

MHLA160000772009



Presented on : 01/01/1999

Registered on : 11/01/1999

Decided on : 30/05/2026

Duration : YY MM DD

27 04 29

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, DEONI,
TALUKA DEONI, DISTRICT LATUR.

(Presided Over by S.A. Surjuse)

OLD REGULAR CIVIL SUIT NO.21/1999

NEW REGULAR CIVIL SUIT NO.59/2009

(Registered on 14/12/2009)

Exhibit No.155

Shakuntalabai W/o. Tukaram Ghatte

Age: 55 years, Occu. – Agriculturist,
R/o. Borsuri, Tq. Nilanga, Dist. Latur.

} ... **Plaintiff**

Versus

1. **Venkat S/o Narayan Valse**
Age: 65 years, Occu. - Agriculturist,

2. **Ashok S/o Venkatrao Valse**
Age: 30 years, Occu. - Agriculturist,

3. **Ankush S/o. Venkatrao Valse,**
Age: 25 years, Occu. - Agriculturist,

4. **Radhabai W/o. Pandurang Suvarnkar,**
Age: Major, Occu. - Agriculturist & H.H.,

5. **Harischandra S/o. Pundalik Jethure,**
Age: Major, Occu. - Agriculturist,

6. **Shobhabai W/o. Ankush Walse,**
Age: Major, Occu. - Agriculturist,

7. **Mahesh S/o. Ankush Walse,**
Age: Major, Occu. - Agriculturist,

} ...**Defendants**

8. **Rameshwar S/o. Ankush Walse,**
Age: Major, Occu. - Agriculturist,
 9. **Kaushalyabai W/o. Laxman Pete,**
Age: Major, Occu. - H.H. & Agriculturist,
Def. No.1 to 9 R/o Gurdhal,
Tq. Deoni, Dist. Latur.
 10. **Rukminbai W/o. Prabhakar Chalmele,**
Age: Major, Occu. - H.H. & Agriculturist,
R/o. Anandwadi,
Tq. Shirur Anantpal, Dist. Latur.
 11. **Ratna W/o. Hanmant Momle,**
Age: Major, Occu. - Agriculturist & H.H.,
R/o Gurdhal, Tq. Deoni, Dist. Latur.
 12. **Premla W/o. Tukaram Sude,**
Age: Major, Occu. - Agriculturist & H.H.,
R/o Bhingoli, Tq. Shirur Anantpal,
Dist. Latur.
- } **...Defendants**

APPEARANCE :-

Adv. Shri. V.N. Sankaye for the plaintiff,

Adv. Shri. B.M. Gundre & D.T. Patil for defendant Nos.1 to 3,

Exparte against the defendant No.4,

Adv. Shri. B.V. Patil, for defendant No.5,

Adv. Y.V. Swami for defendant Nos.6 to 12.

J U D G M E N T

(Delivered on: 30/05/2026)

This is suit for partition, separate possession and perpetual injunction. (Valued Rs.14,972/- and Court fees Rs.3553/-).

2. The plaintiff's case in brief as under -

Nagorao Valse had three sons namely Narayan, Pandurang and Malba. Pandurang died 30-35 years ago. Malba died seven years ago without issues. Narayan died 15 years ago, behind a son i.e. defendant No.1 Venkat and five daughters named Kashibai and defendant Nos.9 to 12 named Ratna, Kaushalya, Prabhavati and Rukmin. The defendant Nos.2 and 3 are sons of defendant No.1.

3. The plaintiff's father Pandurang had 1/3rd share in ancestral property i.e. land Block No.26 area 10 Hectar 01 R and Village Panchayat House No.26/1 at Gurdhal, Taluka Udgir, District Latur. Pandurang also would get 1/7th share in the share of Malba. She being successor is having 1/3rd + 1/7th share in the suit property. The defendant No.1 had possessed that suit property. The defendant No.1 sold some property without her consent. The defendants trying to grab her share and disposes her. The defendants refused her share on 18/12/1998 and trying to dispose her share without her consent and causing irreparable loss.

Amended pleadings :-

4. The defendant No.2 had sold land area 00 H 83 R out of Block No.26, with boundaries towards East – Talegaon – Gurdhal Road, towards West – land of Devraj Kashinath Potdar, towards South – Talegaon-Gurdhal Boundary and towards North – land of Harishchandra Pundlik Jethure to Uttam Tukaram

Biradar by registered sale-deed No.2871/1994 dated 11/07/1994 without ownership and competency. Uttam sold that land to Arjun Tulshiram Kamble by registered sale-deed No.2842/1996 dated 21/06/1996. Arjun sold that land to Suresh Shankar Hiranaik by registered sale-deed No.1716/1999 dated 06/04/1999. Suresh sold that land to defendant No.4 by registered sale-deed No.2540/2000 dated 08/05/2000.

5. The defendant No.2 had sold land area 01 H. 12 R out of Block No.26, with boundaries towards East – Talegaon–Gurdhal Road, towards West – land of Radhabai Pandurang Suvarnakar, towards South – land of Balaji Laxman Biradar and towards North – land of Ankush Valse to Dilip Venkat Biradar by the registered sale-deed No.3893/1994 dated 21/11/1994, without ownership and competency. The said Dilip sold that land to Ramchandra Kishanrao Pethe by registered sale-deed No.3097/1996 dated 10/07/1996. Ramchandra sold that land to defendant No.5 by the registered sale-deed No.1592/1997 dated 21/04/1997. The defendant No.3 illegally and without ownership had transferred some land out of Block No.26 to defendant Nos.6 to 8. It was effected in mutation Nos.716 and 718. Those transactions are not binding upon the plaintiff. That land is liable to the partition. She prayed partition and separate possession of $1/3^{\text{rd}}$ + $1/7^{\text{th}}$ share and restrained the defendants to alienate, transfer and change the suit property.

