

Presented on :- 17.11.2014

Registered on :- 18.11.2014

Decided on :- 13/12/2018

Duration :- 04 Y 00M 25D

**IN THE COURT OF JT. CIVIL JUDGE (JR. DN.), UMRER**  
***(Presided by A.V. Pandit)***

**Regular Civil Suit No.73/2014**

**Exh. No.79**

(CNR No.MHNG10-000835-2014)

- 1) Shri. Sanjay S/o Premdas Gaikwad,  
Age 42 years, Occu. Labour,  
R/o. Thana, Tah. Umrer, Distt. Nagpur.
- 2) Shri. Manoj S/o Premdas Gaikwad,  
Age about 35 years, Occu. Labourer,  
R/o. Thana, Tah. Umrer, Distt. Nagpur.
- 3) Shri. Arun S/o Premdas Gaikwad,  
Age about 42 years, Occu. Labourer,  
R/o. Thana, Tah. Umrer, Distt. Nagpur.
- 4) Shrimati Kamlabai Wdo Vinayak Patil,  
Age about 60 years, Occu. Housewife,  
R/o. Beltrodi, Tah. & Distt. Nagpur.
- 5) Shrimati Malabai Wd/o Ranjeet Moon,  
Age about 45 years, Occu. Housewife,  
R/o. Plot No.56, Arya Shatapdi Chowk,  
Ring road, Nagpur, Tah. & Distt. Nagpur.

**...PLAINTIFFS**

**-- Versus --**

- 1) Shri. Aadesh S/o Madhukar Lokhande,  
Age about 36 years, Occu. Cultivator,  
R/o Deoli (Sawangi)  
Tah. Hingna, Distt. Nagpur.

- 2) Shri. Nilesh S/o Madhukar Lokhande,  
Age about 32 years, Occu. Cultivator  
R/o. Deoli (Sawangi)  
Tah. Hingna, Distt. Nagpur.
- 3) Sau. Prabhulata D/o Madhukar Lokhande,  
Aged about 30 years, Occu. Housewife,  
R/o Deoli (Sawangi)  
Tah. Hingna, Distt. Nagpur.
- 4) Smt. Dharmasheela Wd/o Madhukar Lokhande,  
Aged about 50 years, Occu. Cultivator,  
R/o. Deoli (Sawangi)  
Tah. Hingna, Distt. Nagpur.
- 5) Dharmdas Kamble,  
Age about 40 years, Occu. Labourer  
R/o. Bharkas, Tah. & Distt. Nagpur.
- 6) Indu Dhongde,  
Age about 40 years, Occu. Housewife  
R/o. Borkhedi, Tah. Umrer, Distt. Nagpur.
- 7) Dharmdas Kamble,  
Age about 40 years, Occu. Labourer,  
R/o. Bharkas, Tah. & Distt. Nagpur.
- 8) Lataru Laxman Kamble,  
Age about 40 years, Occu. Labourer,  
R/o. Sathgaon, Tah. & Distt. Nagpur.
- 9) Prem Laxman Kamble,  
Age about 35 years, Occu. Private  
R/o. Sathgaon, Tah. & Distt. Nagpur.

- 10) Bablu Laxman Kamble,  
Age about 30 years, Occu. Service,  
R/o. Sathgaon, Tah. & Distt. Nagpur.
- 11) Prakash Laxman Kamble,  
Aged about 28 years, Occu. Private,  
R/o. Sathgaon, Tah. & Distt. Nagpur.  
Distt. Nagpur.

