

MHKO180003622019



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Decided on : 05/05/2026

Duration : Yrs. Ms. Ds.  
06 11 01

**IN THE COURT OF THE JT. CIVIL JUDGE JUNIOR DIVISION,  
KURUNDWAD AT KURUNDWAD.**

(Presided over by V. R. Mane)

Regular Civil Suit No.90/2019.

Exh. No.48/A

Shri. Prakash Narayan Nampalli, }  
Age 60 years, Occupation – Business, }  
Residents of Kurundwad, Tal. Shirol, }  
Dist. Kolhapur. } **...Plaintiff.**

*Versus*

1. Shri. Ashok Narayan Nampalli, }  
Age 55 years, Occupation – Business, }  
2. Shri. Sanjay Narayan Nampalli, }  
Age 50 years, Occupation – Business, }  
Both R/o. Kurundwad, Tal. Shirol, }  
Dist. Kolhapur. } **...Defendants.**

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**Claim :- Suit for partition and separate possession.**

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**Appearance:**

Ld. Adv. for plaintiff : Shri. D. D. Magdum  
Defendant No.1 : Without Written Statement  
Ld. Adv. for defendant No.2 : Shri. V. L. Jamadagni

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

(Decided on 05<sup>th</sup> May, 2026)

**NATURE OF SUIT :-**

Plaintiff has filed this suit against his real brothers i.e. defendant Nos.1 and 2 for partition and separate possession of joint family properties of plaintiff and defendants.

**SUBJECT MATTER OF THE SUIT :-**

02. House properties bearing City Survey No.1074 admeasuring 14.70 Square Meters and City Survey No.1075 admeasuring 138.15 Square Meters situated at Kurundwad, Tal. Shirol, Dist. Kolhapur which are more specifically mentioned in para No.1 of the plaint are the subject matter of this suit. (These properties hereinafter referred to as “the suit properties” for the sake of convenience.)

**FACTS OF THE PLAINTIFF'S CASE, IN SHORT IS AS UNDER :-**

03. Plaintiff and defendant Nos.1 and 2 are real brothers. They and their father Narayan along with their mother Sonabai were residents of Belgaon, Karnatka State. In the year 1980 Narayan and Sonabai came to Kurundwad along with their children and residing at Kurundwad. They started a business in the name and style Sona Beer Bar and Hotel and Lodging. Narayan was running his family expenditure on the income of that business. In the year 1989 Narayan purchased suit properties from one Chandrakant Ganapati Pawar in the joint name of himself and defenant No.2. Since the suit properties were purchased from joint family income, plaintiff has his share in the suit properties. In the year 1993 disputes between plaintiff and defendants started raising. Hence, Narayan suggested them to start their own separate businesses to avoid disputes. Accordingly, plaintiff started his

own business of selling country liquor since 1993 and running his family on that income. However, defendants were enjoying the joint family property and business. Though plaintiff and defendants were residing separately, suit properties and their joint family business was not separated by metes and bounds. Defendants have no concern with the separate business of plaintiff and the properties he purchased from that income.

04. Plaintiff has further contended that, later on their father and mother died in the year 1996 and 2013 respectively. Thereafter, plaintiff and defendants started disputing about the suit properties. Since plaintiff has his right over the suit properties he asked defendants to which defendants were not paying any heed. Eight days prior to filing of this suit plaintiff asked defendants to hand over his 1/3<sup>rd</sup> share in the suit property to which defendants refused. Hence, plaintiff was constrained to file this suit for partition and separate possession of suit properties.

**FACTS OF THE DEFENDANT NO.2'S CASE, IN SHORT IS AS UNDER :-**

05. Defendant No.2 filed his written statement (Exh.10) and denied the claim of plaintiff. He further submitted that, plaintiff has not approached the court with clean hands, he has suppressed material facts from the court. Plaintiff himself is residing and enjoying the suit properties about which he has kept mum in his plaint.

06. In fact, defendant No.2 has purchased suit properties by paying lawful consideration. But during the process due to sudden demand of more consideration amount by Chandrakant Pawar defendant No.2 was forced to borrow some amount from his father for

which he entered his name in the sale-deed as co-purchaser. Thereafter, defendant No.2 started his business in the name of Sona Beer Bar and from its income he returned all the money he borrowed from his father. Sona Beer Bar was a bar only and it was never a hotel or lodging. Said business was also in the name of defendant No.2 and his father and defendant No.2 was looking after it. So, his father Narayan never claimed any right over its income.