6. The defendant Nos.1 to 3 have resisted the suit and denied all adverse pleadings, relations and the plaintiff's right and interest, vide written statement (Exh.73). According to

them, the plaintiff has pleaded incorrect genealogy. She has no relationship with their family. She has not filed proofs of relationship between Nagorao and Pandurang. Nagorao did not have a son named Pandurang. Narayan and Malba did not have a brother named Pandurang. Therefore, she would not become heir of Pandurang. She neither pleaded date and place of her marriage, nor who solemnized it. She has not pleaded death and place of so called Pandurang and name of his wife. She is daughter of Babarao Gopal Vyanjane R/o. Chandori, Tal. Nilanga. Her father and mother are dead.

7. Land Block No.26 area 24 acre 29 Gunthe (10 H. 01 R) was recorded in name of Narayan Nagoba Valse as owner since the year 1953 to 1982. Narayan died on 25/02/1982. Thereafter, that land was recorded in name of his successors i.e. defendant Nos.1, 9 and 10 and brother Malba, vide mutation No.242. Malba died in the year 1990. The defendant Nos.1, 9 and 10 were successors of Malba. The name of defendant No.1 was recorded as a manager of joint family.

8. The defendant No.1 has orally partitioned ancestral property at the time of Gudipadwa of the year 1994 and allotted land area 02H. each to his son i.e. defendant Nos.2 and 3 and remaining area 06H. 01R to him and his wife. Thereafter, defendant No.1 and his wife sold their share for legal necessity. The defendant No.2 sold his share for legal necessity of family. Accordingly, name of purchasers were recorded in the revenue record. This suit is bad for non-joinder of purchasers being necessary parties and sisters. The plaintiff filed false and wrong

suit in the collusion with rival persons. She will not get exemption from paying Court fees, because this dispute does not fall under the matrimonial dispute. She is liable to pay necessary Court fees. They prayed to dismiss the suit with costs.

9. The suit proceeded ex-parte against defendant No.4 and without written statement against defendant Nos.5 to 12 vide order dated 22/12/2025.

10. After carefully gone through the record and considering pleadings and documents, I have framed issues (Exh.75). I have reproduced that issues hereinafter and I record my findings and reasons thereon as under.

No.	ISSUES	FINDINGS
1.	Whether plaintiff proves that her father namely Pandurang was son of Nagorao?	Yes.
2.	Whether plaintiff proves that suit properties are ancestral properties?	Yes.
2A.	Whether the suit is filed within limitation?	No.
3.	Whether the plaintiff proves her share in suit property? If yes, what extent?	No.
4.	Is the plaintiff entitled for partition and separate possession as prayed?	No.
5.	Whether plaintiff is entitled to perpetual injunction as prayed?	No.
6.	What order and decree?	As per final Order

REASONS

11. List of witnesses of both parties as under :-

Sr. No.	Name of witness	Nature	Exh. No.
1.	Shakuntalabai Tukaram Gatte (PW-1)	Plaintiff	118
2.	Raosaheb Bhimrao Nidwanche (PW-2)	Witness	129
3.	Madhav Nivrutti Khokale (PW-3)	Witness	120
4.	Pralhad Namdev Shingade (PW-4)	Witness	127
5.	Sachin Nagesh Narwane (PW-5)	Gramsewak	132
6.	Shivaji Narayan Dhanegave (PW-6)	Gramsewak	137
7.	Venkat Narayan Valse (DW-1)	Def. No.1	121

12. List of the plaintiff's documents :-

S.No.	Particular	Exh.No.
1.	Copy of village form No.7/12	47, 58, 64, 65 & 60
2.	Copy of village form No.8-A	59
3.	Heirship Certificate dated 26/09/2009	133
4.	Copy of death register	61
5.	Copy of Pahani Patrak	63
6.	Copy of register	135

History of case :-

13. Prior to go for further discussion and reasoning, need to go through past events of the this suit. It was previously proceeded without written statement of defendant Nos.1 to 3

and decreed. The Hon'ble District Judge, at Udgir had confirmed that decree in the RCA No.08/2014. The Hon'ble High Court has set aside that decree in the Second Appeal No.539/2021 and remanded the suit for a fresh trial from the stage of filing written statement and directed to dispose it within five months from the date of appearance i.e. 16/10/2025, vide order dated 25/09/2025. Thereafter, the Hon'ble High Court has extended that time till end of Month of May 2026, vide order dated 24/12/2025, passed in the Civil Application No.14149/2025 in SA/539/2021. Thereafter, the defendant Nos. 4 to 12 have been added in this suit by way of amendment.

ISSUE NO.1 -

The plaintiff's argument :-

14. Learned advocate Shri. Sankaye for the plaintiff has filed notes of argument (Exh.147 and 149) and reproduced the pleadings and evidence. Accordingly, no reason to disbelieve evidence of plaintiff's witnesses and the revenue record. The relations are duly proved. The revenue record, heirship certificate and defendants' suggestions have corroborated to it. The defendants have not led contrary evidence. The fact in issue is duly proved.

The defendants argument :-

15. Learned Advocate Shri. D.T. Patil for the defendant Nos.1 to 3 has taken me through the defence pleadings and evidence and argued in that support. According to him, no direct

proof of plaintiff's paternity, existence of Pandurang and relationship with Nagorao. The plaintiff has improved her case in evidence of PW-2, PW-3, PW-4, regarding marriage of Indirabai with Babarao, without amendment and pleadings. The stray suggestions or admissions are not conclusive proof of the fact. The plaintiff ought to have proved alleged relationship and paternity with a strong proof. PW-5 and PW-6 had no direct knowledge of relationship. PW-6 issued forged heirship certificate without authority. It is inadmissible evidence. The plaintiff failed to prove the fact in issue. On contrary, the plaintiff's relations with Babarao are established.

