

MHKO160003712015	Presented on : 10/07/2015
	Registered on : 17/07/2015
	Decided on : 03/07/2026
	Duration : 10 Ys. 11 Ms. 23 Ds.

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION MALKAPUR AT
SHAHUWADI, DIST KOLHAPUR**

(Presided over by Shri. P. B. Pawar, C.J.J.D., Malkapur-Shahuwadi, Tal.
Shahuwadi, Dist. Kolhapur)

REG.CIVIL.SUIT NO. 69/2015

Exh. _____

Shamrao Chandrappa Patil, Age- 48 Yrs., Occu- Service, R/at- Pishavi, Tal. Shahuwadi, Dist. Kolhapur		Plaintiff
Versus		
1	Baliram Chandrappa Patil, Age- 63 Yrs., Occu- Agriculture, R/at- Pishavi, Tal. Shahuwadi, Dist. Kolhapur	...Defendants
2	Kalabai Shripati Lavhate, Age- 66 Yrs., Occu- Agriculture & Housework, R/at- Parakhandale, Tal. Shahuwadi, Dist. Kolhapur	
3	Dropadi Bajirao Kite, Age- 60 Yrs., Occu- Agriculture & Housework,	

	R/at- Khutalwadi, Tal. Shahuwadi, Dist. Kolhapur	...Defendants
4	Laxman Krushna Vhanangade, Age- 62 Yrs., Occu- Agriculture, R/at- Pishavi Paiki Vhanangadewadi, Tal. Shahuwadi, Dist. Kolhapur	
5	Krushna Hari Patil, Age- 80 Yrs., Occu- Agriculture,	
6	Govinda Dhondi Patil, Age- 66 Yrs., Occu- Agriculture,	
7	Dattu Arjuna Patil, Age- 80 Yrs., Occu- Agriculture,	
8	Sambhaji Dnyanu Patil, Age- 55 Yrs., Occu- Agriculture,	
9	Tukaram Arjuna Patil, Age- 70 Yrs., Occu- Agriculture, Nos. 5 to 9 R/at- Pishavi, Tal. Shahuwadi, Dist. Kolhapur	

Appearance -

Advocate for plaintiff - Shri. V. B. Singhan

Advocate for defendant No.1 - Shri. P. B. Dalavi

Advocate for defendant No.2 to 9 - Ex-parte.

J U D G M E N T

[Delivered on 03/07/2026]

01. Plaintiff filed this suit for declaration, partition and separate possession.

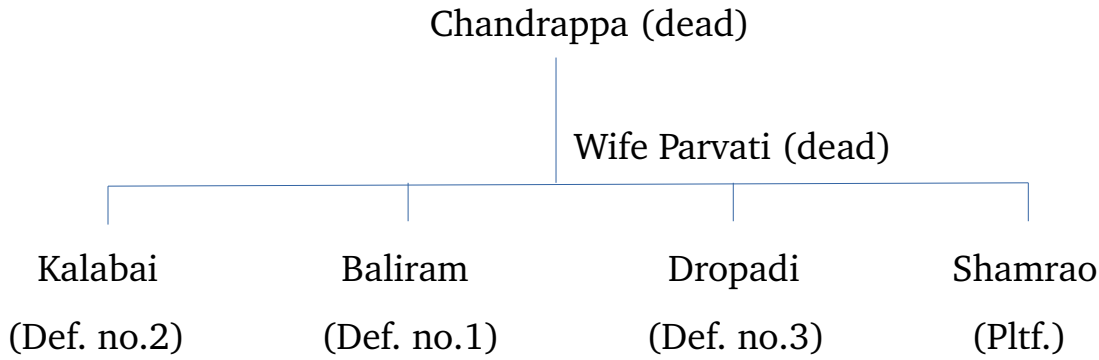
02. Brief facts of the plaintiff's case are as under:-

The landed properties situated at Mouje Pishavi, Tal. Shahuwadi, Dist. Kolhapur are as follows;

Sr.No.	Gat No.	Area H. R.	Akar Rs. Pai.	Total Share	Plaintiffs share
1	648	0.73	0-47	Total	Fourth
2	633	0.97.2 Po.Kh. 0.05	7-62	Half	Fourth
3	632	0.77.9	12-19	Half	Fourth
4	613	0.34	0-075	Total	Fourth
5	592	0.33 Po.Kh. 0.2	5-82	2 Aane 8 Pai	Fourth
6	568	0.6	0-11	Total	Fourth
7	455	0.6	1-28	Total	Fourth
8	436	0.16.2	2-62	Total	Fourth
9	638	1.55.3	12-19	Half	Fourth
10	339	99.2 Po. Kh. 0.5	7-62	Half	Fourth

The above mentioned landed properties are herein after referred as suit properties for the sake of brevity.

