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Decided on : 09/09/2015  
Duration : Yrs. Ms. Ds.,  
07 02 07

**IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION, KAGAL.**

( Presided over by Shri. S.U. Mahadar )

**REGULAR CIVIL SUIT No. 88/2008.**

**Exh. 83**

1. Shri. Balasaheb Tatoba Alate through LR's } **..PLAINTIFFS.**
- 1A) Smt. Shanabai Balaso Alate, }  
Age : 65 yrs., Occu.: Household, }  
R/o.Kasaba Sangaon, }  
Tal. Kagal, Dist. Kolhapur. }
- 1B) Sou. Bebitai Annaso Ainapure, }  
Age : 33 yrs., Occu.: Household, }  
R/o. Takawade, Tal. Shirol, }  
Dist. Kolhapur. }
- 1C) Shri. Suresh Balaso Alate, }  
Age : 29 yrs., Occu.: Agriculture, }  
R/o.Kasaba Sangaon, }  
Tal. Kagal, Dist. Kolhapur. }

**Versus**

1. Shri. Mahavir Annaso Alate, } **..DEFENDANTS.**  
Age: 35 yrs., Occu.: Agriculture, }
2. Shri. Kumar Annaso Alate, }  
Age: 32 yrs., Occ.: Service, }
3. Smt. Champabai Annaso Alate, }  
Age: 65 yrs., Occ.: Household, }  
All R/o.Kasaba Sangaon, }  
Tal. Kagal, Dist. Kolhapur. }
4. Smt. Shobhatai Kallappa Bhikanawar, }  
Age: 40 yrs., Occu. Household, }  
R/o. Pattankodoli, Tal. Chikodi, }  
Dist. Belgaum. }

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5. Karmavir Bhaurao Patil Zilla Sahakari } ..**DEFENDANTS.**  
Patsanstha Maryadit, Jaysingpur }  
Branch Kasaba Sangaon, }  
Tal. Kagal, Dist. Kolhapur. }
6. Prakash Nagari Sah. Patsanstha Maryadit, }  
Kasaba Sangaon, Tal. Kagal, Dist. Kolhapur.}

**SUIT : Partition and permanent injunction V.O.S.M.Rs.19,907.00**

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**APPEARANCE:-** Ld. Adv. Shri. R. D. Magdum for plaintiffs.

Ld. Adv. Shri. R. P. Ghorpade for defendant Nos.1 to 4.

Ex-parte against defendant Nos.5 and 6.

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

( Date : 09.09.2015. )

**The plaintiffs case in short is as under:-**

House properties, bearing C.S.No.214-B having area 57.4 Sq. Meter and bearing C.S.No.215 having area 110.4 Sq. Meter situated at village Kasaba Sangaon, Tal. Kagal, Dist. Kolhapur which are specifically described in para 1 of the plaint, hereinafter referred to as “the suit properties” are subject matter of the suit

02. Deceased plaintiff Balaso had filed this suit in his lifetime. Deceased Balaso and Annaso were real brothers. Due to death Balaso of during pendency of suit is legal heirs plaintiffs No.1-A to 1-C were brought on record. Defendant No.1 to 4 are legal heirs of deceased Annaso. Common ancestor of the parties Tatoba had purchased suit properties from it's previous owner Sakhubai Mane vide sale deed dated 14/08/1949. In the year 1993 Gangubai-sister of deceased Balaso and Annaso, had relinquished her share and hence, deceased Balaso and Annaso owner of the suit properties. On 01/07/1998 Annaso died. Though there was no partition

between the parties names of deceased Balaso and Annaso were recorded in the Grampanchayat record for recovery of Grampanchayat Tax. Hence, deceased Balaso had demanded partition of the suit properties, but on 15/07/2008 the defendants refused to give the same and collected material for constructing house over more than their  $\frac{1}{2}$  share. Hence, he had filed present suit for partition and permanent injunction.