16. Before appreciating the evidence on record, it would be beneficial to go through cardinal principle of law. The plaintiff has burden to prove the fact in issue. In view of the section 44 of Bharatiya Sakshya Adhinyam corresponding section 50 of the Indian Evidence Act, an opinion of member of family or otherwise, has special means of knowledge, on existing relationship, expressed by conduct is relevant fact.

17. The Hon'ble Supreme Court in case of **Ram @ Ramdas Shesherao Neharkar Vs. Shesherao Baburao Neharkar & Ors. (Civil Appeal No.5038/2012 decided on 09/07/2024)** held that, in a suit for partition and separate possession claiming that the appellant/plaintiff was the son of respondent No.1/defendant No.1 born from his marriage with Padminbai, very heavy burden was on the plaintiff to prove this fact, when the factum of marriage was denied by defendant No.1, as he was married to Sheshabai (respondent No.4/ defendant No.4).

18. Shakuntalabai (PW-1) has reproduced the pleadings in the examination-in-chief. In cross-examination, she admitted Nagorao had two sons named Pandurang and Malba. She was 2 to 3 years old at the time of death of Nagorao and Pandurang. Pandurang's name was not recorded in the voter list. Her mother performed marriage with Babarao Gopalrao Vyanjane. But she denied she is a daughter of said Babarao and Pandurang was not a son of Nagorao. She has been testified regarding her knowledge of death of Narayan, his two wives and children of deceased sister Kashibai.

19. Pralhad (PW-4) being relative, Raosaheb (PW-2) being adjoining land holder and Madhav (PW-3) being villager, deposed, Pandurang, Narayan and Malba were real brothers. The plaintiff's father Pandurang was son of Nagorao. The plaintiff and defendant No.1 are cousin. Pandurang had cultivated the suit property in his lifetime. Pandurang died prior to 50 to 60 years. Malba died without issue. In cross-examination, Raosaheb admitted the plaintiff's father and mother are from Chanduri. The plaintiff's marriage solemnized at house of maternal uncle. But he does not know date of that marriage. Due to old age, he was unable to listen and answer the repeated questions.

20. Madhav (PW-3) and Pralhad (PW-4) further deposed, after death of Pandurang, his wife Indirabai performed marriage with Babarao Gopalrao Vyanjane. The plaintiff was used to reside at Chandurwadi and Gurdhal. In cross-examination, Madhav admitted the plaintiff's mother Indirabai

performed marriage with Babarao. But he denied the plaintiff's paternity with Babarao and not with Pandurang. In cross-examination, Pralhad (PW-4) admitted he is 10 years younger than the plaintiff and Indirabai performed marriage with Babarao prior to 10 years of his birth. He denied Nagorao had only two sons named Narayan and Malba, and the plaintiff is a daughter of Babarao.

21. Shivaji (PW-6) deposed, he being Gramsewak had no legal authority to issue the heirship certificate (Exh.133). The Sarpanch, Deputy Sarpanch, Members, Police Patil and Chairman of Society had compelled him to issue that certificate (Exh.133) on 26/09/2009. As per cross-examination, an entry regarding Pandurang was not available in the record. He did not make inquiry of wife of Pandurang. He does not know heirs of Pandurang. He issued the certificate without authority. He got information of the certificate from the court's record.

22. Sachin (PW-5) deposed Village Panchayat, Gurdhal is existed since the year 1962, its officials used to issue heirship certificate. He identified signature of Gramsewak, Sarpanch and Police Patil, and seal of office from the heirship certificate (Exh.133) of Pandurang. But he does not know cause of evidence and legal provisions of issuance of heirship certificate. The plaintiff's advocate stated in that regard. The village panchayat has no authority to issue heirship certificate.

23. Venkat (DW-1) has reproduced pleadings in examination-in-chief. As per cross-examination, he born in the

year 1942, he educated up to 3rd standard. Malba died in the year 1996. Narayan died in the year 1985. But he denied that, he issued invitation card and invited the plaintiff's husband Tukaram Gatte for flower offering ceremony of his wife dated 31/12/2018, he attended marriage of the plaintiff's son Mahadev and daughter Keshar, and Pandurang was son of Nagorao. He denied alleged relationship of Pandurang and the plaintiff, he previously filed the written statement and defendant No.3 sworn affidavit in that support, along with an application (Exh.28). His villagers Babarao Dhanasure, Kisan Apparao Patil, Namdeo Jethure, Govind Pethe and Kisan Sambhaji Goghare are dead. Angad Shingade, Raosaheb Nidwanche and Pundlik Jethure are alive. The Gramsewak, Sarpanch and Deputy Sarpanch had issued heirship certificate by taking bribe. He did not lodge police report against the plaintiff for filing false suit on the basis of false document.

Reasons and Findings :-

24. After carefully gone through the record and argument, it is appeared that the relations between parties are material and disputed fact. Main ancestor is called by different names as Nagorao and Nagoba.

25. In the light of above legal position, now, I consider whether in the present case, the plaintiff succeeded in establishing relationship between her, Pandurang and Nagorao. Shakuntalabai is direct witness. She and the society has assumed alleged relationship. The society treated her as a daughter of Pandurang. On behalf of defendant Nos.1 to 3 neither rebutted

that evidence, nor shown sufficient reasons to disbelieve it. On behalf of the defendant Nos.1 to 3 has collected and suggested evidence of existence of Pandurang son of Nagorao, in support of the plaintiff. It is not stray suggestion. It is material admission in support of the plaintiff. The plaintiff succeeded to prove existence of Pandurang as son of Nagorao.