03. The family tree of plaintiff and defendant No.1 to 3 is as follows;



04. The Plaintiff contended that the suit properties are ancestral properties of the family. The Plaintiff's father, Chandrappa, died on 20.12.1969. After his death, the name of Defendant No. 1, being the eldest son, was mutated in the revenue records (7/12 extracts) of the suit properties. Since Defendant No. 1 was a minor at that time, the name of his mother was entered as his guardian. Upon Defendant No. 1 attaining majority, his mother's name was deleted and the suit properties came to be recorded solely in the name of Defendant No. 1. Suit property Gut Nos. 638 and 639 were protected tenancy lands standing in the name of Hari Rau Patil. Pursuant to proceedings under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, the said properties were mutated in the names of Defendant No. 1 and Defendant No. 5, each having a one-half share therein. Out of Gut No. 362, an area ad-measuring 3 R was jointly owned by all the brothers and the same has already been sold by them. Therefore, the said portion has not been included in the present suit.

05. The Plaintiff has been employed with Mahanagar Parivahan Mandal, Pune, since the year 1987 and has been residing in Pune ever since, occasionally visiting his native village. The Plaintiff has contributed financially towards the marriage expenses of

Defendant No. 1's daughter and has also provided financial assistance to the family from time to time.

06. During the lifetime of the mother of the Plaintiff and Defendant No. 1, the family relations remained cordial and there was no dispute regarding the suit properties. However, recently Defendant No. 1 refused to effect partition of the ancestral properties. Thereafter, upon obtaining the 7/12 extracts of the suit properties, the Plaintiff came to know that Defendant No. 1 had sold the entire Gut No. 568 to Defendant No. 4 without any legal necessity or benefit to the family estate. Before executing the said sale transaction, Defendant No. 1 neither obtained the consent of the Plaintiff nor that of Defendant Nos. 2 and 3. Consequently, the Plaintiff has been constrained to institute the present suit seeking partition and separate possession of his share in the suit properties and a declaration that the sale deed executed by Defendant No. 1 in favour of Defendant No. 4 is not binding upon the Plaintiff's share and interest in the suit property.

07. The Plaintiff has constructed a house on a separate parcel of land acquired by him and has permitted Defendant No. 1 to occupy the old family house. There is no dispute between the parties regarding the house properties. Hence, the house properties have not been included in the present suit.

08. Defendant No. 1 filed his Written Statement and submitted that the suit filed by the Plaintiff is false, untenable, and not maintainable in law. He submitted that the suit is bad for partial partition, as all the joint family properties have not been included

therein. He further contended that the suit suffers from non-joinder of necessary parties, as the Plaintiff has failed to implead the paternal aunts, namely Harubai and the legal heirs of Gangubai. Defendant No. 1 denied the Plaintiff's contention that all the suit properties are ancestral properties. He further contended that Mutation Entry No. 1439, effected after the death of Chandrappa, is illegal and contrary to the provisions of the Fragmentation and Consolidation Act. According to him, the Plaintiff has deliberately suppressed material facts, particularly the Transfer Certificate dated 02.06.1975, and therefore the suit is liable to be dismissed on the ground of suppression of material facts. Defendant No. 1 further submitted that after the death of his father, he assumed responsibility for managing the family affairs, cultivating the agricultural lands, maintaining the family members, and discharging various family obligations. He asserted that he had purchased a flat at Pune for the Plaintiff and had also incurred expenses towards the marriages of Defendant Nos. 2 and 3. He further contended that in the year 1964, he had purchased Gut No. 638 in the name of his father by paying the entire sale consideration to Ramachandra Krushnaji Kharade and had obtained possession thereof as owner. Although Sale Deed No. 1080 of 1964 stood in the name of his father, Defendant No. 5's name was subsequently inserted in the revenue records through Mutation Entry No. 97, which according to him was false and illegal. He claimed exclusive ownership over the entire Gut No. 638 and denied that Defendant No. 5 or any other person had any right, title, or interest therein. Defendant No. 1 also denied the Plaintiff's contentions regarding Gut No. 362 and Gut No. 568. He reiterated that the Plaintiff has suppressed material facts and relevant documents, failed to correctly describe all the properties, and wrongly claimed shares in the suit properties. He further challenged

the valuation of the suit and the adequacy of the court fees paid thereon. On these grounds, Defendant No. 1 prayed for dismissal of the suit with costs.