07. Defendant No.2 further contended that, plaintiff was not residing at Kurundwad in the year 1993. He was residing with his paternal uncle Vishnu Kalala. Which clearly shows that he had no concern with the business of Sona Beer Bar and its income. Their father never instructed them to reside separately. Wives of defendants are real sisters. In the year 1996 after the death of Narayan, disputes started rising between the families of plaintiff and defendants due to which plaintiff was forced to reside separately from defendants. Since then plaintiff is residing in plot No.19 in Gat No.211/220 which was purchased by their mother Sonabai from the sole income of Narayan and she gave it to plaintiff for residing. Thus, plaintiff and defendants started residing separately in the suit property.

08. After the death of Sonabai, defendant No.2 closed his business of Sona Bar and started to run a video game business to run his livelihood. Since then defendant No.2 utilizing suit property for his residence and gave it to the son of plaintiff to run a business. Hence, there remains no reason to file such suit. In this background, the suit of plaintiff is liable to be rejected. Hence, it is prayed to reject it with costs.

**NO WRITTEN STATEMENT AGAINST DEFENDANT NO.1 :-**

09. In spite of sufficient opportunity given to defendant No.1 he failed to file his written statement, hence suit proceeded without his written statement.

**ISSUES AND FINDINGS**

10. On the basis of rival pleadings, my Ld. Predecessor had framed Issues at Exh.12 these issues framed were recasted by order below Exh.1. I have reproduced those Issues and recorded my findings against each of them with the reasons stated below :-

<b>SR. NO.</b>	<b>ISSUES</b>	<b>FINDINGS.</b>
01.	Does plaintiff prove that, suit properties are his and defendant's joint family properties ?	...In the affirmative.
02.	Whether defendant No.2 proves that suit properties are his self acquired properties ?	...In the negative.
03.	Whether plaintiff is having share in the suit properties ? If yes, to what extent ?	...Yes, 1/3 <sup>rd</sup> share in each property.
04.	Whether plaintiff is entitled for relief as claimed ?	...In the affirmative.
05.	What Order and Decree ?	..Suit is decreed with costs.

**-:: EVIDENCE ::-****ORAL EVIDENCE OF PLAINTIFF :-**

11. Plaintiff has examined himself by filing his evidence affidavit at Exh.17 and reiterated the contents of his plaint. Plaintiff has also examined witnesses named Dilip Banda Mali (Exh.18). Plaintiff has closed his oral evidence *vide* Purshis (Exh.28). He has placed his

reliance on following documentary evidence *viz* :-

SR. NO.	EXH. NO.	DESCRIPTION OF DOCUMENT
1.	29	Property Card Extract of City Survey No.1074
2.	30	Property Card Extract of City Survey No.1075
3.	33	Sale-deed No.1826/1989 dated 28/09/1989.
4.	34	Death Certificate of Narayan.
5.	35	Death Certificate of Sonabai.
6.	36	Diary Extract No.4161.

#### ORAL EVIDENCE OF DEFENDANT NO.2 :-

12. Defendant No.2 has filed his evidence affidavit at Exh.20 reiterating the contents of his written statement. Defendant No.2 has also examined witness Shri. Dipak Gajanan Shelake at Exh.27. He has closed his oral evidence *vide* Purshis at Exh.43.

#### -:: ARGUMENTS ::-

13. Ld. Advocate for plaintiff Shri. D. D. Magdum submitted that plaintiff by leading cogent evidence has proved suit properties were purchased out of the joint family income. Defendant has also admitted that suit properties are their joint family properties and the building was constructed in the suit property by obtaining loan and the loan was repaid from joint family income. He further agreed that defendant specifically admitted that plaintiff is having 1/3rd share in the suit properties. Hence, he prayed to decree the suit. In support of his contentions he has placed his reliance on following precedent :

- (i) *Chinniya Gounder (died) & Ors. Vs. Mariappan & Ors.* in

which the *Hon'ble Madras High Court* held that, “*Though the suit properties were purchased in the name of defendant, were acquired using the income from existing joint family properties. Defendant's claim that these properties were his separate, self acquired assets rejected, as he had no separate independent source of income.*”