26. Shakuntalabai (PW-1) deposed death of Pandurang was not recorded, because its record is unavailable. It is supported by copy of death register (Exh.61). Accordingly, an entry of death of Narayan, Malba and Pandurang is unavailable. The plaintiff relied on the copy of Revenue register (Exh.135), regarding entry of of land Survey No.14 situated at Shivtalegao in name of Narayan, Pandurang and Malba. The defendants or on their behalf has not shown contrary circumstance to rebut or disbelieve that record. That copy of death register and copy of revenue register have supported to the fact if existence of Pandurang. Non-availability of voter card of Pandurang would not create adverse circumstance or disbelieve an existence of Pandurang.

27. Similarly, Pralhad (PW-4) and Madhav (PW-3) are not direct witnesses of paternity of Pandurang or the plaintiff. Their status or knowledge is relevant pertaining to the relationship. It is remained unshaken. Pralhad (PW-4) being a relative and Madhav (PW-3) being a villager have sensed alleged relations and formed their opinion. It is direct and remained unshaken. They formed that opinion by their express conduct of day to day life. Mere because his age or fact of youngest is not

sufficient to disbelieve his opinion. They have supported to the plaintiff. Their evidence is in form of explanation. It does not amount to an improvement. Hence the defence argument is not accepted.

28. Venkat (DW-1) denied everything about alleged relationship. The defendants pleaded about the plaintiff's mother Indiarabai performed the marriage with Babarao and the plaintiff is a daughter of Babarao and not Panurang. It is withing their special knowledge. Hence, they ought to have pleaded and proved its particulars. But they did not plead or collect evidence or suggest its date or nature or status, whether it was first or second marriage. They have not led conclusive proof in that regard. Isolated admission is not sufficient or conclusive proof of of the plaintiff begotten from the marital relationship between Indirabai and Babarao. It is proved that Indirabai had performed marriage with Babarao after birth of the plaintiff. It means the plaintiff is a daughter of Pandurang and not Babarao. Alternative pleadings of defendant Nos.1 to 3 have supported to the alleged relationship.

29. The section 124 of the Bharatiya Sakshya Adhiniyam 2023 provides competency of witnesses and the court has to consider the fact that the witnesses prevented from understanding the questions put to them, or from giving rational answers to those question, by tender years, extreme old age, disease, whether body of mind or any other cause of the same kind. As per available evidence, Raosaheb (PW-2) is old aged and unable to listen. His understanding is became question. He

did not answer the question properly in spite repeatedly asked. He is not competent to depose. His evidence is unreliable.

30. Shivaji (PW-6) and Sachin (PW-5) being Gramsewak did not have relations with the plaintiff or defendant Nos.1 to 3 or direct knowledge of relationship between the plaintiff and deceased Pandurang or heirs of Pandurang. Sachin (PW-5) is not an author or witness of the heirship certificate (Exh.133). His evidence is general and not trustworthy. Shivaji (PW-6) had issued that certificate in compelling circumstance and without legal authority. That reasons and lack of knowledge of the fact are sufficient to disbelieve their evidence. The plaintiff failed to prove legal provision or legality of that certificate. It is inadmissible in eye of law. That certificate and evidence are not helpful to the plaintiff.

31. Learned Advocate Shri. Sankaye argued, previously recorded evidence of witnesses has supported to the plaintiff. It is un rebutted. Learned Advocate Shri. D.T. Patil for defendants argued that, those witnesses have filed affidavits prior to the defendants' defence and they failed to give reasonable opportunity to cross-examine. Their evidence is inadmissible.

32. Before appreciating the evidence on record, it would be beneficial to go through Section 32 (e) and (f) of the Indian Evidence Act and corresponding Section 26 (e) and (f) of Bharatiya Sakshya Adhinyam. Accordingly, the person's special means of knowledge and the statement must be made before the

question in dispute was raised are relevant to establish existence of any relationship by blood, marriage or adoption. But the plaintiff has not relied on her previous evidence at Exh.19 and evidence of Babarao Dashrath Dhanasure (PW-2) at Exh.20, Kisan Sambhaji Dhotare (PW-3) at Exh.21, Kisanrao Apparao Patil (PW-3) at Exh.22, Angad Namdeo Shinde (PW-4) at Exh.23, Kundlik Sangram Jethure (PW-5) at Exh.24, Namdeo Sangram Jethure (PW-6) at Exh.25, Govind Sambhajirao Pethe (PW-7) Exh.26 and Raosaheb Bhimrao Nidwanche (PW-8) at Exh.27. She choose to go further and adduced evidence of new witnesses, without giving reasons. Those witnesses had been examined prior to the defendants' defence. The defendants did not get an opportunity to cross-examine them. Angad Shingade, Raosaheb Nidwanche and Kundlik Jethure are alive. But the plaintiff failed to produce them for cross-examination. Other persons are dead, therefore could not be cross-examined. If the suit is remanded for a fresh trial, the plaintiff is duty bound to produce all witnesses and grant an opportunity for their cross-examination to adverse party. Furthermore, they made the statement after the question in dispute was raised. Their evidence shall not be read against the defendants. The plaintiff's argument is rejected.

33. The plaintiff has relied on the previous written statement, supportive affidavit (Exh.29) of Ankush defendant No.3 and application (Exh.28) for setting aside no written statement order. But it is pertinent to note here that, Venkat (DW-1) denied in that regard. Due to non-compliance of order below application (Exh.28), that written statement is not

become part of the record. It shall not be treated record or evidence unless clear admission. Even though it perused for sake of argument, there are no contrary or destructive pleadings of defendants or admission of relationship. Hence, the plaintiff's argument is rejected.

