10-1953. Accordingly, M.E. No.3416 was recorded which itself shows that, Pundlik has already disposed of all the properties which comes to his share and therefore plaintiff has no right to again claim the partition in the property which is allotted to the defendant. Hence, the property which are sold by Pundlik be adjusted to the share of plaintiff. Suit is not maintainable and ought to be dismissed with compensatory costs of Rs.25,000/-.

6. Defendants have also filed the counter-claim for declaration of ownership of the suit property of the defendants and also for mandatory injunction for deleting the name of plaintiffs which is recorded in record of right of the suit property.

7. Defendants No.7 to 9 also restrained the suit by filing written statement at Exh.17. They denied that, the plaintiffs have share in the suit properties. Property bearing city survey No.1069 is exclusively belong to them, in which they have constructed their house. R.C.S.37/78 was filed before the Civil Judge, Jr. Dn., Ichalkaranji which was disposed of. Against which appeal was filed before the District Judge, Kolhapur bearing Civil Appeal No.162/83. Against that order Second Appeal No.4890/86 was filed before the Hon'ble High Court which was disposed of in favour of the defendants. Against which Madhukar filed appeal before the Hon'ble Apex Court, which was also disposed of. Hence, property bearing city survey No.1069 belong to defendants No.7 to 9, to which plaintiffs have no concern. Plaintiffs filed this false suit and therefore prayed to dismiss the suit with costs.

8. The plaintiffs have resisted the counter-claim by filing written statement at Exh.63. They denied the partition between Pundlik and Ramkrishna regarding joint family properties. They also denied that Pundlik has already disposed of the properties allotted to his share. Defendants filed the counter-claim just to grab the property of the plaintiffs. Hence, prayed to dismiss the counter-claim filed by defendants No.1 to 6.

9. While remanding the matter The Hon'ble District Court, Ichalkaranji framed issues which I have produced here along with findings thereon are as under:-

Sr. No.	ISSUES	FINDINGS
1.	Do the plaintiffs prove that, they have 1/4th share each in the suit properties?	Yes
2.	Whether suit is bad for non-joinder of the necessary parties?	No
3.	Do the defendant Nos. 1 to 6 prove that, there was partition of suit properties and other properties during the life time of Ramkrishna and Pundlik?	No
4.	Do the defendants further prove that, all properties C.S. No. 1067, 1068, 1069 and 1073 are not put in hotch potch?	No
5.	Do they further prove that, they are owner of land Gat No. 1244 and C.S. No. 1070, 1071 and 1072?	No
6.	Are the plaintiffs entitled for decree of partition and separate possession as claimed?	Yes
7.	Are the plaintiffs entitled for declaration of civil death of Prakash as sought for?	Yes
8.	Are the defendants entitled for declaration as prayed in the counter claim?	No
9.	What order and decree ?	As per final order

REASONS

10. In support of the suit claim, plaintiff examined herself through power of attorney holder Dagdu (PW1) at Exh.67. After remand he has examined at Exh.163. Plaintiffs have filed evidence close pursis at Exh.178. As against this, defendants have examined Vasant (DW.1) at Exh.91 and after remand he has been examined at Exh.180. They also examined Smt. Chavan (DW2) at Exh.236. Defendants No.1 to 6 have filed evidence close pursis at Exh. 254.

As to Issues No.1, 3 to 6 :-

11. As these issues are inter-linked to each other so, I have taken up for discussion together. It was undisputed that, the suit properties originally belonged to Balaso, whose sons were Pundlik and Ramkrishna. Pundlik died leaving behind his widow Geetabai, two sons (Madhukar and Prakash) and two daughters (the plaintiffs). Defendants No.1 to 6 are legal heir of Ramkrishna. Geetabai and Madhukar subsequently died, while Prakash had been missing for many years. The plaintiffs claimed to be the legal heirs of Pundlik, Prakash and Madhukar and asserted a half share in the joint family properties. They alleged that, the defendants had unlawfully mutated their names in the revenue records after excluding the plaintiffs. Defendants No. 7 to 9 were impleaded as legal heirs of Krishna Karde, who had purchased a portion of C.S. No. 1069 from Ramkrishna.

