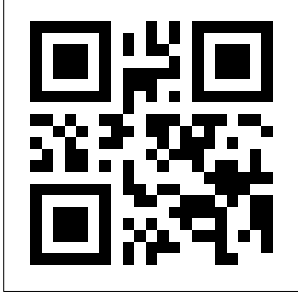


<u>MHKO190002512017</u> 	Presented on	03/05/2017		
	Registered on	03/05/2017		
	Decided on	03/07/2026		
	Duration	Yrs	Mths	Days
		09	02	00

IN THE COURT OF Jt. CIVIL JUDGE (JR.DN.) RADHANAGARI,

DIST. KOLHAPUR

(PRESIDED OVER BY N.P.KAKADE)

Reg.Civil Suit No. 1600074/2017

Exh. No. 64/A

1. Santosh Pandurang Kumbhar

Age: 37 Yrs., Occ :Agri

R/o : Halayachiwadi from Savarde

Tal. Radhanagari, Dist. Kolhapur

... **Plaintiff**

VERSUS

1. Pandurang Ambhaji Kumbhar

Age: 70 Yrs., Occ :Agri

2. Dhanaji Pandurang Kumbhar

Age : 46 Yrs., Occ: Agri.

3. Tanaji Pandurang Kumbhar

Age : 40 Yrs., Occ: Agri.

4. Rukhmini Pandurang Kumbhar

Age : 65 Yrs., Occ: Homemaker.

5. Maruti Ambaji Kumbhar

Age : 68 Yrs., Occ: Agri.

6. Krushna Babu Kumbhar

Age : 48 Yrs., Occ: Agri.

All of the above residing at :

Halayachiwadi from Savarde

Tal. Radhanagari, Dist. Kolhapur

7. Rakmabai Babu Kumbhar

Age : 65 Yrs., Occ: Homemaker,

R/o : Shengaon, Tal. Radhanagari,

Dist. Kolhapur.

8. Shamrao Sadashiv Kumbhar

Age : 45 Yrs., Occ: Agri,

9. Yashwant Sadashiv Kumbhar

Age : 42 Yrs., Occ: Agri,

10. Bayakka Sadashiv Kumbhar

Age : 70 Yrs., Occ: Homemaker,

All of the above residing at : Radhanagari,

Tal. Radhanagari, Dist. Kolhapur.

... Defendants

SUIT FOR PARTITION

The Ld. Advocate

for the plaintiff

: Adv. Shri. S. R. Bhandigare

Defendant Nos. 1, 3, 5, 8 & 9

: Adv. Shri. S. K. Ranadive

Defendant Nos. 2 & 4

: Ex-parte

Defendant Nos. 6, 7

: Adv. Shri. V. T. Dhanawade

Defendant No. 10

: Adv. Shri. R. D. Khade

J U D G M E N T

(Delivered on 03rd Day of July, 2026)

The plaintiff has instituted the suit for partition.

Properties involved-

2. The plaintiff has sought partition of following properties situated at Halayachiwadi from Savarde, Tal. Radhanagari, Dist. Kolhapur. :-

Sr. No.	Block Nos.	Area H. R.	Out of Area H. R.
1.	32/1/24	0.02	Complete
2.	32/1/26	0.02	Complete
3.	62	0.34.4	0.05.72
4.	70/6	0.40 पो. ख. 0.01	0.20.00
5.	70/8	0.29	Complete
6.	70/12	0.85 पो. ख. 0.09	Complete

7.	70/17	0.25 पो. ख. 0.04	Complete
8.	91/8	0.17 पो. ख. 0.01	Complete

(hereinafter referred to as suit properties)

Relationship between the parties :

3. The plaintiff and defendant Nos.1 to 10 are members of one family. One Ambaji was the common ancestor of the parties. The plaintiff is the grandson of deceased Ambaji. Defendant No.1 is the father of the plaintiff. Defendant Nos.2 and 3 are the brothers of the plaintiff. Defendant No.4 is the second wife of defendant No.1, who married after the demise of first wife. Defendant No.5 Maruti is the brother of defendant No.1. One Babu, another son of deceased Ambaji, has expired and defendant Nos.6 and 7 are his legal heirs. Defendant No.10 is the daughter of deceased Ambaji, whereas defendant Nos.8 and 9 are the legal heirs of defendant No.10. Ambaji had 3 sons- Babu, Pandurang (defendant No.1), Maruti defendant No.5 and 2 daughters - Bayakka defendant No.10 and one Yesubai who died issueless. Thus, the plaintiff and defendant Nos.1 to 10 are the legal heirs and descendants of deceased Ambaji.

Case of the plaintiff, in brief, is as follows :

4. The suit properties are ancestral joint family properties inherited from deceased Ambaji. According to the plaintiff, no partition of the suit properties has ever taken place and all the parties continue to be co-sharers therein.