34. As above discussed, Pandurang was son of Nagorao. Consequently the plaintiff's paternity is conclusively proved. Hence, I concluded that, the plaintiff succeeded to prove alleged relationship of Pandurang with Narayan, Malba and Nagorao and she is a daughter of Indirabai and Pandurang. In result, I answered issue No.1 in affirmative.

ISSUE NO.2 -

The plaintiff's argument :-

35. Learned advocate Shri. Sankaye for the plaintiff has filed notes of argument (Exh.147 and 149) and reproduced the pleadings and evidence. According to him, the fact in issue is duly proved.

The defendants' argument :-

36. Learned Advocate Shri. D.T. Patil for the defendant Nos.1 to 3 argued in support of the pleadings of the defence. According to him, oral evidence is insufficient to prove ancestral nature of the suit property, without documents. On behalf of the plaintiff has collected evidence of Narayan purchased the suit property. It is sufficient to take adverse view. The plaintiff failed

to prove fact in issue.

37. The nature of suit property is disputed fact. The plaintiff is bound to prove it. Shakuntalabai (PW-1) has reproduced the pleadings in her examination-in-chief. In cross-examination, she deposed boundaries of house No.26 as towards East and West – house of Marathas, towards South – agricultural land and towards North – village. Pralhad (PW-4), Madhav (PW-3) and Raosaheb (PW-2) deposed regarding ancestral suit property.

38. Venkat (DW-1) has reproduced pleadings in evidence. As per cross-examination, he born in the year 1942, Malba died in the year 1996. Narayan died in the year 1985. Narayan had purchased Survey No.26 area 24 acre 29 Gunthas. It was not property of Nagorao. He got that land after death of Narayan. His name and name of Malba, Rukmin and Kaushalya were jointly recorded in the revenue record.

39. I have carefully gone through the record and advance argument. Before appreciating the evidence on record, it would be beneficial to go through cardinal principle of law. The plaintiff has burden to prove the fact in issue. The Hon'ble Apex Court in case of **Shyam Narayan Prasad Vs. Krishna Prasad ((2018) 7 SCC 646)**, in para No.12 defined "Ancestral Property" as the property inherited by a male Hindu from his father, father's father, father's father's father is an ancestral property.

40. As above discussed, an evidence of Raosaheb (PW-2) is liable to be disbelieved, due to his demeanor. It is not

helpful to the plaintiff. On behalf of the defendant Nos.1 to 3 has collected evidence and suggested in respect of ancestral suit property and not rebutted oral evidence of Shakuntalabai (PW-1), Madhav (PW-3) and Pralhad (PW-4). The defendant Nos.1 to 3 have admitted in pleading ancestral nature and ownership of Nagorao i.e. grandfather of the plaintiff. Venkat (DW-1) has simultaneously deposed contrary regarding nature of the suit property. His evidence of self acquired land Block No.26 of Narayan is without pleadings. He failed to file and prove document regarding self acquired property. His oral evidence is insufficient proof that fact. The partition of property between the defendant Nos.1 to 3 does not create contrary circumstance or established adverse fact. It means that the suit property came from the plaintiff's and defendants' grandfather Nagorao. It is an ancestral property. Hence, I hold that, the plaintiff succeeded to prove fact in issue i.e. ancestral nature of the suit property. In result, I answered issue No.2 in affirmative.

ISSUE NO.2A :-

41. Learned advocate Shri. Sankaye for the plaintiff has filed notes of argument (Exh.147 and 149) and reproduced the pleadings and evidence. According to him, the suit is within limitation.

42. Learned Advocate Shri. D.T. Patil for the defendant Nos.1 to 3 argued in support of the pleadings of the defence. According to him, the public at large has knowledge of public document from its date. The revenue record and sale-deeds are

well within knowledge of the plaintiff from its date. The first cause of action arose in the year 1948-49, when the plaintiff had no right in the suit property and secondly in the year 1982 when the defendant Nos.1 to 3 makes partition. But the suit is not filed limitation from the date of exclusion known to the plaintiff. The suit is barred by limitation.

43. Shakuntalabai (PW-1) has reproduced the pleadings in her examination-in-chief. According to her cause of action is arose on 18/12/1998. As per cross-examination, she was 2 to 3 years old at the time of death of Nagorao and Pandurang. Narayan died after birth of her child. She denied false age mentioned in this affidavit. She seen mutation No.242 and filed this suit against that mutation, but she denied its contents as mutation of heirship after death of Narayan. She cannot depose land area recorded in name of defendant Nos.1 to 3 in village form No.7/12 at the time of filing suit. She admitted name of defendant No.5, Uttam Tukaram Biradar, Dilip Venkatrao Biradar, Arjun Tulshiram Kavale and Ramchandra Kisanrao Pethe were recorded in the revenue record on the basis of sale-deeds. She does not know its entry. She admitted mutation No.467 regarding partition between defendant Nos.2 and 3 in the year 1994, but denied its knowledge from the date of partition. The defendant No.1 sold land from Block No.26 to Pundlik Sakharam Jethure.

44. Pralhad (PW-4), Raosaheb (PW-2) and Madhav (PW-3) deposed, Pandurang cultivated the suit property in his lifetime. Pandurang died prior to 50 to 60 years. Malba died

without issue. The suit property was not partitioned between Pandurang, Malba and Narayan. Pralhad (PW-4) admitted the plaintiff is 10 years younger than him.

45. Venkat (DW-1) has reproduced pleadings in evidence. As per cross-examination, he born in the year 1942, Malba died in the year 1996. Narayan died in the year 1985. The partition of land took placed between defendant Nos.2 and 3 in the year 1991. But defendant Nos.2 and 3 did not partition their share. He denied the plaintiff's request of partition in the year 1998.