12. The defendants contended that, the plaintiffs are not the legal heirs of Pundlik and therefore, have no right to seek partition. However, they admitted that, Madhukar died issueless and that

Prakash had been missing for the last 20 years. The defendants contended that, the suit properties, including C.S. Nos. 1067 and 1068, were originally joint family properties of Pundlik and Ramkrishna. However, an oral partition had taken place, under which the suit properties fell to Ramkrishna's share, while Pundlik sold all the properties allotted to him during his lifetime. Hence, the plaintiffs had no right or interest in the suit properties. The defendants contended that the plaintiffs' names were wrongly entered in the revenue records without notice and that such entries did not confer any rights. They further relied on earlier civil and tenancy proceedings concerning Gat No.1244, wherein Geetabai admitted before the Tenancy Court that she had given her half share to Nana Patil for cultivation as a tenant. The defendants asserted that, Ramkrishna regained possession of Gat No.1244 through legal proceedings, making it his exclusive property. They further alleged that, Pundlik had mortgaged the property to secure a loan, left the village in 1956, and died in 1960. They also challenged the maintainability of the suit, contending that it was filed through a power of attorney holder who lacked personal knowledge of the relevant transactions. According to the defendants, after partition Pundlik has disposed of the properties comes to his share. He accordingly sold property bearing C.S.No.1068 admeasuring 29.7 sq.mtr. to Chandso Nadaf and others. He also sold property bearing C.S.No.1068 of 39 sq.mtr. to Eknath Petkar who in turn sold the said land to Rajaram Petkar. Pundlik also sold C.S.1069 area admeasuring 700 sq.ft. area to Krishna Karde. C.S.No.1070 is allotted to the share of Ramkrishna. He was using the said land as court yard and as a road to approach C.S.No.1068, 1073 and 1072. Similarly, C.S.No.1071 is allotted to the share of Ramkrishna, in which

he has constructed the rooms. Similarly, C.S.No.1073 is sold by Pundlik to Eknath Petkar who in turn has sold the said property to defendant No.3 where he has constructed the house. Similarly, Pundlik has sold 5 Anne 4 pai share out of city survey No.137/15 to Maruti Bhosale on 9-9-1950 vide mutation entry No.3499. Pundlik also sold 3 Anne 10 pai share out of city survey No.132/26 to Sadashiv Powar by sale deed dated 31-12-1952, accordingly M.E. No.3431 was recorded. Pundlik also sold his 8 Anne share in survey No.132/7 and 10 pai share in the survey No.132/23 to Lingappa Mahajan by sale deed dated 5-8-1953. Accordingly, M.E. No.3415 is recorded. Similarly, Pundlik sold 5 Anne 4 Pai share in survey No.154/18 to Shankar Mahajan by sale deed dated 23-10-1953. Accordingly, M.E.No.3416 is recorded. Hence, the contention of defendant is that all those properties which are disposed of by Pundlik during his life time be dropped to his share. Defendants also filed the counter-claim claiming relief of declaration of title to the suit property and also declaration that legal heir of Pundlik have no concern to the suit property and mandatory injunction to delete their names from the record of right of suit property.

13. Defendants No. 7 to 9 contended that C.S. No. 1069 was validly purchased by their predecessor-in-title and that the plaintiffs have no right over it. They claimed ownership and possession of the property, where they had constructed a house, and relied on earlier litigation, culminating in the Supreme Court, which affirmed their title. They also stated that they have been residing in the property and regularly paying taxes.

14. The defendants disputed that the plaintiffs were the legal heirs of Pundlik. However, the property card and 7/12 extracts recorded the plaintiffs' names as the legal heirs of Pundlik and Geeta. It is observed that such entries were unlikely if the plaintiffs were strangers. The defendants argued that these entries were made without their knowledge, were merely nominal, and did not confer title, as revenue records are not documents of title and the presumption attached to mutation entries is rebuttable.

