

MHND250002162020



Presented on : 02.07.2020
Registered on : 02.07.2020
Decided on : 16.04.2026
Duration : Y M D
: 05 09 14

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,
AT UMRI.
(Presided over by K. S. Kulkarni)**

**Regular Civil Suit No. 21/2020
Exh No 75.**

- 1. Maroti Digambar Sawant,**
Age : 18 Yrs, Occ : Agri,
- 2. Gopal Digambar Sawant,**
Age : 20 Yrs, Occ : Agri,
both R/o. Gortha, Tal. Umri Dist. Nanded.

...Plaintiffs.

V/s

- 1. Digambar Maroti Sawant,**
Age : 50 yrs., Occ : Agri,
- 2. Govind Digambar Sawant,**
Age : 28 yrs., Occ : Agri.
Both R/o. Gortha, Tal. Umri Dist. Nanded.
- 3. Gajanan Tanaji Shriramwar,**
Age : 47 yrs., Occ : Agri,
- 4. Yogesh Gajanan Shriramwar,**
Age : 24 Yrs., Occ : Agri,
- 5. Rupesh Gajanan Shriramwar,**
Age : 22 Yrs., Occ : Agri,
No. 3 to 5 R/o. Balaji Galli, Umri. Tq. Umri Dist. Nanded.

...Defendants.

Claim : Suit for declaration, partition and separate possession.

Advocate for the Plaintiffs **Shri. E. S. Ramtirthkar**

Advocate for the Defendant No. 2 **Shri. S. B. Shirke**

Advocate for the Defendants Nos. **Shri. D.M. Rakhe**
3 to 5.

J U D G M E N T
(Delivered on 16.04.2026)

This is a suit for declaration, partition and separate possession.

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

2. Land block no.259, having area 3 H. 0 R, situated at Gortha Tq.Umri Dist. Nanded having four boundaries as -
To the East – Land of Raju Tanaji Shriramwar,
To the West- Land of defendant No.1,
To the South- Land of Shankar Khandare,
To the North- Land Bhujanga Ramaji.
is the property in dispute is hereinafter referred as “**suit property**” for the sake of understanding.

3. It is the contention of the plaintiffs that, they and defendant no.2 are brothers and defendant no.1 is their father. The suit property is the ancestral property of them and defendant no.1 & 2. Defendant No.1 in the year 2002 has orally partitioned the suit property among plaintiffs and defendant no.2. Therefore, they have become absolute owners of the suit property.

4. However, at that time they both were minors. Further, the defendant no.1 being their father was in control and management of suit property. Therefore, they never doubted his intention. However, defendant no.1 in the mean time has addicted to liquor. In order to satisfy his lust for liquor he has sold various properties including the suit property.

5. However, as the plaintiffs were minors defendant no.1 before selling the suit property has not obtained the prior permission of district court. Therefore, sale deed bearing no.1254/2003 executed by defendant no.1 in favour of defendant no.3 is illegal. Further, the transfer of the suit property by defendant no.3 in favour of his sons i.e. defendant nos.4 & 5 are also illegal and does not create any title in favour of them.

6. After attaining the majority plaintiffs on the eve of Makar Sankranti in the year 2020 requested defendant nos.3 to 5 to restore the possession of the suit property with them. However, they refused to do so. Therefore, plaintiffs constrained to file the present suit.

7. Defendant no.1 has not appeared despite in receiving service of summons. Therefore, my predecessor has passed ex-parte order against him. Defendant no.2 appeared and has filed his written statement at **(Exh.29/A)**. He has admitted all the contents in the plaint and prayed for decreeing the suit. Defendant nos.3 to 5 have appeared and filed their written statement at **(Exh.24)**.