46. I have carefully gone through the record and argument. The plaintiff has burden to prove the limitation of the suit. Before appreciating the evidence on record, it would be beneficial to go through cardinal principle of law. The partition is substantive relief and possession is ancillary relief. Hence, the limitation for partition is material in this case. The plaintiff was or is not member of joint family after death of Pandurang and her mother performed marriage. As per Article 110 of the Limitation Act, twelve years limitation is provided to claim partition, who is excluded from a joint family property to enforce the share therein, from the date of exclusion known to him. The date of exclusion from joint family property and its knowledge is trigger of limitation.

47. As per the evidence of Shakuntalabai (PW-1), she was 2-3 years old at time of death of Nagorao and Pandurang. But she has not pleaded her date of birth or death of Pandurang.

Hence, that dates shall be determined from the other circumstances. She pleaded her age 55 years on 01/01/1999 i.e. date of filling the suit, deposed age 59 years in affidavit-in-lieu-of-examination-in-chief (Exh.19) dated 31/07/2004 and age 75 years in affidavit-in-lieu-of-examination-in-chief (Exh.118) dated 28/01/2026. Accordingly, she may be born in the year 1944-1945 or 1951, i.e. prior to the application of the Hindu Succession Act 1956. If her grandfather Nagorao and father Pandurang were died within 2-3 years from her birth. It is clear that they died in the year 1948 or 1954. On behalf of the plaintiff has not shaken an evidence of revenue record in name of Narayan since the year 1953. It amount to exclusion of the plaintiff from the suit property. This is first cause of begin the limitation. But at that time she was minor, therefore the limitation was stopped due to the disability, vide section 6 of the Limitation Act. She might be become major in the year 1966 – 1969. She has to claim partition within 3 years from her majority i.e. when cease disability of minor, vide section 8 of the Limitation Act. But the suit is not filed within that period.

48. Thereafter, Narayan died on 25/02/1982 and the land was recorded in name of his successors i.e. defendant No.1, 9 and 10 and brother Malba under the mutation No.242. The name of the plaintiff or her mother were not recorded in the record of the suit property. It amount to an exclusion from the property. The plaintiff pleaded about her possession, but not proved or filed conclusive proof in that regard. On the contrary, circumstance of recording mutations of heirship, partition and sale-deeds established the fact of she had not possessed the suit property. Under such circumstance, she must have explained the

circumstance of not claiming partition from 1982 to 1994.

49. There is no cogent and conclusive evidence of defendant Nos.1 to 3 refused the partition and her share on 18/12/1998. The statement of cause of action is general and not believable. Her silence on her part without getting fruits makes question on her conduct and demeanor. She did not make single inquiry or attempt to get partition or claim share from the date of her majority till the year 1998. It has established her knowledge and implied consent. Her pleading is so cryptic.

50. The plaintiff is cousin of Malba, who died in the year 1990. She would not get share or interest in his share directly, as his sisters were alive. It would not create cause of action. Similarly, the partition of the year 1994 between defendant Nos.1 to 3 or sale-deed dated dated 11/07/1994 or 21/11/1994 does not create cause of action of the suit.

51. As above discussed, the plaintiff shown general and vague cause of action of the suit on 18/12/1998. She had knowledge of mutation in name of the defendant No.1 after death of his father Narayan. She ought to have filed the suit within three years from the date of cessation of disability and her majority i.e. the year 1969 or thereafter till the year 1994 from the knowledge of exclusion on the basis of mutation after death of Narayan. The suit is not filed within limitation. Hence I answered issue No.2 -A in negative.

ISSUE NOS.3 AND 4 -

52. Aforesaid issues are interlinked and to avoid repetition, they have been discussed simultaneously.

53. Learned advocate Shri. Sankaye for the plaintiff has filed notes of argument (Exh.147 and 149) and reproduced the pleadings and evidence. According to him, defendants' submission that the plaintiff was not entitled to right or interest on in the suit property as Pandurang before application of Hindu Succession Act, 1956 is without pleading. The defendants have not raised an objection regarding year of death of Pandurang. There is no proof of death of Pandurang prior to 1956. The suit property is joint and yet not partitioned. Therefore, the suit property is liable to be partitioned and the plaintiff is entitled to the share as prayed.

54. Learned Advocate Shri. D.T. Patil for the defendant Nos.1 to 3 argued in support of the defendants' pleadings. The plaintiff failed to prove her paternity, existence of Pandurang i.e. alleged son of Nagorao, relationship and entitlement of share. Even if assumed the plaintiff's relations and existence of Pandurang, who died in the year 1947-48 i.e. prior to the application of Hindu Succession Act 1956, the daughter had no right or interest in the ancestral property, in old Hindu Law. Prior to the Hindu Succession Act, the share of Pandurang was reversed back to Narayan and Malba. Similarly, even after Hindu Succession Act 1956 and Amended Act 2005, the defendants transferred the part of suit property for their legal necessity by

the registered sale-deeds. It is remained unshaken and unchallenged. The plaintiff has not challenged that fact. The plaintiff will not get share in the suit property. The suit is also barred by limitation and under the principle of non-joinder of necessary party i.e. heirs of Kashibai. The plaintiff is not entitled to the partition. He relied on following judgments.

1) Lalitaben Vs. Niruben Ramanbhai Suthar and Ors. (2008 (2) Civil LJ 840).

2) Smt. Ragmania died through Lrs. Kariman Das and Ors. Vs. Jagmet Baigadas and Ors. (2025:CGHC:50803)

55. Shakuntalabai (PW-1) has reproduced the pleadings in her examination-in-chief. On behalf of defendant No.1 to 3 has been justified on her birth, death of Nagorao, Pandurang, Narayan and Malba and entries recorded in village form No.7/12 of land Survey No.26, on the basis of sale-deed and mutation No.467 regarding partition between defendant Nos.2 and 3 in the year 1994.