...DEFENDANTS

**SUIT FOR DECLARATION, PARTITION AND SEPARATE  
POSSESSION AND PERMANENT INJUNCTION**

.....  
Advocate for plaintiffs : Shri. M.B. Mahale  
Advocate for defendants : Shri. S.K. Likhite  
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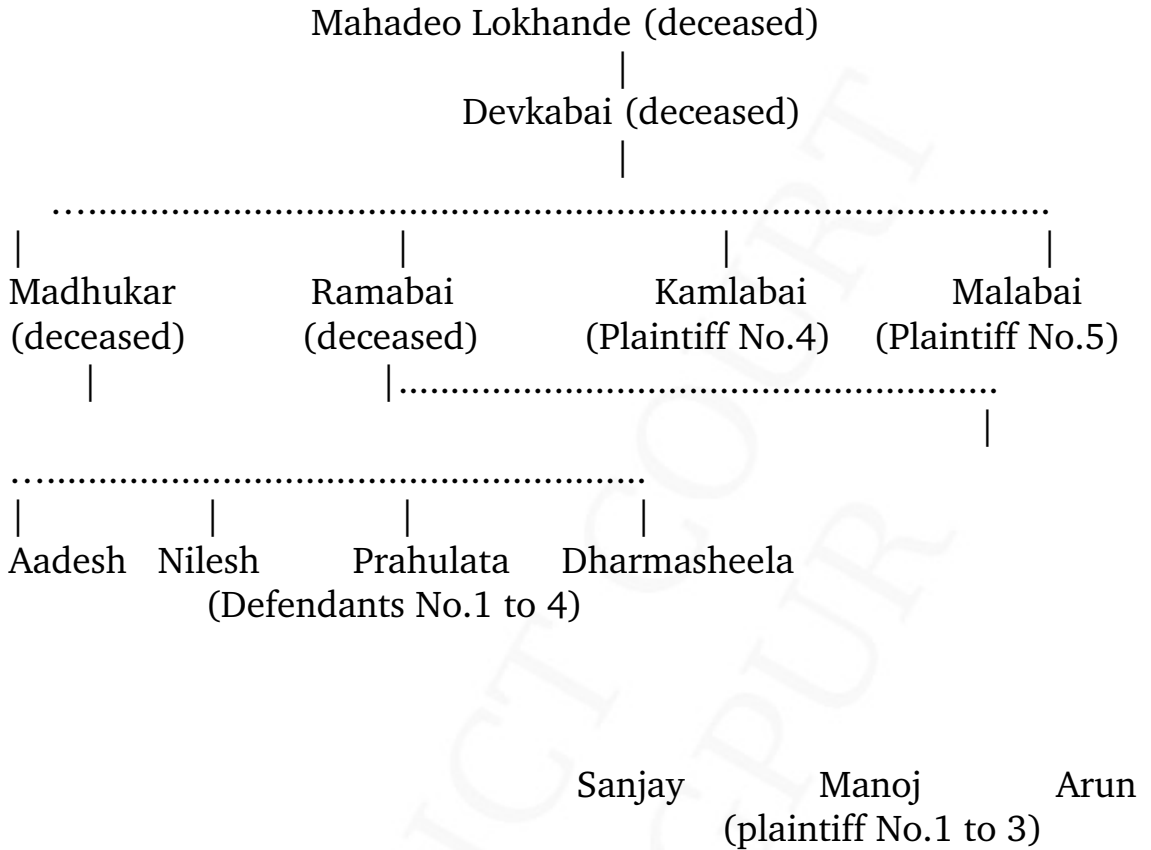
**J U D G M E N T**

(Delivered on 13<sup>th</sup> December, 2018)

- 1] This is a suit for declaration, partition, separate possession and permanent injunction.
- 2] Brief facts of the plaintiffs' case is as under :-

That mother of plaintiff No.1 to 3, plaintiff No.4, Plaintiff No.5 and father of defendant No.1 to 3 and husband of defendant No.4 Late Madhukar were real son and daughter of Late Mahadeo, who expired in 1977. wife of deceased Mahadeo i.e. Devkabei expired on 3.9.2005. Madhukar expired in 1992. mother of plaintiffs

Ramabai expired on 12.5.2000. Following are genealogical tree of plaintiff and defendants.



3] Father of plaintiff No.4 and 5 during his lifetime owned and possessed ancestral field at Thana bearing Gat No.12/1 area 3.24 Hector and field Gat No.12/2 area 1.61 Hector. The above property shall be referred as suit property.

4] That the suit fields were ancestral property of deceased Mahadeo who received in a oral partition between himself and his brother and father Dashrath. In that partition, Mahadeo was allotted 12 acre land and Ramdas allotted 12 acres land. Sister of Late

Mahadeo relinquished their share orally from abovesaid property but their names were mutated in Revenue record. Therefore, they are not party to the suit.