They have denied the contentions in the plaint which are unfavourable to them. They have further stated that, the present suit is not tenable as suit property is already partitioned. Further, the plaintiffs have purposefully, by suppressing the material facts and with a view to grab money from them has filed the present suit. Further, the suit property was sold to them by following the due procedure of law. Further, defendant no.3 by family partition has transferred the suit property in favour of defendant no.4 & 5. Therefore, there is no cause of action to file the present suit. Further, present suit is not filed within the period of limitation. Therefore, they have prayed for dismissing the suit along with compensatory cost of Rs.50000/-.

8. Following are the admitted facts in the present suit.

| Sr No. | Admitted Facts |
|--------|---|
| 1. | Relation of plaintiffs and defendant nos.1 & 2. |
| 2. | Existence of sale deed no.1254/2003 |

9. After considering the rival pleadings of both the parties, my learned predecessor has framed the issues at (Exh.23). I have reproduced the same along with my findings thereon with reasons to follow.

| SR. NO. | ISSUES | FINDINGS |
|------------|--|----------|
| 1. | Whether plaintiffs prove that suit property is their ancestral joint family property ? | Yes |
| 2. | Whether plaintiffs prove that sale deed | |

- bearing registration no.1254/2003 is not binding upon plaintiffs' share ? **No**
3. Whether plaintiffs are entitled to relief of declaration, as prayed? **No**
4. Whether plaintiffs are entitled to have partition of suit property ? If yes, what is the share of parties. **No**
5. Whether plaintiffs are entitled to have possession of suit property as prayed ? **No**
6. Whether suit is instituted within limitation ? **Yes**
7. What order and decree? **As per final order.**

REASONS

10. In order to substantiate their claim plaintiffs have examined the following witnesses.

| Sr. No. | Name | Exh. No. |
|----------------|-------------------------------|-----------------|
| 1. | Maroti Digambar Sawant (PW-1) | 30 |

11. In order to substantiate their claim plaintiffs have relied upon the following documents.

| Sr. No. | Name of the Document | Exh. No. |
|----------------|--|-----------------|
| 1. | Certified copy of registered sale deed no.1254/2003. | 45 |
| 2. | Certified copy of Mutatio entry no. 4002. | 46 |
| 3. | Certified copy of 7/12 Extract of Gut no.249. | 47 |
| 4. | Certified copy of 7/12 Extract of Gut no.249. | 48 |
| 5. | Certified copy of Mutation entry no.1177. | 69 |

| Sr. No. | Name of the Document | Exh. No. |
|---------|--|----------|
| 6. | Certified copy of Mutation entry no.2091. | 70 |
| 7. | Original copy of school leaving certificate of plaintiff no.1. | 71 |
| 8. | Original copy of school leaving certificate of plaintiff no.2. | 72 |

12. In order to substantiate their defence defendants have examined the following witnesses.

| Sr. No. | Name | Exh. No. |
|---------|----------------------------------|----------|
| 1. | Gajanan Tanaji Shriramwar (DW-1) | 59 |
| 2. | Sharad Ankush Pawar (DW- 2) | 63 |

Arguments-

13. Ld. Advocate for the plaintiffs has given his written argument at (**Exh.73**). Further, Ld. Advocate for the Defendant nos. 3 to 5 has given his written argument at (**Exh.74**). Their written submission will be considered at relevant stage in the judgment.

14. At the outset, I would like to mention here that, the relief of declaration is granted as per the principles laid down **U/sec. 34 of the Specific Relief Act, 1963 (In short 'Act')**. In a suit for declaration, the plaintiffs will have to establish that, as on the date of the suit they were the owner of the suit property

and defendants denied their title. Further, in a suit for partition plaintiffs will have to establish that, suit property is ancestral joint Hindu family property which earlier not partitioned.

15. So far as the burden of proof is concerned, as per **Sec. 101 of Indian Evidence Act, 1872**, whosoever deserves any court to give judgment as to any legal right or law depends on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the evidence act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon prove his case. The same is casted upon plaintiffs to prove issue nos.1 to 5.