03. Defendant No.1 to 4 resisted the plaintiffs claim vide written statement (Exh.21). They have not disputed fact of purchasing the suit properties by deceased Tatoba and fact that, Gangubai had relinquished her share. According to them, on 03/07/1989 there was partition between deceased Balaso and Annaso and to that effect stamp was executed. In the said partition north side portion along with House standing on the same and open land in front of the same was given to deceased Balaso as his share and open land from south side was given to Annaso as his share. They were possessing their respective shares accordingly and deceased Balaso suppressed said material fact. Further, on 21/12/1989 deceased Balaso sold his  $\frac{1}{2}$  share out of C.S.No.214-B for Rs.1,892/- and handed over possession of the same to deceased Annaso. He had executed unregistered sale deed to that effect, but, also suppressed said material fact. On the basis of the partition deed and sale deed name of deceased Annaso was recorded in the Grampanchayat record. However, as the sale deed was unregistered name of deceased Balaso was not deleted from the city survey record and by taking disadvantage of the said fact deceased Balaso filed this false suit. The defendants constructed house over C.S.No.214-B by spending Rs.3,00,000/- and it is completed except some miscellaneous work. Hence, deceased Balaso do not have any right in the same. In theses circumstances they requested to dismiss the suit.

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04. My learned predecessor framed following issues (Exh.49). I have reproduced those issues as it is. The issues along with my finding thereon and reasons for the same are as under.

<b><u>Sr. No.</u></b>	<b><u>ISSUES</u></b>	<b><u>FINDING</u></b>
1	Whether the suit property is joint family property of parties?	Yes
2	Does defendant No.1 to 4 proves that, suit property is partitioned in writing on 30/07/1989 ?	No.
3	Does defendant No.1 to 4 proves that, plaintiffs have executed sale deed 21/12/1989 in respect of ½ portion out of R.S.No.214/B?	No.
4	Does defendant No.1 to 4 proves their possession over R.S.No.214/B?	No.
5	Whether plaintiff is entitled for partition and possession of ½ share out of the suit property?	Yes.
6	Whether plaintiff is entitled for permanent injunction as prayed?	No.
7	What order and decree?	The suit is decreed partly.

**: REASONS :**

**AS TO ISSUE No.1 and 2 :-**

05. It is not disputed that, the suit properties were purchased by Tatoba and after his death names of his four heirs were recorded to the same. Out of the four heirs on 03/07/1983 Anandibai died and in the year 1983 Gangubai had relinquished her share. Hence, remaining two heirs deceased Balaso and Annaso were joint owner of the same. However, the defendants claimed that, vide partition dated 03/07/1989 house bearing C.S.No.215 was partitioned and deceased Annaso had purchased half share out of C.S.No. 214-B from deceased Balaso vide sale deed dated 21/12/1989 and their names were recorded accordingly to their respective shares and hence, now the suit properties are not joint family properties.

06. On the other hand, the plaintiffs claimed that, as per mutual understanding they were possessing the properties and their names were recorded to the respective lands for the purpose of collecting tax and till today the properties are of undivided Hindu Family. Admittedly, there is no reference of partition deed dated 03/07/1989 in the plaint.

07. On behalf of the plaintiffs, only plaintiff No.1-C Suresh (Exh.53) adduced his oral evidence. Whereas on behalf of the defendants, defendant No.2 Kumar (Exh.68) and D.W. No.2 Laxman Bhopale (Exh.72) adduced their oral evidence. The defendants also relied on unregistered partition deed (Exh.65) to prove fact of partition of C.S.No.215. Plaintiff No.1-C Suresh (Exh.53) denied fact of execution of partition deed (Exh.65) in his cross examination. However, he admitted signature of his father - deceased Balaso and also of a witness Mallu Gangai, appearing on the same. Hence, at this stage it is clear that, partition deed (Exh.65) bear signatures of deceased Balaso, Annaso Alate and Mallu Gangai.

