


CNR No.MHNG130010902023 	Filed on	:	11/01/2023
	Registered on	:	11/01/2023
	Decided on	:	16/05/2026
	Duration	:	Yrs, Mon, Days

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, RAMTEK.
(Presided over by Shri. S.M. Sarode)

Special Civil Suit No. 154/2023
(Old Spl. No. 92/2023)

Exhibit No.135

Mrs. Mandabai Rangrao Thakre (Married name)
Ms. Mandabai Ramrao Taywade (Maiden name)
Age: Approx. 67 years, Occupation: Housewife
Address: Bajeria, Behind Ganesh Temple,
Empress Mill Chawl, Quarter No. 14,
Nagpur - 440018

.. Plaintiff

...Versus...

1. Mr. Ramrao Sadashiv Taywade
Age: 80 years, Occupation: None
R/o Nehru Near, Behind Bus Stop,
Near Hanuman Temple, Parseoni,
Taluka Parseoni, Dist.-Nagpur 441107
2. Mr. Mohan Ramrao Taywade
Age: 49 years, Occupation: Private
R/o Nehru Near, Behind Bus Stop,
Near Hanuman Temple, Parseoni,
Taluka Parseoni, Dist.-Nagpur 441107
3. Mr. Hansraj Ramrao Taywade
Age: Adult, Occupation: Private
R/o Plot No. 21, Baba Farid Nagar,
Zingabai Takli, Chhindwara Road,
Nagpur - 440030
4. Mrs. Satyaphula Shalikram Gawande

Age: Adult, Occupation: Housewife
R/o Dhulse Layout, Samaj Mandir,
Mahadula, District Nagpur 441111.

5. Mrs. Chandrakala Ramdasji Hud (Deceased)
through Legal Heirs:

5-A. Mr. Hemant Ramdasji Hud
Age: 31 years, Occupation: Service

5-B: Mrs. Priya Gaurav Khadse
Age: 28 years, Occupation: Housewife

R/o Both : Ekta Nagar, Gittikhadan,
Gorewada Road, Nagpur

6. Mrs. Shobha Prabhakar Rao Bhoyar
Age: Adult, Occupation: Housewife
R/o Mondha, Taluka Hingna,
District Nagpur - 441110

7. Late Mr. Kevalram Ramrao Taywade
through Legal Heirs:

7-1: Maya Kevalram Taywade ,
Age-Adult, Occupation: Housewife

7-2: Tushar Kevalram Taywade
Age-Adult, Occupation: Private

7-3: Nandini Kevalram Taywade
Age-Adult, Occupation: None

Address (7-1 to 7-3): Ganpati Nagar, Opposite Waheguru Honda
Service Center, In front of Shankar Temple, Nagpur - 440030

8. Mr. Pankaj Mohan Taywade
Age: 17 years, Occupation: Student
(Minor, under the guardianship of
Father: Mr. Mohan Ramrao Taywade,
Age: 49 years, Occupation: Private)
R/o Nehru Nagar, Behind Bus Stop,
Near Hanuman Temple, Parseoni,

Taluka Parseoni, District Nagpur - 441107

9. Mr. Rohit Mohan Taywade
Age: 18 years, Occupation: Student
R/o Nehru Nagar, Behind Bus Stop,
Near Hanuman Temple, Parseoni,
Taluka Parseoni, District Nagpur - 441107
10. Mrs. Manorama Shankarraoji Chavare
Age: Adult, Occupation: Private
R/o Khaparkheda Vasti, Taluka Saoner,
District Nagpur

.. Defendants

**SUIT FOR DECLARATION, CANCELLATION OF GIFT DEEDS, PARTITION
AND SEPARATE POSSESSION.**

Learned Advocate Shri. P.B. Awachat for the plaintiff.
Learned Advocate Shri. M.D. Paliwal for defendant Nos.1,2,8 and 9.
Learned Advocate Shri. A.M. Kashikar for defendant No.3.
Ex-parte against defendant no.4, 6, 7 and 10.

J U D G M E N T

(Delivered on this 16th day of May, 2026)

In short, the plaintiff case is that-

That, the defendant no.1 is the father of plaintiff. Defendant nos. 2 and 3 are plaintiff's brothers. The defendant nos. 4 to 6 are plaintiff's sister's 6 pts. The defendant no.7 was plaintiff's real brother. The defendant no.7 was survived by wife and children. The defendant no.8 and 9 are sons of defendant no.2. Defendant no.10 is the purchaser of one of the suit property executed by defendant no.3 in respect of suit property survey no.38/2.