5. It is further contended that defendant No.6 started obstructing the plaintiff's joint possession over the suit properties by asserting that his mother, namely Lakshmi, was entitled to a larger share. Upon making inquiries, the plaintiff learnt that, by Mutation Entry No.872 effected in the

year 1998, one-half share in suit block Nos.70/6, 70/8, 70/12 and 70/17 had been recorded in the name of Lakshmi, the mother of defendant Nos.6 and 7. According to the plaintiff, the said mutation entry is illegal, erroneous and not binding upon the other co-sharers, as Lakshmi was wrongly shown to be entitled to an additional share without the consent or admission of the remaining co-owners.

6. The plaintiff thereafter requested defendant No.6 to effect partition of the suit properties and to have the revenue entries corrected in accordance with law. However, defendant No.6 refused to accede to the request. Consequently, the plaintiff was constrained to institute the present suit seeking partition.

Defence of the defendants, in brief, is as follows :

7. Defendant Nos.1, 3, 5, 8 and 9, by filing their common written statement at Exh.28, admitted that the suit properties have not yet been partitioned. They further contended that the name of Lakshmi has been wrongly recorded in the revenue record in respect of a larger area than what she was legally entitled to. According to them, the said mutation entry is erroneous. They, therefore, supported the case of the plaintiff and prayed that the suit be decreed by determining the respective shares of all the co-sharers.

8. Defendant No.10 also, by filing her written statement at Exh.35, supported the averments made in the plaint and prayed for decreeing the suit.

9. The record reveals that the suit has proceeded *ex-parte* against defendant Nos.2 and 4 and without written statement of defendant No.6 and 7.

Evidence on record :

10. In order to substantiate his case, the plaintiff examined himself at Exhibit 37. Through his testimony, he reiterated the averments made in the plaint. The plaintiff also relied upon the following documentary evidence:

- A) 7/12 extracts pertaining to the suit properties at Exh. 5 to 12 and 40 to 53
- B) Certified copy of Mutation Entry No.872 of the year 1998 at Exh. 54
- C) Certified copy of Mutation Entry No.905 of the year 2000 at Exh. 55.

Thereafter, the plaintiff closed his evidence by filing a pursis at Exh. 56.

11. The defendants, however, did not adduce any oral or documentary evidence. Defendant Nos.1, 9 and 10 filed a pursis for closing their evidence at Exh. 57. The remaining defendants also did not lead any evidence.

Issues-

12. After taking into consideration the pleadings of parties and material available on record, the learned predecessor has framed issues at Exh.36. Those are reproduced below, along with my findings thereon for the reasons stated hereinafter :

Sr. No.	Issues	Findings
1.	Whether the plaintiff proves that he has a share in the suit properties? If yes, to what extent?	Yes. (1/16 th share)

2.	Whether the plaintiff is entitled to the reliefs as prayed for?	Partly yes.
3.	What order and decree?	As per final order.

REASONS

As to issue Nos.1 and 2 :

Both these issues are interconnected and, therefore, are taken up together for discussion.

13. The burden to establish that he has a share in the suit properties and that he is consequently entitled to the relief of partition squarely lies upon the plaintiff. In order to discharge the said burden, the plaintiff examined himself at Exh. 37. Through his testimony, he reiterated the pleadings set out in the plaint. The plaintiff has also relied upon the 7/12 extracts of the suit properties produced at Exh. 5 to 12 and 40 to 53 and certified copies of Mutation Entry Nos.872 and 905 at Exh. 54 and 55 respectively.

14. It is pertinent to note that the testimony of the plaintiff has remained unchallenged. Defendant Nos.2 and 4 were proceeded ex parte. Defendant Nos.6 and 7, though appeared, failed to file his written statement and also did not adduce any evidence. Defendant Nos.1, 3, 5, 8, 9 and 10, who have filed their written statements, also chose not to enter the witness box or lead any evidence in rebuttal. Nevertheless, it is a settled principle of law that merely because the evidence of the plaintiff has remained unrebutted, the Court cannot mechanically decree the suit. The plaintiff has to independently establish his entitlement by acceptable evidence.

15. The written statement filed by defendant Nos.1, 3, 5, 8 and 9 at Exh.28 assumes significance. They have specifically admitted that the suit properties have not been partitioned till date. They have further admitted that Mutation Entry No.872 records a larger share in the name of Lakshmi than what she was legally entitled to and have supported the plaintiff's prayer for partition. Defendant No.10 has also, by her written statement at Exh.35, supported the case of the plaintiff and prayed for decreeing the suit. Thus, no contesting defendant disputes either the joint nature of the suit properties or the entitlement of the parties to seek partition. Such admissions constitute substantive evidence and can legitimately be taken into consideration while appreciating the evidence on record.

16. The documentary evidence placed on record consists principally of revenue extracts and mutation entries. It is well settled that entries in the revenue record are maintained primarily for fiscal purposes. Such entries neither create nor extinguish title, nor are they conclusive proof of ownership or the extent of proprietary rights. Similarly, the 7/12 extracts only depict the revenue record relating to the lands and cannot, by themselves, conclusively establish the title or precise shares of the parties. Therefore, the said documents cannot be treated as documents conferring ownership or determining the shares of the co-sharers.