5] Defendants are very well aware of the said facts. Plaintiffs on number of occasions requested to partition to defendant but defendants refused their request. Plaintiff No.1 felt something fishy and went to Patwari to see revenue record and was shocked to see that defendants mutated the field Gat No.12/1 showing their joint names purporting to be partitioned. On perusal partition alleged to have been taken on 25.5.2009. It is specifically submitted that Ramabai expired in 2000, Shanti Sukhdeo Kamble expired in 1998, Kaushyala Laxman Kamble expired on 9.4.2000, Subhadra Kamble expired on 20.10.2014. Therefore, there is no question of partition by Late Shanti and Kaushlya. Kaushlyabai stated to plaintiff that she has not executed any partition deed before revenue authority. It is seen that entire record is illegal and manipulated.

6] That plaintiffs are residing at above mentioned address and demanding partition to the suit field. They want to keep the field intact. Defendant assured to give share to plaintiff but inspite of assurance, they were hesitant to give share. Therefore, plaintiff No.1 to 5 claiming their  $\frac{1}{4}$  th share each in suit property by partition and separate possession. They pray for partition deed is declared to be sham and void. Hence, they filed this suit.

7] In response to the suit summons, defendants No.1 to 4

appeared and filed their Written Statement at Exh.15. Defendant No.5 to 11 appeared and filed their Written Statement at Exh.42. Defendant No.1 to 4 denied the averments of plaint in toto and specifically submitted that mother of plaintiffs No.1 to 3 Ramabai Gaikwad and plaintiff No.4 and 5 and father of defendant No.1 to 3 and husband of defendant No.4 Late Madhukar were daughter and son of deceased Mahadeo Madhukar Lokhande. Grand father of plaintiff No.4 and 5 Shri. Dashrath Lokhande was original owner of agricultural land. Survey No.13 new Gat No.12/1, 12/2. Total area 4.85 Hector.

8] Late Dashrath holding ancestral house within jurisdiction of Gram Thana. Entire above property was ancestral property of deceased Dashrath Lokhande. After his death his son Mahadeo and daughter Shanti, Kaushlya, Subhdra have been substituted in Revenue record. After Mahadeo, Madhukar and his sister inherited the above said property. Widow of Mahadeo, Devkabai inherited undivided share of Mahadeo Lokhande. Sister of Mahade Lokhande and sister of Madhukar Lokhande voluntarily relinquished their share in abovesaid property. Therefore, mutation is taken place in revenue record. Madhukar Mahadeo Lokhnade and Plaintiff No.5 and Devkabai partitioned agricultural land on 17.6.1987 and as per that partition, Survey No.13 area 4.86 Hector is divided into two parts. Survey No.13 was allotted in the share of deceased Madhukar Lokhande and area 1.62 Hector was allotted in the name of mother Devkabai. Revenue record was accordingly corrected.

9] After partition father of defendant No.1 to 3 and husband of defendant No.4 i.e. Madhukar became the owner of agricultural land bearing Survey No.13/1 new Survey No.12/1 area 3.24 Hector at Thana and Smt. Devkabai and Mala Mahadeo Lokhande became joint owner of Gat No.13/2 new Gat No.12/2 area 1.62 Hector at Thana.

10] Thereafter, father of defendant No.1 to 3 died on 6.10.1992 leaving behind defendant No.1 to 3. After death of Madhukar, name of defendant No.1 to 4 have been substituted in revenue record Gat No.13 new no.12/1. As such defendant No.1 to 4 became absolute owner of said land and plaintiff have no right title and interest in said land as they already relinquished their share.

11] Mother of plaintiff no.4 land 5 Devkabai died on 3.9.2005. After death of Devkabai, name of plaintiff no.1 to 3 substituted in name of their mother. Ramabai and defendant No.4 as legal heir of Late Devkabai came in Gat No.12/2. Plaintiff in collusion with Talathi changed entire revenue record. Therefore, names of daughter of Late Devkabai and above people shows in Revenue record. In fact Shanti, Kaushlya, Subhadra relinquished their share in 1987.

12] Late Mahadeo Lokhande was owned and possessed ancestral house at Thana that house was not partitioned. Plaintiff did not include in plaint, therefore suit is bad for partial partition.

13] Plaintiffs are aware about family arrangement made by Madhukar and Plaintiff No.5. Mutation is carried on in favour of defendant No.1 to 4. They had not objected the entry in life time of Madhukar. Therefore, suit is barred by limitation.

14] Names of Shanti, Kaushlya and Subhadra is shown in Gat No.12/2, therefore, they are not made party to the suit, therefore, suit is bad for none joinder of necessary party. Plaintiff filed the suit with malafide intention to extract money from defendants. They deliberately suppressed material facts from the court. Present suit is filed with intention to harass defendants, hence, liable to be dismissed.

