

MHKO060000452020



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IN THE COURT OF DISTRICT JUDGE-1, JAYSINGPUR.

(Presided over by Jagdeesh M. Dalvi)

REGULAR CIVIL APPEAL NO.3 of 2020.

(CRN No.MHKO060000452020)

(Arising out of R.C.S.No. 276/2014 dt.19/12/2019) Exh.16

1 Sou.Vaishali Vijay Gadve,
Age-40 yrs. Occu: Housewife,
R/o.Hasur, Tal.Shirol Dist.Kolhapur
Now R/o.Dattwad, Tal.Shirol
Dist.Kolhapur.

**Appellant
(org. plaintiff).**

VERSUS

- 1) Shankar Basgonda Patil,
Age-62 yrs., Occu: Agriculture,
R/o.Dattwad Tal.Shirol Dist.Kolhapur
- 2) Sou.Pramila Shankar Patil,
Age-58 yrs., Occu: Housewife,
R/o. As above.
- 3) Amol Shankar Patil,
Age-38 yrs, Occu: Service
R/o.As above
- 4) Sou.Rupali Basgonda Patil,
Age 35 yrs., Occu: Household,
R/o.as above
- 5) Kalgonda Malgonda Patili (Deceased)
through legal heirs

- 5A) Madhukar Kalgonda Patil,
Age 80 yrs. Occu:Agriculture
R/o. As above
- 5B) Ramgonda Kalgonda Patil,
Age 59 yrs. Occu: Agri.
R/o.As above.
- 5C) Smt.Sushila Ravsaheb Aawate,
Age-70 yrs. Occu:Housewife
R/o. Kallo Tal.Chikkodi Dist.Belgaon
- 5D) Shivgonda Kalgonda Patil (Deceased)
through Lrs.
- 5D-1 Smt.Laxmi Shivgonda Patil,
Age-53 yrs. Occu: Housewife,
R/o.Datwad, Tal.Shirol Dist.Kolhapur
- 5D-2 Ashwini Shivgonda Patil,
Age-31, Occu: Houswife,
R/o. as above
- 5D-3 Onkareshwar Shivgonda Patil,
Age-27 yrs. Occu: Agriculture
R/o. As above.

(Org. def.)
...Respondents

Claim :- Appeal arising out of the judgment and decree in Reg. Civil Suit No. 276/2014 dated 19/12/2019 passed by Civil Judge, Jr. Division, Kurundwad.

Appearances :-

Shri.S.D.Patil, Advocate for appellant.

Shri. A.D.Kallannawar Advocate for respondents.

-: J U D G M E N T :-

(Delivered on this 4th day of July, 2026)

Appellant is aggrieved by the Judgment and Decree in RCS No.276/2014, passed by the Ld.Trial Court dated 19-12-2019, whereby her claim for partition and separation of share was rejected. [For the sake of brevity parties to the dispute are referred as their original status in the suit].

2] **Facts in brief are as below :-**

The plaintiff is the daughter of defendants No.1 and 2 and defendants No.3 and 4 are her brother and sister respectively. The suit property is undivided joint family property and defendants have denied separation of her share giving cause to the present action. The defendants have admitted the relationship however, denied the share of the plaintiff. According to the defendants, the plaintiff has relinquished her rights in the suit property. The defendants particularly contends that they have repaid the loan amount due towards her husband and in lieu thereof plaintiff has relinquished her share in the suit property.

3] Based upon rival pleading, the Ld. Trial Court framed issues and after considering the evidence on record, the Ld.Trial Court concluded that the plaintiff relinquished her share in the suit property as well the suit is bad for non joinder of necessary parties and consequently dismissed the suit.

4] The aggrieved plaintiff has assailed the impugned judgment and order on multiple grounds. At the foremost, she submits that the Ld.Trial Court has failed to appreciate the evidence correctly leading to wrong findings. Further, according to her, there is no evidence to show the relinquishment of her share and hence the impugned judgment and decree needs to be set aside and her suit should be decreed.

5] The Ld.Advocate for the appellant submits that the Ld.Trial Court has recorded its findings based upon the presumptions and assumptions. It has failed to over look the material fact that there is no evidence to show the relinquishment of share by the plaintiff. Also, he submits that the witnesses examined by the defendants are not believable because one of the witness is divorcee husband of the plaintiff and another witness is not having any personal information about alleged relinquishment.

6] The Ld.Advocate for the defendants has supported the impugned judgment and decree. He has emphasized upon the repayment of loan due by the husband of plaintiff in the bank by the defendants and submits that at the same time the plaintiff has relinquished her share. He emphasized upon the testimony of Vijay (DW2) in this respect.

7] Point for determination along with findings thereon and reasons therefor are as below :

POINTS	FINDINGS
i] Does the defendants prove relinquishment of her share by the plaintiff in the suit property ?	..No..
ii] Whether the plaintiff is entitled to the partition and separation of share?	..Yes..
iii] Whether the suit is bad for non : joinder of necessary parties?	..No..

iv] Whether impugned judgment ..Yes..
and decree needs interference?

vi] The relief. : The appeal is
allowed as per final
order.

REASONS :-

Point No. 1 :-

8] The plaintiff Vaishali (PW1) has supported her claim through testimony. According to her, the suit property is ancestral joint family property and with her undivided share. Further, according to her, defendants have refused to separate her share. In the reference, the testimony of defendant No.1 Shankar (DW1) is material. He admits the relationship with the plaintiff as well further admits that the suit property is ancestral property. Thus, from the admissions of defendant No.1 Shankar (DW1), it is clear that the suit property is undivided joint family property.

