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Registered on : 30-07-2010.
Decided on : 07-06-2019.
Duration : 08Y.10M.07Ds.

:: IN THE COURT OF THE CIVIL JUDGE JUNIOR
DIVISION AT DEONI ::

{ Presided over by : U. B. Kalapagar }

:: Reg. Civil Suit No.17/2012 :: **EXH. NO.{ 123 }.**
:: Old Spl. Civil Suit No.40/2010 ::

Dattatraya s/o Devedas Malshetwar, }
.... <u>Died.</u>

:: Through L.R.'s ::

- 1) Alka w/o Dattatraya Malshetwar, }
- Age : 38 years, Occ : Household, }
- R/o: Deoni Tq.Deoni Dist.Latur }
- 2) Pooja d/o Dattatraya Malshetwar, }
- Age : 20 years, Occ : Household, }
- R/o: Deoni Tq.Deoni Dist.Latur }
- 3) Prasad s/o Dattatraya Malshetwar, }
- Age : Minor U/g. Of his real mother, }
- Alka w/o Dattatraya Malshetwar, }
- Age : 38 years, Occ : Household, }
- R/o: Deoni Tq.Deoni Dist.Latur }... **Plaintiffs.**

:: V e r s u s ::

- 1) Premlabai w/o Devedas Malshetwar, }
- Age : 65 years, Occ : Household, }
- R/o : Deoni Tq. Deoni Dist. Latur. }
- 2) Pradeep s/o Devedas Malshetwar, }
- Age : 48 years, Occ : Agri., }
- R/o : Deoni Tq. Deoni Dist. Latur. }

- 3) Rajkumar s/o Devedas Malshetwar, }
Age : 37 years, Occ : Agri., }
R/o:Bside Court, Hospital Quarters, }
Ahemadpur, Tq. Ahemadpur Dist. Latur. }
- 4) Basawraj s/o Channappa Masgalle, }
Age : 65 years, Occ : Retired, }
R/o : Somnathpur Tq. Udgir Dist. Latur. }
- 5) Syed Shadulla s/o Sd. Ismail, }
Age : 39 years, Occ : Business, }
R/o : Abadi, Tq. Udgir Dist. Latur. }...**Defendants.**

Claim :- Suit for partition and separate possession.

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Shri. B.P. Navtakke, advocate for the plaintiffs.
Shri. B.P. Ambekar, advocate for the defendant Nos. 1 & 3.
Shri. B.M. Walandikar, advocate for the defendant No. 2.
Shri. B.V. Patil, advocate for the defendant Nos. 4 & 5.
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:: J U D G M E N T ::

{ Delivered on : 7th June, 2019 }

01. This judgment is delivered under Order-XII, Rule-6 of the Code of Civil Procedure. The suit is for partition and separate possession.

02. **Plaintiffs' case in short is as under.:**

Suit properties described in paragraph No. 2 of the plaint vide 2-A to 2-D are subject matter of dispute. The suit properties are ancestral and joint family properties and there is no partition taken place between plaintiffs and defendant Nos. 1 to 3, who are members of joint family. The defendant

No. 4 is purchaser of suit property No. 2-A from Devidas Malshetwar, who was common ancestor of plaintiffs and defendant Nos. 1 to 3. He was also Karta of joint family. The suit property No. 2-A was sold without legal necessity. Hence, said transaction is not binding on the plaintiffs. During pendency of suit, the defendant No. 4 transferred suit property No. 2-A in favour of defendant No. 5. Hence, he was also made party to the suit.

03. The defendant Nos. 1 and 3 filed written statement at Exh. 19 and admitted claim of the plaintiff. They prayed to decree suit as per claim of the plaintiff. Suit proceeded Ex-parte against defendant No. 2. The defendant No. 4 contested claim of the plaintiff by filing written statement at Exh. 36. As per his written statement, the suit property No. 2-A was not ancestral property and he has purchased said property for valuable consideration. It was sold to him by Devidas Malshetwar for paying family expenses and repayment of debts. He has also denied that, the plaintiff and defendant Nos. 1 to 3 are members of joint family. The defendant No. 5 adopted written statement of defendant No. 4.

04. Suit is concerning multiple properties. But after supporting written statement of defendant Nos. 1 and 3 the controversy would be only in respect of suit property No. 2-A, which was sold to defendant No. 4 and later on again sold to defendant No. 5. Since there is no controversy in respect of

other properties, suit requires to be decreed in respect of suit properties except suit property No. 2-A. Accordingly, this judgment on admission under Order-XII, Rule-6 of the Code of Civil Procedure is delivered. Therefore, following order is passed.:

:: Order ::

- 1} Suit is decreed in respect of suit property Nos. 2-B to 2-D.
- 2} The plaintiff and defendant Nos. 1 to 3 allotted 1/4th share in suit property Nos. 2-B to 2-D.
- 3} Preliminary decree is passed in respect of house properties described in suit property No. 2-B and 2-D.
- 4} Precept be sent under section 54 of the Code of Civil Procedure to the District Collector for partition of landed properties described in suit property No. 2-C.
- 5} Preliminary decree be drawn up accordingly.
- 6} Suit will proceed in respect of suit property No. 2-A against defendant Nos. 4 and 5.

Date : 07-06-2019.

Sd/-
{U.B. Kalapagar}
Civil Judge Jr. Division,
Deoni.

:: Certificate ::

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	M.Y. Wadiwale.
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Judgment**CNR No.MHLA160000292010****Reg. Civ. Suit No.17/2012****5 Exhibit No.(123)**

Name of the Court	Shri.U.B.Kalapagar, Civil Judge J.D.,Deoni.
Date of Dictation	07/06/2019
Order signed by the P.O. on	13/06/2019
Order uploaded on	13/06/2019