15] Defendant No.5 to 11 denied the averments in vague manner. They admitted death of Dashrath and daughters Subhadra, Shanti, Kaushlya. They submitted that present defendants are co-owner having share in suit property. Therefore, they pray for their share.

16] From rival pleadings of the parties and documents on record, my learned predecessor framed Issues at Exh.20. I have given my findings thereon with reasons are as under :-

SR. NO	ISSUES	FINDINGS
1	Whether the suit properties field Gat No.12/2, area 3.24 HR and field Gat No.12/3, area 1.61 HR situated at village Thana, Tah. Umrer, District Nagpur are the joint Hindu Family properties of plaintiffs and defendants ?	<b>Affirmative</b>
2	Whether plaintiffs are entitled for partition and separate possession of their shares in the suit properties as prayed ? If Yes, What are the shares of plaintiffs and defendants ?	<b>Negative</b>
3	Whether the plaintiffs prove that partition deed dated 25.5.2009 is sham, bogus and void-ab-initio ?	<b>Affirmative</b>
4	Whether plaintiffs are entitled for decree of declaration ?	<b>Negative</b>
5	Whether plaintiffs are entitled for enquiry into mesne profits ?	<b>Negative</b>
6	Whether suit is barred by limitation ?	<b>Negative</b>
7	Whether suit is bad for partial partition ?	<b>Affirmative</b>
8	Whether suit is bad for non joinder of necessary parties ?	<b>Negative</b>
9	Do defendants prove that the plaintiffs have already relinquished their rights in land S.No.12/1 and therefore, they have no right, title and interest in this property ?	<b>Negative</b>
10	Do defendants prove that Smt. Shanti Kamble, Smt. Kausalya Kamble and Smt. Subhadra Kamble have relinquished their rights in Gat No.12/2 in the year 1987 ?	<b>Negative</b>
11	What Order and Decree ?	<b>Suit is dismissed</b>

### REASONS

17] In order to prove the suit, plaintiff No.5 examined himself at Exh.42 and relied on Exh.43 to 46 - 7/12 extract, Exh.47 to

Exh.48 Extract 8-A extract, Ferfar at Exh.49, Notice at Exh.50, envelope Exh.51, 53. Postal acknowledgment at Exh.54, Patwari Map Exh.55,

18] Defendant No.1 examined at Exh.64 and relied on Ferfar Exh.65 to Exh.67. 7/12 extract of Gat No.13/1 on Exh.68 to 69, 7/12 extract of Gat No.13/2 Exh.70, Tax receipt of house Exh.71.

**AS TO ISSUE NO.1 :-**

19] It is evidence of plaintiff that suit property was owned by Late Mahadeo. That partition was taken place among Dashrath and his son Mahadeo and Ramdas. Other sister relinquished their share from suit property. In support of his oral evidence, she relied on Exh.65, 66, 67, 68 . From the contents of that documents, it is clear that suit property was ancestral property of plaintiffs and defendants. Defendant in rebuttal deposed that partition was taken place but no documents filed on record to show that partition was taken place during life time of all co-owner. Therefore, I answer Issue No.1 in Affirmative.

**AS TO ISSUE NO.3 :-**

20] It is evidence of plaintiff that he found in Patwari record that partition of Gat No.12/1 was taken place on 25.5.2009. He further deposed that Ramabai died on 2000, Shanta Sukhdeo

Kamble died in 1998, Kaushlyabai died on 9.4.2000 and Subhadrabai Kamble died on 20.10.2014. From document Exh.67 it is shown that partition was taken place on 25.6.2009 among Subhadrabai, Kaushlyabai and Ramabai. Death of Kaushlyabai, Ramabai, Subhadrabai is not disputed by defendant. In cross examination nothing came on record to shatter her evidence. Therefore, it is highly improbable that partition was taken place among all legal heir of late Madhukar Lokhande. Hence, I answer Issue No.3 in Affirmative.

**AS TO ISSUE NO.7** :-

21] It is evidence of defendants that apart from other agricultural field Late Mahadeo had one ancestral house. Plaintiff did not include that house in suit in plaint. Therefore, suit is bad for partial partition. Plaintiff in her cross examination at page No.7 para no.3 admitted that apart from ancestral field there was ancestral house of Late Mahadeo but she did not include in the plaint.