02. It is contended that, some of the suit properties are ancestral properties and some of the suit properties are purchased out of the joint

family property. It is contended that, ancestral suit properties were originally owned by grand father of the plaintiff namely Sadashiv. After the death of Sadashiv, it was devolved upon his two sons namely Ramrao and Haribhau. Thereafter, Ramrao and Haribhau partition the properties and thereafter, following suit properties had been fallen in the share of defendant no.1-

03. The Suit properties situated at Village-Khandara (Mariambee), Tahsil-Parsoni are as follows-

- a. Survey no.38/1 an area admeasuring 2.42HR.
- b. Survey no.38/2 an area admeasuring 1.7HR.
- c. Survey no.82 an area admeasuring 1.81HR.
- d. Survey no.111 an area admeasuring 00.16HR.
- e. Survey no. 43 an area admeasuring 1.27HR.
- f. House property no.119 an area admeasuring 1768 Sq.fts.

04. The Suit property situated at village-Zingabai Takli, Tahsil & District-Nagpur as follows-

- a. Plot No.21, House No.612/A/21 situated at survey no.92, ward No.61, an area admeasuring 1800 sq.fts.

05. It is contended that, suit properties namely survey no.38/1, survey no. 38/2, survey no. 82, survey no.111 and survey no.43 are ancestral properties. Whereas, both house properties bearing No.119 and plot No.21 were purchased out of funds of joint family property.

06. It is case of the plaintiff that the plaintiff has a right in the suit properties. However, defendant no.1 has denied her right in the suit properties and in order to deprive plaintiff from the suit properties, the

defendant no.1 illegally partitioned the some of the suit properties between defendant nos.2 and 3 and illegally executed gift-deeds in respect of some of the suit properties in favour of defendant nos. 8, 9 and 3 and others. Thereafter, defendant no.3 further alienated suit property bearing no.38/2 in favour of defendant no.10. Therefore, under these circumstances, the plaintiff is constrained to file present suit for seeking partition and separate possession of her share against the defendants.

07. On the other hand, defendant no.1,2,8 and 9 have filed the written statement at Exh.9. The defendants have specifically admitted allegations regarding partition deed in respect of suit property survey no.38/1 and 38/2 and execution of gift-deeds in favour of defendant nos. 8, 9 pertaining to the survey no.82 and in favour of defendant no.3 pertaining to the plot no.21. However, defendants have denied that, suit properties are ancestral properties. The defendants contended that suit properties were self acquired properties of defendant no.1 and he purchased by selling grains. Therefore, the plaintiff has no right in the suit properties.

08. Whereas, defendant no.3 has filed his written statement at Exh.40. The defendant no.3 has admitted claim of the plaintiff.

09. Whereas, suit has been proceeded ex-parte against defendant no. 4, 6, 7 and 10.

10. Heard learned counsel appearing for the plaintiff and defendants. Following issues have been framed below Exh.27 to decide present suit on the merit. I have recorded my findings along with reason in respect of each issue as follows-

<u>Sr.No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether the plaintiff proves that, suit properties bearing survey no.38/1, 38/2, 82, 111 and 43 and house property bearing no.119 are ancestral properties ?	In the affirmative.
2.	Whether the plaintiff proves that, suit property bearing plot no.21 situated in the survey no.92 was purchased out of joint nucleus/income of joint family ?	In the affirmative.
3.	Whether the plaintiff proves that, the gift-deed dated 6/07/2021 is illegal and not binding upon her?	Partly affirmative.
4.	Whether the plaintiff proves that, the gift-deed dated 21/07/2020 is illegal and not binding upon her ?	Partly affirmative.
5.	Whether the plaintiff proves that, the transaction being effected in respect of suit property bearing no.38/2 by defendant no.3 in favour of defendant no.10 is illegal not binding upon her ?	Partly affirmative.
6.	Whether the plaintiff is entitled for partition and separate possession of her share ?	In the affirmative.
7.	If, yes, what are shares of both parties ?	1/8th share for each coparcener.
8.	Whether the plaintiff is entitled for the mesne profits ?	In the affirmative.
9.	Whether the plaintiff is entitled for relief of declaration as prayed by her ?	In the affirmative to the extent of her share
10.	Whether the plaintiff is entitled for relief of perpetual injunction as prayed by her ?	In the affirmative.
11.	What order and decree ?	Suit is decreed with costs.

REASONS

11. In order to substantiate the case, the plaintiff has examined her constituted power of attorney namely Rangrao Thakare (PW1) at Exh.30.

The plaintiff has further examined witness namely Suryabhan Mahalle (PW2) at Exh.100 and Dnyaneshwar Urkude (PW3) at Exh.104. Thereafter, the plaintiff closed her oral evidence by filing pursis at Exh.106.

12. The plaintiff has produced on record the original Power of Attorney at Exh.47 and revenue documents at Exh.48 to 96. The plaintiff has also produced certified copy of notice at Exh.125 and certified copy of plaint pertaining to Special Civil Suit No.702/2002 at Exh.126.