14. On the other hand, Ld. Advocate for defendant No.2 Shri. V. L. Jamadagni submitted that suit properties are not properly valued and also suit is not within limitation. In 1993 there was dispute between plaintiff and defendants so they resided separately as the suit properties are partitioned between them. Their business were also separated. Plaintiff was having permit of liquor in his name and defendant No.2 was also having his ‘Sona Beer Bar’ business. Both the businesses were separate. So partition cannot be reopen. Hence, prayed to dismiss the suit with costs. He lastly argued that suit properties were purchased by defendant No.2 and his father Narayan. If the court comes to the conclusion that plaintiff is having share then plaintiff can get 1/3<sup>rd</sup> share in the ½ share of his father Narayan. In support of his contentions he has placed his reliance on following precedents :-

- (i) *Pundlik Kisan Akhatkar Vs. Wasudeo Kisan Akhatkar* reported in *2009(6) Mh.L.J. 197* wherein the *Hon'ble Bombay High Court* has held that “*a plea that a party has purchased the property cannot be read as synonyms to said property being a self acquired property.*”
- (ii) *Central Bank of India Vs. Sion Bakers and Confectioners Pvt. Ltd.* reported in *2008(5) Mh.L.J. 772* wherein the *Hon'ble Bombay High Court* has held that, “*any evidence without pleading is inadmissible. The admission is the best evidence against the person giving it.*”
- (iii) *Madhavrao Ramchandra More Vs. Rajendra Sah. Griha Nirman Sanstha Marya., Kolhapur* reported in *2019(1) Mh.L.J. 419* wherein the *Hon'ble Bombay High Court* has

held that *“Denial of fact must be specific. Absence of specific denial in written statement about fact pleaded in plaint amounts to admission and admitted facts need not be proved.”*

15. Despite sufficient opportunity was given neither defendant No.1 nor his advocate appeared before the Court for argument. Hence, this suit proceeded without the arguments of defendant No.1.

**-:: REASONS ::-**

**AS TO ISSUE Nos.1 AND 2 :-**

16. As the evidence and reasons on these issues are inter-linked, they are taken up together for discussion to avoid repetition.

17. Under the Hindu Law joint family property includes both ancestral property and property jointly acquired by family members. However, self acquired property is different from the ancestral and joint family property. Under Hindu Law, self acquired property is a property an individual earns, buys or receives as a gift, granting them absolute ownership.

**WHETHER SUIT PROPERTY IS JOINT FAMILY PROPERTY OR SELF ACQUIRED PROPERTY? :-**

18. Admittedly suit property is purchased in the name of plaintiff and defenant's father Narayan and defendant No.2 Sanjay and it is also reveals from registered sale-deed No.1826/1989 (Exh.33) Disputed fact is that, according to plaintiff in the year 1989, suit property was purchased by their father Narayan in the name of himself i.e. their father and defendant No.2 Sanjay from joint family income. So, the suit properties are their joint family property. On the contrary, it

is the contention of defendant No.2 that suit properties were jointly purchased by defendant No.2 and his father on their name. Thereafter, he repaid the amount borrowed from his father at the time of sale-deed. So suit properties are his self acquired properties. To appreciate the rival contentions and the submissions the evidence on record needs to be looked into.

19. Plaintiff has examined himself and reiterated the contents as stated in the plaint. During cross-examination defendant No.2 brought on record that plaintiff had running his country liquor business and defendant had running his Sona Beer Bar. However, plaintiff specifically denied that suit properties were not purchased from their joint family income. Plaintiff has also examined PW 2 Dilip Mali who is well acquainted with the plaintiff, defendants and suit properties but from the cross-examination of said witness it reveals that witness given contrary statement and confused about his answers. His evidence is neither useful to the plaintiff nor defendant No.2.

20. However, in the cross-examination of defendant No.2 he has specifically admitted that his father and plaintiff were the elders, so they were the breadwinners of their family. In 1982 they started their business of 'Sona Bar' on rent in Bhabire's land. Since, the 'Sona Bar' was not running properly, plaintiff used to go to work with their maternal uncle at Jaysingpur. Their family livelihood was maintained by the income received from the work in Jaysingpur and from the Sona Bar. Sona Bar was part of their joint family. When the Sona Bar started functioning properly and started making profit, the plaintiff stopped working at Jaysingpur.

21. Defendant No.2 further admitted that since 1980 to 1991 he was taking education at Belgaon but he denied that he was not separate source of income. He also admitted that plaintiffs had resided separately but their business had running together. It is important to note that defendant No.2 specifically admitted that suit properties were their joint family properties. In the year 1992, a building was constructed on the suit property by obtaining loan from the Ganesh Bank and this loan was repaid from the joint family income. Plaintiff having  $1/3^{\text{rd}}$  share in the suit properties. He also admitted that only suit property is eligible for partition except the property in his name in Belgaon and the property in the name of plaintiff.