22] Learned counsel for defendant argued that suit is bad for partial partition. In support of his argument, he relied on **Govinda .vrs. Dadarao reported in 2004 Vol. IV MH LJ page no.653**. I have gone through the Judgment of Hon'ble Court. With due respect, law laid down is applicable to the present facts of the case. Learned Pongde argued that sister died in 2012 therefore partition is sham.

He rightly pointed out that entire record is manipulated. He argued that ancestral property is admitted in para no 3 of the written statement. He argued that notice to produce partition had given but did not produce the partition deed. As per Exh.64 separate possession was not there. He rightly argued that no relinquishment and partition deed on record. He prayed for suit may be decreed.

23) Learned counsel Mr. Mandawkar argued that Dashrath was grandfather and after him no partition was taken place of suit property. There should be legal partition. Sister died prior to 2009. Mutation without supporting document is no value. He argued that it is choice of the parties which property they want to join in suit. Argument is not acceptable, because it settled law that suit for partition should include whole property, partial partition is not legal. He placed his reliance on Dhanamm's case. With due respect, Law is not applicable here because in Dhanamm's case property was proved to be joint family property. In this case, suit property is ancestral one.

24] Learned counsel for plaintiffs relied on **S. Satnam .vrs. Surendra reported in 2009 Vol. IV MHLJ page no.6**. Facts of that case and this case are different. Hence, with due respect law laid down is not applicable here.

25] Plaintiff did not add ancestral house in the plaint, therefore, suit is bad for partial partition. Hence, I answer Issue No.7 in Affirmative.

**AS TO ISSUE NO.2,4,5** :-

26] All point are interconnected and for brevity of Judgment i took for discussion under common headings.

It is evidence of plaintiff that suit property is ancestral property of Late Madhukar, therefore, they have  $\frac{1}{4}$  share in suit property. It is proved that suit property is ancestral property of Late Mahadeo. I have already held that suit is bad of partial partition, therefore, plaintiff are not entitled for relief of partition, declaration and mesne profit. Hence, I answer Issues No.2,4,5 in Negative.

**AS TO ISSUE NO.6** :-

27] It is averred by defendants that suit is barred by limitation. This is suit for partition, therefore, law of limitation is not strictly applicable here. There is no evidence that defendant ousted plaintiffs from suit property. Therefore, being lack of evidence, I answer Issue No.6 in Negative.

**AS TO ISSUE NO.8** :-

28] It is aver by defendant No.1 to 4 that original parties died already their legal heirs are alive. They are proper and necessary parties, therefore, suit is bad for non joinder of necessary party. To support their version, there is no evidence to show that who are necessary party of original owner.

Furthermore, there is no reference in affidavit to that respect. Hence, I answer Issue No.8 in Negative.

**AS TO ISSUE NO.9 & 10** :-

29] The burden was on plaintiff to prove that defendants already relinquished their share from Survey No.12/1 and Late Shanti, Kaushlyabai and Subhdrabai from Survey No.12/1 in 1987. As per section 17 of Indian Registration Act, 1908 relinquishment of share in immovable property required to be effected by way of registered document. Defendant did not file and prove any such document, therefore, I answer Issue No.9 and 10 in Negative.

**AS TO ISSUE NO.11** :-

30] In view of the answer to Issues No.1 Negative, plaintiffs failed to prove their case on principle of preponderance of probability. Hence, I pass following order :-

**ORDER**

- 1] Suit is dismissed.
- 2] No order as to costs.
- 3] Decree be drawn up accordingly.
- 4] Judgment dictated and pronounced in open court.

Place :- Umrer  
Date :- 13.12.2018

(A.V. Pandit)  
Jt. Civil Judge,(Jr.Dn.),  
Umrer.

**CERTIFICATE**

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

<i>Case argued on</i>	:	19.11.2018
<i>Judgment dictated on</i>	:	13.12.2018
<i>Transcription ready on</i>	:	13.12.2018
<i>Judgment checked and signed on</i>	:	13.12.2018

**Name of Stenographer : Mrs. S. D. Karemore**

/home/ubuntu/Deshmukh, Pandit Saheb/Jt.Civil Court /Civil  
Matters/Judgments/English Judgments/December, 18/