56. Pralhad (PW-4), Raosaheb (PW-2) and Madhav (PW-3) deposed, Pandurang and thereafter the plaintiff has right and interest in the suit property, which is ancestral and yet not partitioned between Pandurang, Malba and Narayan.

57. Venkat (DW-1) has reproduced pleadings in evidence. As per cross-examination, he born in the year 1942, Malba died in the year 1996. Narayan died in the year 1985.

Narayan have a son means he and five daughters named Kashibai Ratnabai, Parmabai, Kausabai and Rukminbai. He got that land after death of Narayan. His name and name of Malba, Rukmin and Kaushalya were jointly recorded in the record. The partition of land took place between defendant Nos.2 and 3 in the year 1991. But defendant Nos.2 and 3 did not partition their share.

58. I have carefully gone through the record and advance argument. The plaintiff has burden to prove the fact in issue. Before appreciating the evidence on record, it would be beneficial to go through cardinal principle of law, which may help to determine the fact in issue. First of all, let's go through the rules of pleadings. As per Order VII Rule 7 and 8 of the Civil Procedure Code, every plaint shall state specifically the relief claimed and the plaintiff shall be stated as far as may be separately and distinctly grounds and cause of action of the reliefs.

59. The Hon'ble Gujrat High Court in case of **Lalitaben Vs. Niruben Ramanbhai Suthar** held that, the father died in the year 1947 leaving behind a son and a daughter. The right of succession was not available to the daughter in the year 1947. The daughter is not entitled to frame mutation in her favour.

60. The Hon'ble High Court of Chattisgarh in case of **Smt. Ragmania died through Lrs. Kariman Das and Ors. Vs. Jagmet Baigadas and Ors.** held that, "the plaintiff to claim that she is entitled to inherit the suit property as per section 6 of the

Hindu Succession Amended Act, 2005 should first plead and prove that the parties are governed by Hindu Succession Act 1956. From bare perusal of the pleadings made in the plaint, it is quite vivid that the plaintiff has nowhere pleaded that when Sudhin expired to establish that partition is open to get benefits of the Hindu Succession Act, 1956, whereas the defendant No.1 is entitled to inherit the entire suit property. The plaintiff despite specific averment made by the defendant to exclude the applicability of Hindu Succession Act 1956 has not taken any stand by amending its pleading. From the evidence, it is undisputed fact that Sudhin expired in the year 1950-51, much prior to the enactment of Hindu Succession Act 1956, as such the succession is opened under the old Hindu Law. It is well settled legal position of law that as per Mitakshara Law, the daughter is not entitled to inherit the property of her father before the enactment of the Act 1956. The succession to the property of Hindu whether ancestral or self acquired was governed by the pristine principles of Hindu Law, as embodied in the Shastric text and Smritis.”

61. The Hon’ble Supreme Court in case of **Vishwa Vijai Bharati Vs. Fakhrul Hasan and Ors. (AIR 1976 Supreme Court)** held that, “entries in record of rights has presumptive value and accepted at their face value and the Court should not embark upon an appellate inquiry into the correctness. But the presumptions of correctness can apply only to genuine, not formed or fraudulent entries.

62. The Hon’ble Madhya Pradesh High Court in case of

Keshav Prasad and Ors. Vs. Brijbhusan and Ors. (AIR 2006 MADHYA PRADESH 207), held that, “the revenue record prepared for the fiscal purpose, which do not give any right or title over the property.”

63. Now turn towards the case. The competency of Raosaheb is in question. The evidence of Madhav (PW-3) and Pralhad (PW-4) is based on an information given by the plaintiff. It is general and not trustworthy and helpful to the plaintiff.

64. The plaintiff has claimed share and partition. Therefore, she should first plead and prove base of reliefs as that the parties are governed by Hindu Succession Act 1956. From bare perusal of the pleadings made in the plaint, it is quite clear that the plaintiff has nowhere pleaded that when her father Pandurang expired to establish that partition is open to get benefits of the Hindu Succession Act, 1956 and how she has share in the suit property. The plaintiff despite specific averment made by the defendants to exclude the applicability of Hindu Succession Act 1956 has not taken any stand by amending its pleading.

65. From the evidence and above discussion, the plaintiff might be born in the year 1944-1945 or 1951, and Nagorao and Pandurang might be died within 2 to 3 years means 1948 to 1954 i.e. much prior to the enactment of Hindu Succession Act 1956, as such the succession is opened under the old Hindu Law. In view of aforesaid case laws and old Hindu Laws, it is well settled legal position of law that as per

Mitakshara Law, the daughter had no direct right or interest in the ancestral property. She is not entitled to inherit the property of her father before the enactment of the Act 1956. Therefore, probability of reversing share of Pandurang to his survived brothers Narayan and Malba and recording suit property in name of Narayan in the year 1953 is duly established. As per village form No.7/12 (Exh.62 and 64), land Survey No.26 was recorded in name of Narayan since 1959-60 to 1992-93. The copy of Pahani Patrak (Exh.63) has established position of the year 1955 to 1961.

66. Furthermore, the defendant Nos.1 to 3 have denied the plaintiff's right and share. It is appeared that the pleadings in the regards of alleged objection is mentioned there. This is legal point. It is not without pleading. Hence, the plaintiff's argument is not accepted.

67. The Hindu Law relating to succession was codified. For the first time under the codified law, right was conferred upon widow, daughter, widow of predeceased son or other females, who otherwise, had no right in the property before coming into force of the Hindu Succession Act. Section 6 of the Hindu Succession Act provides that in case there is a joint family property, the property would be succeeded by other co-parceners of the family and they would enjoy joint possession. The clause (b) of the Section 6 of the Act provides that if co-parceners-cum-owner in the Hindu joint family leaves any female here as provided under Section 8 of the Act, then, there would be a deemed partition and the property would devolved upon by

succession and not by survivorship. The Section 6 would govern the field of succession after coming into force of Hindu Succession Act and would not reopen the subject which is already come to an end. Hence, the plaintiff's share is not established.