08. In respect of partition deed (Exh.65) learned advocate Magdum representing the plaintiff submitted that, it was necessary for the defendants to prove contents of the same and merely because signatures appearing on the same are admitted it does not mean that, it's contents have been proved. Basically, the defendants ought to have adduced evidence to prove it's contents and partition deed (Exh.65) being unregistered not admissible in evidence. It is on record that, in that respect oral evidence of only defendant No.2 Kumar (Exh.68) is available. However, in his evidence there is no reference of correctness of contents of the same as well as signatures appearing thereon. Admittedly, it is not case of the defendants that, in his presence partition deed (Exh.65) was executed. On the contrary he specifically admitted that, he does not have personal knowledge of the same and at that time he was minor. He also admitted that Mallu Gangai is alive and ready to give his evidence. However, the defendants have not adduced

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his evidence. Hence, to prove partition deed (Exh.65) evidence of defendant No.2 Kumar (Exh.68) is of no use. In fact, it was necessary for the defendants to prove contents of partition deed (Exh.65), in whose handwriting the same has been written and when it was executed. But, the defendants have not lead evidence in that respect. There is nothing on record to explain that as to why the defendants have not adduced evidence of Mallu Gangai or other witness. As stated above, partition deed (Exh.65) was exhibited during cross examination of plaintiff No.1-C Suresh (Exh.53) as he admitted signatures of his father and of the witness. In that respect in his evidence, there is following reference in respect of partition deed (Exh.65).

09. साक्षीदारास उलटतपासात दाखविल्यामुळे त्यास निशाणी ६५ देण्यात आला आहे. (Para 1<sup>st</sup> of cross examination of plaintiff No.1-C Suresh (Exh.53) page No.12). Thus, it is rightly submitted on behalf of the plaintiffs that, contents of partition deed (Exh.65) have not been proved by leading evidence to that effect. Hence, partition deed (Exh.65) cannot be read in evidence. Therefore, to prove fact of partition as claimed by the defendants the same is of no use.

10. The defendants also claimed that, as per partition name of deceased defendants were recorded to their share in the Grampanchayat record, they are paying Grampanchayat Tax of the same and also obtained loan also on their share from defendant No.6 Patasanstha. Similarly, name of deceased Annaso was also recorded to his share, he was paying Grampanchayat tax of the same and obtained loan of defendant No.5 on the same. Further, they are possessing their respective shares. Admittedly, according to their submissions, the defendants were bound to lead their evidence. But it is on record that, in evidence of defendant No.2 Kumar (Exh.68) there is only reference of effecting partition of C.S.No.215 on the basis of partition deed (Exh.65). However, his evidence is silent in respect of

another submissions. Further, the defendants not submitted any document showing that, deceased Balaso had submitted application to the Grampanchayat, to record his name and also of deceased Annaso due to partition. In the circumstances, for want of other supporting evidence, mere oral evidence of defendant No.2 Kumar (Exh.68) is not sufficient to prove fact of partition as alleged by the defendants. Hence, his evidence is not accepted. Except the evidence discussed above, no any other evidence is available in respect of the partition. The defendants nowhere claimed that, C.S.No.214-B was also partitioned. In that respect they claimed that, deceased Balaso had executed sale deed of his half share in favour of deceased Annaso, but, said fact has also not been proved for want of evidence in that respect as discussed below.

11. The defendants also claimed separate possession as per the partition and sale deed. However, the plaintiff claimed that, they were possessing the properties as per their mutual understanding. As the defendants were bound to prove the fact of the alleged partition and as they failed to prove the same, merely because, the parties are possessing some portion as alleged by them the fact of mere possession itself is not sufficient to accept claim of the partition. In the circumstances, for want of evidence it is not proved that, the suit properties were partitioned. Hence, evidence lead on behalf of the plaintiffs in that respect is accepted. As their evidence is sufficient to prove that the suit properties are undivided Hindu family properties, I answer issue No.1 in the affirmative and issue No.2 in the negative.