Issue Nos. 1 to 5:-

16. Evidence on all of these issues is same. Hence, in order to avoid repetition, they are discussed together.

17. It is the contention of the plaintiffs that, defendant no.1 partitioned the suit property in their and in favour of defendant no.2. However, defendant no.1 in order to satisfy his lust for liquor has sold the suit property to defendant no.3 during their minority by registered sale deed no.1254/2003 without the permission of district court as opposed to section 8 of Hindu Minority and Guardianship Act, 1956 (hereinafter called as “the act” for the sake of convenience).

18. It is interesting to note that, the plaintiffs on one hand are praying for partition of the suit property and on the other hand praying for declaration that sale deed no.1254/2003 is not binding upon them because suit property executed in their favour by defendant no.1 by oral partition and he sold it without the permission of district court.

19. Ld. Advocate for the defendants has submitted that, the plaintiffs have made inconsistent pleadings. Therefore, it is necessary to dismiss the present suit.

20. Therefore, in this backdrop it is necessary to read the oral evidence available on the record. In this regard, plaintiff (PW-1) in his affidavit in lieu of examination in chief has reiterated his contentions in the plaint. In his cross examination he has deposed that, he has not filed any documentary evidence on record to prove that suit property came to name of his father from his grand father. Further, he has not filed any documentary evidence to prove that, suit property came to his name from his father.

21. Now, it is necessary to read documentary evidence available on the record. In this regard, plaintiffs have filed certified copy of 7/12 extract of suit property at (Exh.47 & 48). Further, they have filed certified copies of mutation entries nos.1177 & 2092 at (Exh.69 & 70). On perusal of certified copy of mutation entry no.1177 at (Exh.69), it appears that, suit

property came to the name of defendant no.1 by transfer made by one deceased Narayan. Further, on perusal of certified copy of mutation entry no.2092 it appears that, defendant no.1 transferred the suit property and other properties in favour of plaintiffs and defendant no.2 by way of partition. Further, on perusal certified copies of 7/12 extract of suit property at **(Exh.47 & 48)** it appears that, originally the names of plaintiffs and defendant no.2 appears on it. Later on, the names of defendant nos.3 to 5 appears on it.

22. It is the settled position of law that, there is presumption in favour of joint nature of suit property. Therefore, considering the relations between plaintiffs and defendant no.1 & 2 and considering the certified copies of 7/12 extracts and mutation entries at **(Exh.47, 48, 69 & 70)** I hold that suit property is ancestral and joint family property.

23. Now, plaintiffs in order to prove oral partition apart from filing certified copies of mutation entries and 7/12 extracts have not filed anything on the record. Particularly, they have not filed anything to prove when the oral partition between them and defendant no.2 took place. Further, they have not filed as to prove who were present at the time of oral partition. Further, they have not examined any witness who could depose about the oral partition. Further, they have not filed anything as to prove when they were in the possession of the suit property through defendant no.1. Further, they have

not filed anything to prove the acts by which they were in the possession of the suit property through defendant no.1.

24. Therefore, in the absence of the proof of the things mentioned in the above paragraphs the mutation entries and 7/12 extracts would alone not constitute a reliable evidence. Further, Hon'ble Supreme Court and Hon'ble Bombay High Court time and again has continuously held that, the mutation entries in the revenue record are made only for the fiscal purpose of recovery the revenue and do not constitute a document on which title is created or has been conferred. Hence, the mutation entry itself in the absence of other evidence on record would not amount to a document which could be said to prove the partition. Therefore, it is not proved that, plaintiffs became owners of suit property by oral partition.

25. As discussed earlier, it is contention of the plaintiffs that, defendant no.1 in order to satisfy his lust for liquor has sold the suit property to defendant no.3 during their minority by registered sale deed no.1254/2003 without the permission of district court as opposed to section 8 of the act. Therefore, it is necessary to read section 8.

26. Section 8 of the act reads as- *“Powers of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of*

the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,— (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in subsection (2) except in case of necessity or for an evident advantage to the minor...”