13. On the other hand, defendant Nos.1, 2, 8 and 9 have examined defendant No.2 namely Mohan Taywade (DW1) at Exh.111. Defendant Nos.1, 2, 8 and 9 thereafter closed their evidence by filing pursis at Exh.122. The said defendants have further produced Index-II at Exh.112, record of Adhikar Panji at Exh.113, certified copy of Day Book at Exh.114 and certified copy of Gift Deed at Exh.115.

14. Defendant No.3 has examined himself as DW2 at Exh.121. Thereafter, defendant No.3 closed his evidence by filing pursis at Exh.127.

As to Issue Nos.1 and 2 :

15. Both these issues are interconnected and, therefore, they are being taken up together for the purpose of common discussion.

16. It is a settled position of law that the plaintiff is required to prove her case by leading cogent and reliable evidence on her own behalf.

17. In order to establish that the suit properties bearing Survey Nos.38/1, 38/2, 82, 111 and 43, as well as house property bearing No.119, are ancestral properties, the plaintiff has produced documentary evidence on record.

18. The old revenue records placed on record at Exh.59, 60, 64, 74, 91, 92, 93, 95 and 113 clearly demonstrate that the suit properties bearing Survey Nos.38/1, 38/2, 82, 111 and 43 are ancestral properties. All these revenue entries indicate the manner in which the said suit properties came to be recorded in the name of defendant No.1. It is significant to note that defendant No.1 has not produced any documentary evidence to establish that the aforesaid suit properties were purchased from his self-earned income or that the same are his self-acquired properties. On the contrary, the defendants' witness namely Mohan (DW1) has admitted that he possesses no evidence to show that his father was carrying on any business of purchase and sale of grains.

19. Furthermore, it is pertinent to note that certified copy of notice dated 12/08/2002 at Exh.125, issued by Advocate S.D. Deshpandey under the instructions of defendant No.1 prior to filing of Special Civil Suit No.702/2002 (Exh.126), contains specific recitals to the effect that all the suit properties, including the house situated at Khandala, are ancestral properties. This piece of evidence also lends support to the case of the plaintiff.

20. Insofar as the house properties are concerned, it is material to note that the defendants' witness namely Mohan (DW1), in his cross-examination, has admitted that suit property Plot No.21 was purchased from the income of the joint family.

21. The defendants' witness namely Mohan (DW1) has further admitted that he has been residing in house property bearing No.119 situated at village Khandala since his birth and that he has no proof to

establish that the said property was purchased by his father from his independent income.

22. The aforesaid evidence clearly establishes that house property bearing No.119 situated at village Khandala is an ancestral property and that Plot No.21 situated at Zingabai Takli was acquired from the joint family income. Hence, I answer both these issues in the affirmative.

As to Issue Nos.3 to 5 :

23. All these issues are interconnected with each other and, therefore, they are taken up together for common discussion.

24. In view of the findings recorded on Issue Nos.1 and 2, it stands proved that the suit properties are ancestral and joint family properties. It is significant to note that, in view of Section 6 of the Hindu Succession Act, 1956, the plaintiff is a coparcener and is entitled to an equal share and right in the ancestral/coparcenary properties.

25. It has come on record that defendant No.1 partitioned suit property bearing Survey Nos.38/1 and 38/2 in the year 2005 without allotting any share to the plaintiff. It is needless to state that the alleged partition was effected after 20/12/2004.

26. Admittedly, no share was allotted to the plaintiff in the said partition and, therefore, such partition is not binding upon her legal rights.

27. It is also needless to mention that the Gift Deeds executed by defendant No.1 in favour of defendant Nos.8 and 9 and defendant No.3 are not binding upon the legal rights and share of the plaintiff. Similarly, the transaction effected by defendant No.3 in favour of defendant No.10 in

respect of suit property bearing Survey No.38/2 is also not binding upon the rights of the plaintiff.

28. However, it is to be noted that defendant No.1 is admittedly a coparcener and, therefore, any transaction effected by him would be valid to the extent of his undivided share in the suit properties. Consequently, the said transactions cannot be termed as wholly illegal, but are valid to the extent of the share of defendant No.1. Similarly, the transaction effected by defendant No.3 in favour of defendant No.10 would also be valid to the extent of the share of defendant No.3. Hence, I answer these issues partly in the affirmative

As to Issue Nos.6 and 7 :

29. In view of the findings recorded on Issue Nos.1 and 2, it stands proved that the suit properties are ancestral properties. It is further established that no legal partition had been effected amongst all the coparceners in respect of the suit properties.