15. The defendants contended that the suit was filed through the plaintiffs' power of attorney holder, Dagdu Chaye (PW-1), who lacked personal knowledge of the transactions between Pundlik and Ramkrishna. Since PW-1 admitted this fact in cross-examination, the defendants argued that his evidence was unreliable.

16. Learned advocate for the defendants relied on **Janki Bhojwani vs. Indusind Bank Ltd., (2005) 2 SCC 217**, in which it is held that, the attorney cannot depose on behalf of principal regarding matters that are within the personal knowledge of the principal such as intention, conduct, source of funds or personal transactions. The attorney give evidence only in respect of facts personally known to him or acts performed by him under the authority of the power of attorney. In this suit the defendants have taken plea previous possession between the parties. Therefore, the whole burden lies on the defendants to prove prior partition. Moreover, power of attorney holder is husband of plaintiff No.1. He has deposed regarding the facts within his knowledge. In such circumstances his evidence cannot be discarded. Learned advocate for defendants further relied on **Man**

Kaur vs. Hartar Singh Sangha, (2010) 10 SCC 512, in which it is held that, the power of attorney holder may depose regarding acts performed by him under the authority of the power of attorney and prove facts within his own personal knowledge. However, the power of attorney holder cannot depose regarding the principal's personal knowledge, intention, financial capacity or willingness to perform the contract. The above-mentioned case is relating to specific performance of contract. In the present matter as discussed above the burden lies on the defendants to prove the fact of prior partition between the parties.

17. It is very material to note that in this suit defendants have taken the plea that already partition of the suit property and other joint family property was effected long back and suit properties are allotted to the share of Ramkrishna and properties which were allotted to Pundlik are already sold by him and therefore suit properties are the exclusive properties of defendants No.1 to 6. Hence, the burden lies upon the defendant to prove prior partition. If defendants prove the partition, then plaintiffs will be non-suited. Hence, primary burden lies upon defendant to prove partition. In such circumstances merely because plaintiff not entered into the witness box, no adverse inference can be drawn against them. Moreover, as per Section 120 of the Indian Evidence Act, the husband or wife of a party is a competent witness in civil proceedings. Therefore, the objection that the suit was not maintainable through the plaintiffs' power of attorney holder was rejected.

18. Defendants produced various documents on record to show that, Pundlik has already sold the property come to his share. He produced on record the mutation entry No.3499 Exh.125 showing 5 Anna 4 pai share in R.S.No.137/15 is sold by Pundlik to Maruti Bhosale by sale deed dated 9-9-1950. Then he produced on record the mutation entry No.3431 Exh.125 showing that Pundlik sold 3 Anne 4 pai share out of survey No.132/26 to Sadashiv Powar. Then he produced mutation entry No.3415 Exh.127 showing that Pundlik has sold 8 Anna share in survey No. 132/7 and 10 pai share in survey No.132/23 to Lingappa Mahajan.

19. The documents on record viz. 7/12 extract of block No.1244 old survey No.274/1 Exh.71, 72, 73 and 133 showing name of the plaintiff, Madhukar, Prakash and name of defendants No.1 to 6 are commonly recorded. Then plaintiff produced the property card extract of C.S.No.1069 admeasuring 72.08 sq.mtr. Exh.74 wherein there is remark as ancestral, extract of inquiry register Exh.79 is also produced on record, which shows that it is belong to Ramkrishna and Pundlik Mahajan out of which Ramkrishna sold area admeasuring 12ft. x 7 ft. to Krishna Karde by sale deed dated 16-11-1959 for Rs.450/- and the remaining property is mortgaged by Pundlik Mahajan, Mahadev Ramkrishna Mahajan to Anna Karde for total amounting to Rs.150/- which was, however, repaid by them. However, property is in possession of Krishna Karde to the extent of 12ft. x 7ft. area and therefore recorded his name in record of right. Then he produced the property extract of C.S.No.1070 (Exh.75) wherein there is also remark that the property is ancestral one to which name of the plaintiff and Prakash is recorded, extract of inquiry register is