22. Moreover, witness of defendant Shri. Dipak Shelake and (DW 2) also admitted that in the year 1989 defendant No.2 was not independently engaged in any employment or business. While defendant No.2 was in Belgaon and even after returning from there upon completing his education he had not independent source of personal income. Plaintiff, defendants and their father jointly owned 'Sona Bar' and said bar belong to joint family.

23. The case-laws relied by both the parties are inapplicable to this suit as facts and circumstances of the cited case-laws differs from the case in hand. Considering evidence on record it appears that in the year 1980 plaintiff was around 22 years old and defendant No.2 was around 12 years old. Defendant No.2 was pursuing education till 1991. In 1982 plaintiff and his father started 'Sona Bar' on rented premises. Since the 'Sona Bar' was not running properly so, plaintiff worked at Jaysingpur and their family livelihood was maintained by the income of

plaintiff and 'Sona Bar'. When the 'Sona Bar' started making profits plaintiff stopped working at Jaysingpur. It also appears that Sale-deed of suit property was executed in the year 1989. From the evidence itself appears that at the time of Sale-deed plaintiff and his father were earning from the family business of 'Sona Bar' and purchased suit properties from joint family income.

24. On the contrary, in the year 1989, defendant No.2 was pursuing education, so it is not possible for him to have income to purchase the suit properties. Moreover, he specifically admitted that suit property is joint family property and is eligible for partition. As per section 58 of the Indian Evidence Act (Sec.53 of Bharatiya Sakshya Adhiniyam) facts admitted by parties or their agents need not be proved. Hence, I answer issue No.1 in the affirmative holding that plaintiff proved that suit properties are joint family properties of plaintiff and defendants and is yet to be partitioned and I answer issue No.2 in the negative holding that defendant No.2 failed to prove that he had separate independent source of income in the year 1989 and he had purchased suit properties out of his own income. Hence, suit properties are not his self acquired properties.

**AS TO ISSUE NO.4 AND 5 :-**

25. Both these issues are inter linked they are taken up together for discussion to avoid repetition of evidence.

**CARVING OUT SHARE OF PARTIES :-**

26. Plaintiff proves that suit properties are joint family properties and is yet to be partitioned between them. Plaintiff,

defendant Nos.1 and 2 are the real brothers and therefore as per the schedule appended to the Hindu Succession Act, 1956, they are Class-I heirs, Section 8 of the Hindu Succession Act provides for general rules of succession in case of males, which runs as under:

**Section 8. General rules of succession in the case of males.**— The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

27. Section 9 of the Hindu Succession Act provides for order of succession among heirs in the Schedule, which runs as under:

**Section 9. Order of succession among heirs in the Schedule.** — Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

28. In the present suit plaintiff and defendants who are the real brothers are the class I heirs. Therefore, they are entitled to have simultaneous share which come to  $1/3^{\text{rd}}$  each in both the suit properties. Accordingly, plaintiff is entitled for partition and separate possession of his share. Plaintiff, defendant Nos.1 and 2 have  $1/3^{\text{rd}}$  share each in the suit properties.

**HOW TO EFFECT PARTITION OF HOUSES PROPERTIES :-**

29. As per clause (2) of rule 18 of order 20 read with rule 13 of order 26, so far as the partition of house property is concerned the preliminary decree is required to be drawn out for effecting the partition through the court commissioner. Accordingly, I answer issue No.3 and 4 in affirmative and pass following order :-

**ORDER**

- (i) Suit is decreed with costs.
- (ii) It is declared that plaintiff is entitled to 1/3<sup>rd</sup> share each in the suit property 1(a) and (b).
- (iii) Plaintiff is entitled for partition and separate possession of his 1/3<sup>rd</sup> share in suit house properties i.e., properties mentioned in para 1(a) and (b) by appointment of court commissioner.
- (iv) Preliminary decree be drawn up under Rule 18(2) of Order 20 of Civil Procedure Code, 1908 for effecting partition of house properties 1(a) and (b).  
(Dictated and pronounced in open Court.)

Place : Kurundwad.  
Date : 05/05/2026.

( V. R. Mane )  
Jt. Civil Judge Jr. Dn. Kurundwad.