09. Heard Ld. advocate Shri. V. B. Singhan for plaintiff, Ld. advocate Shri. P. B. Dalavi for defendant No.1. In view of rival pleadings of the parties my learned predecessor has framed issues below Exh.16. I have reproduced the same and recorded my findings accordingly;

Sr No	ISSUES	FINDINGS
1	Whether the plaintiff proves that suit properties are ancestral properties?	Yes
2	Whether the plaintiff is entitled to have partition of the suit properties? If yes, what would be the respective shares of the parties?	No
3	Whether the plaintiff is entitled to the relief of declaration that sale-deed executed by defendant No.1 in favour of defendant No.4 is not binding upon him ?	Does not survive
4	Whether suit bad for non-joinder of necessary parties ?	No
5	Plaintiff has brought all the ancestral properties in a common hot-pot ?	No
6	Whether defendant No.1 proves that Gat No.638 is a self acquired property ?	Yes
7	What order and decree ?	Suit is dismissed

10. Plaintiff has filed following documents at Exh.No.3 & Exh.No.21;

Sr No	Description of document	Exh.No.
1	7/12 extract of Gat No.648 of Grampanchat Pishavi	3/1
2	7/12 extract of Gat No.633 of Grampanchat Pishavi	3/2
3	7/12 extract of Gat No.632 of Grampanchat Pishavi	3/3
4	7/12 extract of Gat No.613 of Grampanchat Pishavi	3/4
5	7/12 extract of Gat No.592 of Grampanchat Pishavi	3/5
6	7/12 extract of Gat No.568 of Grampanchat Pishavi	3/6
7	7/12 extract of Gat No.455 of Grampanchat Pishavi	3/7
8	7/12 extract of Gat No.436 of Grampanchat Pishavi	3/8
9	7/12 extract of Gat No.638 of Grampanchat Pishavi	3/9
10	7/12 extract of Gat No.339 of Grampanchat Pishavi	3/10
11	Diary Extract No.1439 of Grampanchat Pishavi	3/11
12	Diary Extract No.1611 of Grampanchat Pishavi	3/12
13	Certified copy of Registered Sale-deed No.259/2008 dated 11/03/2008	21/1

Plaintiff examined himself as P.W.1 at Exh.18. Plaintiff closed his evidence by filing evidence close pursis Exh.22.

11. Defendant No.1 has filed following documents at Exh.15;

Sr No	Description of document	Exh.No.
1	Extract of monthly meeting No.140/3 dated 10/01/2013 of Grampanchayat Pishavi	15/1
2	Assessment extract of Property No.147 of Grampanchayat Pishavi	15/2

3	Assessment extract of Property No.407 of Grampanchayat Pishavi	15/3
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Defendant No.1 examined himself as D.W.1 at Exh.24 and closed his evidence by filing evidence close pursis Exh.26.

REASONS

12. Before proceeding to answer issues it will be helpful to go through arguments of both the sides. Learned Advocate for the plaintiff, Shri. V. B. Singhan, argued that the Plaintiff and Defendant Nos. 1 to 3 are the legal heirs of deceased Chandrappa and the suit properties are ancestral properties inherited by succession. Reliance was placed on the 7/12 extracts and Mutation Entry No. 1439, which show that the names of all legal heirs were entered after Chandrappa's death. It was argued that Defendant No. 1 has disputed only Gut No. 638, but has failed to produce any documentary evidence to prove his claim of exclusive ownership. On the contrary, the revenue record shows that his name was entered during his minority through his mother as guardian, making his defence improbable. It was further submitted that the plea of previous partition is unsupported by any evidence and that the Plaintiff, being a coparcener, is entitled to partition and separate possession of his lawful share. Consequentially entitled for declaration as prayed.

13. Conversely, Learned Advocate for the defendant, Shri. P. B. Dalavi, submitted that the suit is not maintainable as it is a suit for partial partition. It was argued that the Plaintiff himself admitted the existence of another ancestral house property at Village Pishavi, which

has not been included in the suit schedule. It was further contended that Gut No. 638 is the self-acquired property of Defendant No. 1, purchased from his own earnings, and that revenue entries do not confer title. The Defendants also contended that there had been a previous partition between the parties. Therefore, it was prayed that the suit be dismissed as not maintainable.