produced at Exh.80, 81 and 112. Then he produced the property card extract of C.S No.1071 Exh.76 and extract of inquiry register Exh.81 wherein there is remark of ancestral belong to Ramkrishna Mahajan and Geeta Pundlik Mahajan. After their death it is recorded in the name of plaintiffs and defendants No.1 to 6. Then they produced the property card extract of C.S.No.1072 Exh.77 and extract of inquiry register Exh.81 where is remark of ancestral property in the name of Ramkrishna Bala Mahajan. After his death it is recorded in the name of defendants No.1 to 6. They also produced the property card extract of C.S.No.1073 Exh.78, in which name of the plaintiff is recorded. During cross-examination, the plaintiff admitted that he did not know when or where Pundlik died and had not produced his death certificate. He further admitted that several properties belonging to Pundlik and Ramkrishna were excluded from the suit, while C.S. No.1069 is in possession of defendants Nos.7 to 9. The city survey records indicate that different properties, including C.S. Nos.1067 and 1073, were allotted to Pundlik and subsequently sold by him, and the plaintiff's name does not appear in the relevant revenue records as Pundlik's legal heir. He also admitted that Prakash has been absconding since 1984 without any police complaint or public notice being issued and expressed ignorance about the earlier Civil Suit No.207/61 filed by Ramkrishna against Nana Patil and the possession proceedings arising therefrom.

20. During cross-examination, DW1 admitted that the suit property originally belonged to Balaso Mahajan and, after his death, devolved upon his three sons, Pundlik, Ramkrishna, and Mahadev, the latter having died issueless. He further admitted that Pundlik's sons,

Madhukar and Prakash, are recorded as owners of half share in Gat No.1244, while Ramkrishna holds the remaining half share. DW1 also admitted that the plaintiff, Prakash, and the deceased Madhukar are the only legal heirs of Pundlik, and that Prakash has been missing for the last 20–25 years. The evidence shows that proceedings were initiated before the Circle Officer in Complaint Register No.53/08 for recording the plaintiff's name after Madhukar's death and Prakash's disappearance. DW1 admitted receiving the order (Exh.103), acknowledged that the plaintiff's name is entered in the property card, and further admitted that the suit properties are ancestral, with the plaintiff and defendant each having a half share. He also admitted that no documentary evidence was produced to prove that all properties had fallen to Pundlik's share. Although the Circle Officer later cancelled Mutation Entry No.7387 for want of a legal heirship certificate, the defendants' clear admissions regarding the plaintiff's half share are admissible and can be relied upon under Section 21 of the Indian Evidence Act. Then he submitted that the mutation entries in revenue record even can be relied upon to prove the partition of the property. It is, however, material to note that defendant, however, not produced a single mutation entry on record showing that partition of joint family property was effected in between Pundlik and Ramkrishna.

21. Except for the bare assertion of the defendants, no documentary or reliable oral evidence was produced to prove that a family partition took place in 1960. The mutation entry recorded on the basis of Defendant No.1's statement is not conclusive proof of

partition. Therefore, in the absence of credible evidence, it cannot be held that a family partition occurred in 1960.

22. Defendants Nos. 1 to 6 contended that the suit property had already been partitioned between Pundlik and Ramkrishna and that Pundlik had sold his share. After the trial court decreed the suit, they preferred Regular Civil Appeal No. 26/2016 and filed an application under Order XLI Rule 27 CPC to produce additional sale deeds and related documents, claiming they were not in their possession earlier. The appellate court allowed the application, framed additional issues, remanded the matter for fresh decision, and permitted both parties to lead further evidence.