9] The plaintiff seeks partition and separation of share from this property. The defendants denied her share contending relinquishment. Thus, the burden is upon the defendants to prove that plaintiff relinquished her undivided share in the suit property. In the context, the defendants have put forth different reasons allegedly for relinquishment of share by the plaintiff. First, the defendant contends that they have incurred expenditure for the marriage and gift to the plaintiff therefore, voluntarily she has relinquished her share. At second instant, defendants contends that the loan of husband of plaintiff was due for repayment of Rs.92500/- to

Co-operative society, at that time the plaintiff relinquished her share and therefore, they repaid the loan due towards her husband. At the foremost, it is clear that there is no document to show alleged relinquishment of her share by the plaintiff in the suit property. The defendants have relied upon the testimony of Vijay (DW2) to establish that the defendant No.1 repaid the loan of husband of plaintiff. Basically, there is no evidence to show that the plaintiff undertook to relinquish her share in lieu of repayment of loan of her husband by the defendants. Further more, the transaction between husband of the plaintiff and defendant No.1 is independent act and there needs to be cogent evidence to show it related to relinquishment of share by the plaintiff. In this regard, Vijay (DW2) admits that there is no document to show that defendant No.1 repaid the loan of husband of plaintiff. Thus, there is no evidence to connect alleged transaction between husband of plaintiff and defendant No.1 in respect of repayment of loan.

10] Another material aspect is relationship between the parties. The husband of plaintiff is admittedly brother-in-law of defendant No.4. Thus, the witness is connected on both the sides with the plaintiff and defendants. He is the husband of plaintiff at the same time son-in-law of defendants No.1 and 2 and also he is brother-in-law of defendant No.4. Further, it is clear that the plaintiff and Vijay (DW3) are divorced. Therefore, in such circumstances, the testimony of Vijay needs more corroboration and cannot be relied on.

11] Thus, in entirety of facts and circumstances there is no direct evidence regarding relinquishment of her share by the plaintiff in the suit property. Moreover, even circumstances does not indicate the relinquishment as alleged by the defendants. The Ld.Trial Court heavily relied upon the testimony of Shankar (DW1) and Vijay (DW3). It presumed that the defendants repaid the loan due towards the husband of plaintiff against relinquishment of her share. However, the Ld.Trial Court presumed that this transaction was against the relinquishment of share by the plaintiff. There is no direct or indirect evidence to show the relinquishment of share by the plaintiff and therefore, findings of the Ld.Trial Court in this regard is completely based upon presumption and hypothesis not supported by the evidence and are not sustainable. Thus, defendants fails to prove that the plaintiff relinquished her share in the suit property hence, answered point No.1 in the negative.

Point No.3:

12] According to the defendants, the suit is bad for non joinder of necessary parties. According to the defendant, the suit property having No.222 is belongs to Government, the property having No.262 is in the possession of Balgonda Patil and also the properties are mortgaged to Panchganga Sugar Factory. Therefore, the suit is bad for non joinder of these parties. From the 7/12 extract of block No.222, it appears that the defendant No.1 is the tenant in the property and property is owned by the Government. Also, it appears that

the properties mortgaged with sugar factory. Thus, so far this property is concerned, neither the Government nor the sugar factory are necessary parties in juxtaposition of the claim. They further objected non joinder regarding house in CTS No.909. According to defendants, in CTS No.909, they are having $\frac{1}{2}$ share and till date the property is not partitioned. From city survey record (Exh.69), it is clear that Kalgonda Malgonda Patil and Basgonda Malgonda Patil are the joint owners of this property. Thus, apparently defendant No.1 is half owner of this property. Though, this property is allegedly hold in joint but at the same time, it is clear that alongwith defendant No.1, the plaintiff and defendant No.2 and 3 do have an undivided share in this property. The plaintiff seeks partition of her share from half share in this property. Therefore, co-owner of this property is not necessary party in the suit. The Ld.Trial Court failed to appreciate that the plaintiff is seeking separation of her share from admitted joint family properties and decree, if any, shall be preliminary which will only determine shares in the suit property. Thus, defendants failed to prove that suit is bad for non joinder of necessary parties, therefore answered point No.3 in the negative.

Point No.2 :

13] The plaintiff seeks separation of share and the property needs to be divided equally between plaintiff and defendants. Thus, plaintiff is entitled for $\frac{1}{5}$ th share in the suit property, hence answered point No.2 in the affirmative.

Point No.4

14] The Ld.Trial Court overly emphasized upon the testimony of witnesses who fails to give direct and believable evidence regarding relinquishment of share by the plaintiff. The alleged transaction between the husband of plaintiff and defendant No.1 cannot be connected with relinquishment of the share by plaintiff without cogent and supporting evidence. In fact, even if, the transaction between the husband of plaintiff and defendant No.1 is believed then also it cannot be presumed that the plaintiff relinquished her share in lieu of that transaction. Thus, the findings arrived by the Ld.Trial Court suffers from infirmity and overlooked the evidence in proper perspective. Therefore, findings are not sustainable and judgment alongwith decree needs to be set aside, hence answered point No.4 in the affirmative.

15] The plaintiff proved her share in the suit property and defendant failed to prove the relinquishment of share by the plaintiff as claimed. Hence, impugned judgment with findings and decree for the reasons afore stated is not sustainable and needs interference. Consequently, the suit needs to be decreed with costs. Hence, the order

-: ORDER :-

1. The appeal is allowed with costs.
2. The Judgment and Decree in Reg. Civil Suit No. 276/2014 dated 19/12/2019 is set-aside.

3. It is declared that plaintiff is having 1/5th share in the suit properties.
4. Preliminary decree be drawn accordingly.
5. R & P be sent to the Ld. Trial Court.

Jaysingpur.

(Jagdeesh M. Dalvi)

04/07/2026.

District Judge-1, Jaysingpur.