AS TO ISSUES NO. 1 & 6 -

14. Both the issues are regarding ancestral nature of the properties; hence they are taken up for discussion together. At the outset, it is important to note some undisputed facts that plaintiff and defendant no 1 to 3 are brothers and sisters. In order to prove that the suit properties are ancestral in nature; plaintiff has filed his affidavit of examination in chief at Exh 18. In his chief he has reiterated all the averments made in the plaint. It has come in his cross-examination that, at present his family and defendants family are separate. He denied previous partition. He further deposed that he do not know Gut numbers of the suit property and it's area. Further he was testified on the point of bearing expenses of marriage of daughter of defendant no. 1. He deposed that he has no documentary evidence to show said expenses. Further, he admitted that at village Pishavi there is ancestral house property which is not included in suit as suit property. He also admitted that house property is on ancestral land. Further suggestions were given regarding previous partition; which are denied by the plaintiff.

15. It is evident from the testimony of defendant no. 1 that, apart from suit property Gut no. 638 he has not denied ancestral

nature of remaining suit properties. Thus, it is essential to see the nature of Gut No. 638. As per defendant no. 1 he has purchased property at Gut No. 638 in the name of his father. However, on perusal of 7/12 extract of Gut No. 638 it can be seen that, defendant no. 1's name is mutated along with his mother as guardian for minor to the extent of half share in Gut No. 638. Thus, the contention of the defendant no. 1 that he purchased Gut No. 638 in the name of his father do not appears trustworthy as his name was mutated while he was minor. Moving further, defendant no. 1 has contended that, entire Gut no. 638 belongs to him and name of defendant no. 5 was mutated wrongly. However, there is no evidence to substantiate the contention. Moreover, there is nothing on record to show that, he has challenged said mutation till date.

16. Upon careful appreciation of the oral and documentary evidence on record, this Court finds that the Plaintiff has successfully established that the suit properties are ancestral in nature. It is an admitted position that the Plaintiff and Defendant Nos. 1 to 3 are the children of deceased Chandrappa. Significantly, except for disputing the nature of Gut No. 638, Defendant No. 1 has not seriously challenged the ancestral character of the remaining suit properties.

17. The revenue record produced on record, particularly the 7/12 extracts and Mutation Entry No. 1439 exhibited along with Exhibit-3, assumes considerable importance. A perusal thereof reveals that after the demise of Chandrappa, the names of all his legal heirs were taken into consideration while effecting the mutation. The mutation entry reflects succession to the properties on account of the

death of the original holder and indicates the existence of hereditary rights in favour of the legal heirs. This circumstance lends substantial support to the Plaintiff's case that the properties descended from the common ancestor and retained their ancestral character.

18. So far as Gut No. 638 is concerned, Defendant No. 1 has contended that he had purchased the said property in the name of his father and that the entire property exclusively belongs to him. However, this contention is not supported by any cogent documentary evidence. On the contrary, the 7/12 extract of Gut No. 638 discloses that the name of Defendant No. 1 was entered in the revenue record during his minority and his mother's name was shown as guardian in respect of his share. If Defendant No. 1 had in fact purchased the property in the name of his father from his own independent funds, there was no plausible reason for his name to be reflected in the revenue record as a co-holder during his minority. This circumstance renders his version improbable and untrustworthy.

19. Further, although Defendant No. 1 has alleged that the name of Defendant No. 5 was wrongly entered in the revenue record through Mutation Entry No. 97, no documentary evidence has been produced to establish the alleged illegality. More importantly, there is nothing on record to show that Defendant No. 1 ever challenged the said mutation entry before any competent authority. The prolonged acceptance of the revenue entries raises a strong presumption regarding their correctness and militates against the defence sought to be raised by Defendant No. 1.

20. The admissions given by the Plaintiff in cross-examination regarding non-inclusion of the ancestral house property or his inability to produce documentary proof of certain expenses do not affect the core issue concerning the nature of the suit properties. Likewise, the suggestions regarding a previous partition have been specifically denied by the Plaintiff and no convincing evidence has been adduced by Defendant No. 1 to prove such partition.