23. After remand, both parties re-examined themselves, and the defendants also examined the Senior Clerk from the Sub-Registrar's Office (DW2) and produced sale deeds at Exhibits 238 to 243 and 250. The defendants relied on these sale deeds to support their plea of prior partition, contending that the boundary descriptions referred separately to the properties of Pundlik and Ramkrishna. However, these documents merely show the adjoining ownership of the two brothers in the property boundaries and do not conclusively establish that a partition had taken place.

24. The sale deeds executed by Pundlik and Ramkrishna do not, by themselves, establish that an oral partition had taken place. A coparcener can transfer only his undivided share and not a specific portion of joint family property without partition or the consent of other coparceners. The defendants failed to prove the particulars of

the alleged oral partition by cogent evidence. Moreover, although the sale deeds date from 1950 to 1959, Ramkrishna never challenged them during his lifetime. Hence, the sale deeds do not prove that a partition had taken place between Pundlik and Ramkrishna.

25. Learned advocate for the plaintiff relied on **Dewkabai Pratap Patil vs. Bhagwat Baburao Patil, AIR Online 2021 Bom. 796**, in which Hon'ble Bombay High Court held that, mere execution of sale deed with specific boundaries does not establish an oral partition. Unless there is a clear and convincing evidence of partition, property continues to remain joint family property. A Coparcener has right to transfer only his undivided interest in joint family property. He further relied on **Rajendhiran vs. Muthaiammal, AIR Online 2024 SC 10**, in which Hon'ble Supreme Court held that, oral partition must be proved by clear, cogent and convincing evidence. Mere reliance on a few sale deeds or mortgage deed relating to other properties is insufficient. Both the case laws are helpful to the plaintiffs case.

26. Although the defendants pleaded a prior partition, they failed to produce specific and convincing evidence showing when the partition occurred or which properties were allotted to Pundlik and Ramkrishna. Mere mutation entries and sale deeds executed by Pundlik are insufficient to prove partition, as it is equally possible that the properties were sold during the continuance of the joint family for legal necessity.

27. The evidence establishes that the suit properties are joint family properties of the plaintiffs and defendants Nos. 1 to 6, and that

the plaintiffs are the legal heirs of Pundlik. The defendants failed to prove the alleged prior partition between Pundlik and Ramkrishna, that the suit properties had fallen to Ramkrishna's exclusive share, or that Pundlik had already sold the properties allotted to him. Consequently, the defendants also failed to establish their exclusive ownership over the suit properties. Hence plaintiffs No.1 and 2 are entitled to 1/4th share each in the suit property. It is, however, material to note that admittedly in the present case property bearing C.S.No.1069 admeasuring 12ft. x 7ft. is sold to defendants No.7 to 9, in which they have constructed their house and they are residing there. Plaintiff not claimed declaration that the sale deed executed in favour of predecessor in title of defendants No.7 to 9 are not binding on them. They also not sought the relief to set aside the sale deed and therefore plaintiff entitled to their share excluding the property sold and in occupation of defendants No.7, 8 and 9 in C.S.No.1069. I, therefore, answer Issue No.1, 3 to 6 accordingly.

As to Issue No. 7 :-

28. The plaintiffs sought a declaration of the civil death of their brother Prakash on the ground that he had not been heard of by anyone for more than seven years, invoking the presumption under Sections 107 and 108 of the Indian Evidence Act, 1872. The defendants contended that the suit was not maintainable as Prakash was not impleaded as a party. However, no legal provision was shown requiring the person whose civil death is sought to be made a defendant, and therefore, the defendants' objection cannot be accepted.

29. After adverting the provision of Section 107 and 108 of Evidence Act, it reveals that there is presumption that when the question is whether man is alive or dead and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirm it. Section 108 of the Act, add proviso that when the question is whether a man is alive or dead, and it is proved that he has not been heard for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to person who affirms it. The burden of proving when the person had not been heard of by his neighbour or relatives for more than 7 years before filing of this suit that he was alive on the plaintiff. When court has to determine date of death of a person who had not been heard for period of more than 7 years, there is no presumption that he died at the end of the first 7 years or at any particular date.