27. Thus, as per the section 8 of the act natural guardian shall not, without the previous permission of the court, transfer by sale any part of the immovable property of the minor. However, as per section 6 of the act the immovable property does not include the undivided interest of the minor in the joint family property.

28. Ld. Advocate for the defendants has submitted that,

defendant no.1 being the father and Karta of the suit property as every right to transfer it.

29. In this regard, plaintiff (PW-1) in his cross examination has deposed that, defendant no.1 was during their minority was the Karta of their family. Further, at that time, he was taking crops and irrigating the suit property and bearing the expences of his family through its income. Further, nothing contradictory came on the record in the cross examination of defendant (DW-1) of his family were borne.

30. Therefore, considering the oral evidence of the plaintiff (PW-1) it appears that, the defendant no.1 was the Karta of their family and he has borne the expences of his family from the income of the suit property. Therefore, defendant no.1 has every right to sale the suit property.

31. Further, plaintiff (PW-1) in his cross examination has deposed that, defendant no.1 has purchased other properties in his and in the name of plaintiff no.2. Further, on perusal of certified copy of mutation entry no.2092 at (Exh.70) it appears that, apart from suit property there are other properties are also mentioned in it. However, plaintiffs have not included the same in the present suit. Therefore, there is a bar of common hotchpot to the present suit. Therefore, considering the above discussion although it is proved that suit property is ancestral joint family property of plaintiffs and defendant nos.1

& 2 it is not proved that plaintiffs are entitled to declaration , partition and possession of the suit property. Therefore, as to issue no.1 I record my finding in the **affirmative** and as to issue no.2 to 5, I record my finding in the **negative**.

Issue No.6:-

32. Ld. Advocate for the defendant has submitted that, the present suit is not filed within the period of limitation. Hence, it is liable to be dismissed. On the other hand, Ld. Advocate for the plaintiffs has submitted that, the plaintiffs have filed present suit after cessation of their minority within the period of limitation. In this regard, Ld. Advocate for the plaintiffs have filed certified copies of school leaving certificates of plaintiffs at **(Exh.71 & 72)**. On perusal of it appears that, plaintiff no.1 is born on 01.06.2002 and plaintiff no.2 on 05.08.1999.

33. As per Article 110 of Limitation Act, the period of limitation for filing suit for partition is 12 years from the exclusion become known to the plaintiffs. Further, as per Article 58, the period of limitation for obtaining any other declaration is 3 years when the right to sue first accrues.

34. On perusal of certified copy of sale deed at **(Exh.45)** it appears that, it was executed on 10.11.2003. Thus, plaintiffs were certainly minor at that time. Therefore, time had not run against them. Now, in order to ascertain whether the suit is

filed within the limitation if we calculate then plaintiff no.1 become major on 01.06.2020 and plaintiff no.2 on 05.08.2017. The present suit is filed on 02.07.2020 which is well within the period of 12 years and 03 years as mentioned in article 110 and 58 of the Limitation Act. Therefore, as to issue no.6 I record my finding in the **affirmative**.

Issue No.7:-

35. In view of my findings to issue nos. 2 to 5, suit deserve to be dismissed. So far as the costs are concerned, the costs follow the event as per **Sec.35** of the Code of Civil Procedure, 1908. Therefore, the defendant nos.3 to 5 are entitled for the same. Resultantly, as to Issue No.7, I pass the order.

ORDER

1. The suit is dismissed with cost.
2. Decree be drawn accordingly.

(Dictated and pronounced in the open court.)

Date : 16.04.2026
Place: Umri

(Kuldip S. Kulkarni)
Civil Judge Jr. Division,
Umri.

CERTIFICATE

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

| | |
|---|---|
| Name of Stenographer | - G. B. Wavdhane, Stenographer Gr. III (On Deputation) |
| Court | - CJJD & JMFC Umri |
| Date | - 16.04.2026 |
| Order signed by the Presiding Officer on | - 16.04.2026 |
| Order uploaded on | - 16.04.2026 |