**AS TO ISSUE No.3 and 4:-**

12. The defendants claimed that, on 21/12/1989 deceased plaintiff had executed sale deed of his half share out of property C.S.No.214-B in favour of deceased Annaso. However, the plaintiffs denied said fact. Admittedly the defendants were bound to prove their contention. For that

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purpose the defendants adduced oral evidence of defendant No.2 Kumar (Exh.68) and of D.W.No.2 Laxman Bhopale (Exh.72). They also relied on unregistered sale deed (Exh.66). D.W.No.2 Laxman Bhopale (Exh.72) is witness of the same. He adduced his evidence supporting the defendants claim. However, as per section 17(b) of the Registration Act, 1908 registration of the same was necessary as consideration amount of the same was Rs.1,872/-. As it is unregistered document as per section 49 of the Registration Act, 1908 it is neither admissible in evidence nor affect the property in respect of which the same was executed. Hence, sale deed (Exh.66) is of no use. Hence, oral evidence in that respect also cannot be accepted, it is not accepted.

13. The defendants claimed that, sale deed (Exh.65) was impounded and they have paid stamp duty along with penalty. However, admittedly, the plaintiffs paid only stamp duty which was necessary to be paid. But, merely because stamp duty has been paid, compulsory registration of the sale deed cannot be dispensed with. Therefore, it is clear that, the defendants have not proved that, on 21/12/1989 deceased plaintiff had executed sale deed of his half share out of house C.S.No.214-B in favour of deceased Anso. Hence, I answer, issue No.3 in the negative.

14. The defendants are claiming possession over entire C.S.No.214-B on the basis of unregistered Sale deed (Exh.66). But, as discussed above, the defendants cannot claim any right on the basis of the same. Further, the plaintiffs specifically stated that, as per mutual understanding they are possessing the properties and it was not partitioned. Hence, it is required to be presumed that, being co-sharer the defendants are possessing entire C.S.No.214-B. Hence, I answer issue No.4 in the negative.

**AS TO ISSUE No.5:-**

15. In view of above discussions, it is clear that, the suit properties are of the undivided Hindu Family of the parties as till today those are not

partitioned. It is also not disputed that, the plaintiffs are having half share and the defendants are having half share. Now, as claimed by the plaintiffs the suit properties are required to be partitioned. Hence, the plaintiffs are entitled for partition and possession of their half share as claimed by them.

**AS TO ISSUE No.6:-**

16. The plaintiffs are claiming permanent injunction restraining the defendants from doing construction over the plaintiffs share as well as from disturbing his possession. However, as the properties are not partitioned till today, prayer of the plaintiffs in respect of partition has been granted. Hence, it is clear that, the plaintiffs share is yet to be separated. Hence, he cannot claim that, the defendants constructed house over their share. Further, it is also on record that, the defendants already completed the construction and now there is no evidence to show that their construction is going on. Further, when the defendants are entitled for joint possession, the plaintiffs cannot claim injunction against them. Hence, they are not entitled for injunction as claimed. In the circumstances I answer issue No.6 in the negative.

**AS TO ISSUE No.7 :**

17. In view of answers issue No.1 to 6 the plaintiffs are entitled for partition and separate possession out of the suit properties, but they are not entitled for relief as to the permanent injunction. In the circumstances, the suit will have to be decreed partly, accordingly, with direction to both the parties to bear their own costs. Hence, in answer to issue No.7, I pass following order:-

**: O R D E R :**

- (1) The suit is decreed partly, the prayer of injunction is rejected. The parties to bear their own costs.
- (2) It is declared that, plaintiffs No.1-A to 1-C collectively and defendant No.1 to 5 collectively have  $\frac{1}{2}$  share, each, in the suit properties.

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- (3) Partition of the suit properties be effected through the Court Commissioner.
- (4) The preliminary decree be drawn accordingly.

Date : 09.09.2015.  
Kagal.

Sd/-  
( S.U. Mahadar )  
Civil Judge, J.D., Kagal.

I affirm that the contents of this PDF file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	S. S. Gorwade
Name of the Court	Civil Judge Jr. Division, Kagal.
Date of Dictation	09/09/2015.
Judgment signed by the P.O. on	09/09/2015
Judgment uploaded on	11/09/2015