30. Learned advocate for the plaintiff relied on **Subhash Ramchandra Wadekar vs. Union of India, AIR 1993 Bombay 64**, in which it is held that, in absence of any reliable material to the contrary, the Court must presume in this case that, the missing person died on completion of 7 years of his missing. Ordinarily the Court may make such presumption in all the cases in absence of any reliable evidence to the contrary. On the other hand, learned advocate for defendants **Swati Deshmukh vs. Abhay Deshmukh, S.A.No. 18/2016**, in which it is held that, the State of Maharashtra (through the Collector) could be added as a defendant to enable the Court to pass an effective decree.

31. Admittedly defendant in their written statement admitted that, Prakash is absconding since last so many years and they have not heard of him. Even during cross-examination D.W.1 admitted that Prakash is absconding since last 20-25 years and he do not know his whereabouts. Hence, considering the overall evidence on record, plaintiffs prove that they have not heard of their brother Prakash for more than 7 years before filing the present suit and therefore entitled for relief of declaration of civil death of Prakash. Actually as the defendants admitted the fact that Prakash is absconding, then no need to additional proof. In the present matter the Collector is made as party to the suit. Therefore, compliance as per decision in **Swati Deshmukh's (cited supra)** case is made out. Therefore, I answer Issue No.7 in the affirmative.

As to Issue No. 2 :-

32. Defendants No.1 to 6 contended that the suit was bad for non-joinder of necessary parties, as Mahadev, the brother of Pundlik and Ramkrishna, and Prakash, Pundlik's missing son, were not impleaded. However, during cross-examination, DW1 admitted that Mahadev had died issueless, thereby weakening the defendants' objection regarding non-joinder. Learned advocate for the defendants relied on **Savitribai Gunwant Waghmare vs. Deorao Amrutrao Waghmare, 2011 (3) Mh.L.J.**, in which it is held that, in a partition suit every coparcener or person having an interest in the joint family property is a necessary party. He further relied on **Kankarathanammal vs. V.S. Loganatha, AIR 1965 SC 271**, it is held that, brother are not impleaded in a suit then suit is in competent for non-joinder of necessary parties. DW1 admitted that Mahadev died issueless and that

Prakash has been missing for many years. In these circumstances, neither could be impleaded as a necessary party. Accordingly, the defendants' objection regarding non-joinder of necessary parties is untenable, Hence, I answer Issue No.2 in the negative.

As to Issue No.8 and 9 :-

33. In the present case, plaintiff proved that, the suit properties are joint family properties of plaintiffs and defendants. In which plaintiff No.1 and have 1/4th share each and defendants No.1 to 6 have half share collectively. Defendants No.1 to 6 failed to prove the alleged prior partition or their exclusive ownership of the suit properties through Ramkrishna and, therefore, are not entitled to the declaration or mandatory injunction sought in the counterclaim. On the other hand, the plaintiffs are entitled to partition and separate possession of their lawful share. I, therefore answer Issue No.08 in the negative and in answer to Issue No.9, I pass the following order -

ORDER

1. Suit is partly decreed with costs.
2. It is hereby declared that plaintiff No.1 and 2 have 1/4th share each, and defendants No.1 to 6 jointly have half share in the suit properties excluding property area sold to them bearing C.S.No.1069 which is sold to the predecessor-in-title of defendants No.7 to 9.
3. The decree shall be sent to District Collector, Kolhapur to effect the partition of the suit property bearing Block No.1244 situated at Rendal, Tal - Hatkanangale, Dist.- Kolhapur, vide Section 54 of the Code of Civil Procedure.

4. Court Commissioner be appointed for effecting partition of house property bearing C.S.No 1069 to 1073.
5. Prakash Pundlik Mahajan is being declared to have Civil death.
6. Counter-claim of the defendants is dismissed.
7. Preliminary decree be drawn up accordingly.

(Judgment dictated and pronounced in open court)

Ichalkaranji.
Date: 23.07.2026

(G. M. Nadaf)
Civil Judge Senior Division,
Ichalkaranji.