21. Therefore, considering the oral testimony of the parties, the revenue records, Mutation Entry No. 1439, and the absence of reliable evidence supporting the defence of exclusive ownership, this Court is of the considered opinion that the suit properties, including Gut No. 638, are ancestral properties of the family in which the Plaintiff and Defendant Nos. 1 to 3 have inherited rights by succession. Accordingly, the issue no. 1 and 6 in affirmative.

AS TO ISSUE NO. 04 -

22. It transpires from the evidence on record that the defendants have admitted the correctness of the genealogy (family tree) set out in the plaint. It is not their case that any person, who was a necessary party to the suit, has been omitted from the array of parties. No material has been placed on record to establish that the presence of any other person was necessary for the effective and complete adjudication of the dispute. Therefore, the suit is not vitiated on account of non-joinder of any necessary party. Accordingly, Issue No. 4 is answered in the negative.

23. Before proceeding towards entitlement of the partition and determination of shares it is important to discuss issue regarding common hotch-pot. Hence issue no. 5 is taken up for discussion.

AS TO ISSUE NO. 05 -

24. It is evident from the testimony of the plaintiff that there exists a house property situated on the ancestral land at Village Pishavi. Admittedly, the said house property has not been included in the schedule of the suit properties. The plaintiff has sought to justify its exclusion by contending that the house property had already been partitioned. However, during his cross-examination, he denied the suggestion that he and defendant No. 1 were residing in separate halves of the said house property. He further deposed that defendant No. 1 had denied him his share in the house property, compelling him to construct a separate house elsewhere. This evidence clearly indicates that the ancestral house property has neither been partitioned nor included in the present suit.

25. It is a settled principle of law that a suit for partition must ordinarily encompass all joint family or ancestral properties, and a suit seeking partial partition is not maintainable unless it falls within the recognized exceptions, none of which have been pleaded or proved in the present case. Therefore, the present suit suffers from the vice of partial partition. Accordingly, I answer Issue No. 5 in the negative.

AS TO ISSUES NO. 02 & 03 -

26. As discussed while deciding the previous issue, a suit for partial partition is not maintainable in law. *The Hon'ble Supreme*

Court, in the Kenchegowda v. Siddegowda (1994) 4 SCC 294, has held that a suit for partial partition, without including all the joint family properties and without impleading all the co-sharers, is not maintainable. In the present case, although the plaintiff has successfully established that the suit properties are ancestral in nature, it has also come on record that one of the ancestral house properties has not been included in the suit schedule. Consequently, the suit suffers from the defect of partial partition. In view of the settled legal position, the plaintiff is not entitled to a decree for partition and separate possession of the suit properties. Further, since the suit itself is held to be not maintainable on account of partial partition, the shares of the parties cannot be determined in the present proceedings. Any adjudication on Issue No. 3 regarding the respective shares of the parties would be merely academic and may adversely affect the rights of the parties in any future comprehensive partition proceedings. Hence, Issue No. 3 does not survive for consideration. Accordingly, Issue No. 2 is answered in the negative and Issue No. 3 is answered as "does not survive for consideration."

AS TO ISSUE NO. 07 -

27. In view of the foregoing discussion and the findings recorded on the issues above, the Plaintiff has succeeded in establishing that the suit properties, including Gut No. 638, are ancestral properties in which he and Defendant Nos. 1 to 3 have inherited rights by succession. However, since the ancestral house property situated at Village Pishavi has admittedly not been included in the hotch-pot, the suit suffers from the vice of partial partition and is, therefore, not maintainable in law. Once the suit itself is held to be

bad for partial partition, no effective decree of declaration, partition and separate possession can be passed in respect of only some of the joint family properties, as the relief of declaration sought by the Plaintiff is consequential to and inseparable from the relief of partition. Consequently, the Plaintiff is not entitled to the declaration or to the decree of partition and separate possession as prayed for. In the result, I proceed to pass the following order:

ORDER

- 1.The suit is dismissed.
- 2.Considering the relationship between the parties, they shall bear their own costs.
- 3.Decree be drawn up accordingly.

(Judgment pronounced in open court.)

Shahuwadi

Date: 03/07/2026

(P. B. Pawar)

Civil Judge Junior Division,

Malkapur-Shahuwadi.

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) file judgment are same, word to word, as per the original judgment.

Name of the Stenographer	P.A. Vasudeo
Name of Court	P. B. Pawar, C.J.J.D & J.M.F.C. Malkapur-Shahuwadi
Date of Dictation	03/07/2026
Judgment signed by the P.O.on	03/07/2026
Judgment uploaded on	03/07/2026