68. If assumed the plaintiff's right and interest in the suit property, an objection of non-joinder of necessary parties raised by the defendant Nos.1 to 3 have to be deal. It is well within knowledge of the plaintiff. Alleged purchasers are stepping in shoes of vendors, who are parties i.e. defendant Nos.1 to 3. The purchasers are bound to follow the obligations created by their predecessor i.e. vendors. They may be proper party of the suit and not necessary party of the suit. The suit can be decided and passed effective decree in their absence. The objection in that regard in rejected.

69. The plaintiff had applied to add Kashibai sister of defendant No.1 as defendant. But as per the bailiff report (Exh.93) of show cause notice of application for adding party under Order 1 Rule X of the Code of Civil Procedure, Kashibai was dead. The plaintiff had applied to add dead person in the suit. She admitted in cross-examination regarding alive legal heirs of Kashibai. This is suit for partition of the ancestral property. The plaintiff is claiming share in the property of grandfather Nagorao, who was also grandfather of Kashibai. Therefore, her right in the suit property is survived with her legal heirs. They are necessary parties of the suit. An effective decree of partition shall not be passed unless made parties to

her all heirs. This suit is bad for non-joinder of necessary party. The plaintiff's conduct itself make her disentitled from the reliefs of partition and separate possession.

70. The defendants have also objected this suit on the grounds of transfer of suit property to others for legal necessity. They have burden to prove legal necessity. Venkat being family members of defendant Nos.2 and 3 has sufficient knowledge of all transactions. He deposed regarding legal necessity. But on behalf of the plaintiff has not challenged that evidence. It is remained unshaken. It is appeared that the defendant Nos. 1 and 3 have sold the part of Block No.26 for legal necessity. Under such circumstance, firstly need to go through proviso of section 6 of the Hindu Succession (Amended) Act, 2005, as the plaintiff is claiming share as a daughter in share of Pandurang. According to sub-clause (b) of proviso of sub-section (4) of section 6, the said law shall not affect alienation made in respect of or in satisfaction of, any debt. The sale-deeds executed by the defendant Nos.1 to 3 are binding upon the plaintiff. It is not subject of partition

71. It is pertinent to note here that, the plaintiff has filed village form No.7/12 (Exh.17) along with the suit, wherein the name of purchaser as Uttam Tukaram Biradar, Dilip Venkatrao Biradar, Arjun Tulshiram Kamble, Ramchandra Kishanrao Pete and Harishchandra Pundlik Jethure were mentioned. Similar name is also appeared in village form No.7/12 (Exh.60). It is sufficient and conclusive to held that, the plaintiff had knowledge of alienation of part of land. But she did

not act and amend the suit withing reasonable time. She applied to add the purchasers as defendants on 03/12/2025 vide application (Exh.82) and amend the plaint and add the said translations and pleadings of non-binding of sale-deeds and its land is liable to be partition, vide application (Exh.108) on 01/01/2026. Thus, it is appeared that the plaintiff keep mum near about 32 year and thereafter pleaded against that sale-deeds. It is pertinent to note here that, the plaintiff has not specifically and distinctly claimed the reliefs of declaration of sale-deed as not binding, in-spite added the pleadings. She has not explained why that pleadings has been added. Under such circumstance, her conduct itself established her knowledge and not establishing base of the reliefs.

72. Hence, I concluded that the plaintiff's grandfather Nagorao and father Pandurang died prior to the application of the Hindu Succession Act 1956, at that time a daughter had no right or interest in the ancestral property. Consequently, the share of Pandurang was reversed back to his brother Malba and Narayan. The plaintiff has no right to open partition or claim back that share. Even if assumed the plaintiff's right in the suit property, she has been excluded from the suit property since the year 1956, and 1982. It is well within her knowledge. She has not claimed the partition within limitation. The suit is barred by limitation. The defendant Nos.1 to 3 sold the part of the land in legal necessity, which shall not be affected by the implementation of Hindu Succession (Amended) Act 2005. Hence, the plaintiff failed to prove her share and entitlement. She is not entitled to the alleged partition and separate

possession of the suit property. In result, I answered issue Nos.3 and 4 in negative.

ISSUE NO.5 :-

73. The plaintiff has prayed perpetual injunction to restrain alienation and change the suit property. But as above discussed, the plaintiff's right or interest in the suit property is not established and the suit is barred by limitation. The plaintiff failed to prove her right or interest in the suit property and apprehension of the transfer or alienate or change the suit property with hands of the defendants i.e. components of an injunction. The discretionary and equitable injunction shall not be granted on general pleadings or without harm or injury. The plaintiff is not entitled to the relief as claimed. In result I answered issue No.5 in negative.

ISSUE NO.6 :-

74. As above discussed and negative findings of issue Nos.4 and 5, the plaintiff is not entitled to alleged reliefs of partition, separate possession and perpetual injunction. Hence, the suit is liable to be dismissed.

75. In view of Section 35 of Civil Procedure Code, success party has right of cost of suit. There is no reason or exceptional circumstance to refuse the cost of the suit. Hence, in answer of issue No.6, I pass the following order.

ORDER

1. The suit is dismissed with costs in the interest of justice.
2. Decree be drawn up accordingly.
3. The judgment is dictated on the computer and pronounced in open court.

Date-30/05/2026
Deoni.

(S.A. Surjuse)
Civil Judge, Jr. Dn., Deoni.

:: C E R T I F I C A T E ::

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

Name of the Stenographer	M.N. Yenge
Name of the Court	Shri. S.A. Surjuse, Civil Judge Jr. Division, Deoni.