17. The principal grievance of the plaintiff is regarding Mutation Entry No.872 of the year 1998, whereby one-half share in certain suit lands has been recorded in the name of Lakshmi, the predecessor of defendant Nos.6 and 7. However, on careful perusal of the plaint, it is evident that the plaintiff has not sought any declaration that the said mutation entry is illegal, void, invalid or not binding upon him, nor has he sought its cancellation. The present suit is essentially one for partition and separate possession. In absence of a specific prayer seeking declaration regarding

the validity of mutation entry No.872, this Court cannot record any finding declaring the said mutation entry to be legal or illegal or direct its cancellation. Such a relief cannot be granted beyond the pleadings.

18. At the same time, the existence of mutation entry No.872 does not govern or conclude the civil rights of the parties. Revenue entries do not determine title or the extent of legal shares. The rights of the parties are required to be adjudicated by the Civil Court in accordance with the applicable law of succession and partition. Consequently, while this Court refrains from expressing any opinion regarding the legality or otherwise of mutation entry No.872, the said revenue entry cannot operate as a bar to determination of the respective shares of the co-sharers in the present suit.

19. The relationship between the parties is not in dispute. It is also not disputed that the parties trace their rights through the common ancestor, deceased Ambaji. The pleadings and admissions on record further establish that the suit properties continue to remain joint and no partition thereof has been effected till date. Every co-sharer has a legal right to seek partition and separate possession of his legitimate share unless such right is taken away by law, which is not the case here. There is no evidence on record to show that the plaintiff has relinquished his share or that the suit properties have already been partitioned.

20. In view of the unrebutted oral testimony of the plaintiff, the admissions contained in the written statements of defendant Nos.1, 3, 5, 8, 9 and 10, and there being no material to indicate any prior partition or extinguishment of the plaintiff's rights, this Court is satisfied that the plaintiff has established that he is a co-sharer in the suit properties and is entitled to claim partition. Consequently, he is entitled to a preliminary decree declaring his share in the suit properties. The actual partition by metes and bounds in respect of the agricultural lands shall be effected in

accordance with Section 54 of the Code of Civil Procedure through the competent revenue authority in execution of the preliminary decree.

21. This being the finding, the next question arises is of shares of each party. The genealogy of the parties is not in dispute. It establishes that deceased Ambaji was survived by his sons namely Babu- father of defendant No.6 and 7, Pandurang (defendant No.1) and Maruti (defendant No.5), and his daughter Bayakka (defendant No.10). It has further come on record that another daughter, namely Yesubai, died issueless and, therefore, no separate share devolves through her branch. Consequently, the estate of deceased Ambaji is liable to be divided into four equal shares, one each in favour of the branch of deceased Babu, defendant No.1, defendant No.5 and defendant No.10.

22. Since defendant Nos.6 and 7 are the legal heirs of deceased Babu, they shall jointly succeed to the one-fourth share falling to the branch of Babu in accordance with law. Defendant No.5 is entitled to one-fourth share in the suit properties. Likewise, defendant No.10 is entitled to one-fourth share. The remaining one-fourth share devolving upon defendant No.1 shall be further apportioned amongst the members of his branch in accordance with their respective legal entitlement. The plaintiff, being one of the members of that branch, is consequently entitled to his lawful share therein that is $1/16^{\text{th}}$.

23. Defendant No.4 stands on a different footing. She is admittedly the wife of defendant No.1. She is neither a descendant nor a legal heir of deceased Ambaji through whom the parties claim their rights in the present suit. No independent right or entitlement in the suit properties has been pleaded or proved by defendant No.4. The present suit has been instituted for determination of the shares of the legal heirs of deceased Ambaji in the suit properties. In these circumstances, defendant

No.4 is not entitled to an independent share under the preliminary decree merely by virtue of her marriage with defendant No.1.

24. In view of the foregoing discussion, this Court holds that the plaintiff has successfully established his entitlement to seek partition of the suit properties and separate possession of his lawful share therein. Accordingly, **issue Nos.1 and 2** are answered in the **affirmative** by holding that the plaintiff is entitled to a 1/16th share in the suit properties.

As to issue No.3:

25. In view of the findings recorded on issue Nos.1 and 2, the suit deserves to be partly decreed by passing a preliminary decree for partition and separate possession declaring the plaintiff's entitlement to his share in the suit properties. Hence in answer to issue No.3 the following order is passed :

ORDER

1. The suit is partly decreed with costs.
2. It is hereby declared that the plaintiff is entitled to 1/16th share in the suit properties.
3. It is further declared that defendant No.1 is entitled to 1/16th share, defendant No.2 is entitled to 1/16th share, defendant No.3 is entitled to 1/16th share, defendant No.5 is entitled to 1/4th share, defendant Nos.6 and 7 together are entitled to 1/4th share, and defendant No.10 along with defendant Nos.8 and 9 subject to their *inter se* rights shall together be entitled to 1/4th share, in the suit properties.
4. Since the suit properties are agricultural land, the decree be sent to the District Collector, Kolhapur, under Section 54 of the Code of Civil

Procedure, 1908, for effecting partition and separate possession.

5. Preliminary Decree be drawn up accordingly.

(Dictated and pronounced in open court.)

Sd/-

Radhanagari.

(N. P. Kakade)

Date : 03-07-2026

Jt. Civil Judge Junior Division,
Radhanagari.