30. Therefore, all the coparceners are entitled to equal share in the suit properties.

31. Learned Advocate appearing for defendant Nos.1, 2, 8 and 9 argued that the plaintiff is not entitled to seek partition and separate possession of her share during the lifetime of her father i.e. defendant No.1, as the suit properties became separate properties after partition with his brother. While considering the said contention, it is required to be noted that had defendant No.1 been the sole coparcener, the suit properties would have remained his separate properties. However, after the birth of the plaintiff and defendant Nos.2, 3 and 4 to 6, the suit properties acquired the character

of ancestral/coparcenary properties for the family of defendant No.1.

32. Learned Advocate for defendant Nos.1, 2, 8 and 9 further contended that since the plaintiff was born prior to the commencement of the Hindu Succession Act, 1956, she cannot be treated as a coparcener. While considering the said submission, it is pertinent to note that in the judgment of the Hon'ble Supreme Court in the case of Vineeta Sharma Vs. Rakesh Sharma reported in AIR 2020 SC 3717, it has been categorically held that daughters are entitled to the status of coparceners irrespective of their date of birth. Hence, the said contention is devoid of merit and cannot be accepted.

33. Considering the genealogy of the family of the plaintiff, namely that defendant No.1 is the father of the plaintiff, defendant Nos.2 and 3 are her brothers, defendant Nos.4 to 6 are her sisters and deceased defendant No.7 namely Kewalram was her real brother, I hold that the plaintiff, defendant Nos.1 to 6 and deceased defendant No.7 are each entitled to 1/8th share in the suit properties and are also entitled to partition and separate possession of their respective shares. Hence, I answer both these issues in the affirmative.

As to Issue No.8 :

34. The plaintiff has claimed future mesne profits. Therefore, an inquiry under Order XX Rule 12(1)(c) of the Code of Civil Procedure is required to be conducted and the plaintiff is entitled to future mesne profits from the date of institution of the suit till delivery of possession of the suit land. Hence, I answer this issue in the affirmative.

As to Issue Nos.9 and 10 :

35. The plaintiff is entitled to the relief of declaration that she has share in the suit properties and that the Gift Deeds and Sale Deed executed by defendant Nos.1 and 3 are not binding upon her share.

36. The partition effected by defendant No.1 in favour of defendant Nos.2 and 3 in respect of suit properties bearing Survey Nos.38/1 and 38/2 is illegal, as the same was effected in the absence of the plaintiff and without allotting her lawful share.

37. Considering the nature of the suit, it is necessary to grant perpetual injunction against the defendants thereby restraining them from alienating the suit properties in favour of third parties in any manner whatsoever until partition is effected by metes and bounds. Hence, I answer Issue No.9 partly in the affirmative and Issue No.10 in the affirmative.

As to Issue No.11 :

38. In view of my findings recorded on Issue Nos.1 to 10, the suit deserves to be decreed with costs. Hence, I proceed to pass the following order :-

ORDER

1. The suit is hereby decreed with costs.
2. It is hereby declared that the plaintiff and defendant Nos.1 to 7 are entitled to 1/8th share each in the suit properties.

3. It is hereby declared that the Gift Deeds and Sale Deed executed by defendant Nos.1 and 3 respectively are not binding upon the share and legal rights of the plaintiff.
4. It is hereby declared that the Gift Deeds executed by defendant No.1 in favour of defendant Nos.8 and 9 are valid only to the extent of his share i.e. 1/8th share.
5. It is hereby declared that the Sale Deed executed by defendant No.3 in favour of defendant No.10 pertaining to Survey No.38/2 is valid only to the extent of his share i.e. 1/8th share.
6. It is hereby declared that the partition effected by defendant No.1 in favour of defendant Nos.2 and 3 in respect of suit properties bearing Survey Nos.38/1 and 38/2 is illegal and not binding upon the plaintiff.
7. Defendant Nos.2 to 10 are hereby permanently restrained from alienating the suit properties in any manner whatsoever until partition is effected by metes and bounds, in accordance with Section 54 of the Code of Civil Procedure.
8. An inquiry under Order XX Rule 12(1)(c) of the Code of Civil Procedure be conducted for determination of future mesne profits.
9. The plaintiff shall be entitled to future mesne profits from the date of institution of the suit till delivery of possession of the suit land.

10. Partition of the agricultural suit properties situated at village Khandala, Tahsil Parseoni, District Nagpur, shall be effected equitably by the Collector or any Gazetted Officer subordinate to the Collector duly deputed in this behalf, in accordance with the declaration of shares made hereinabove and in conformity with the provisions of law relating to partition and separate possession of agricultural lands, and the respective parties shall be placed in possession of their respective shares accordingly.
11. The decree be transmitted to the Collector for compliance of the directions in accordance with Section 54 of the Code of Civil Procedure.
12. A Court Commissioner be appointed for effecting partition of house property bearing No.119 and Plot No.21 situated at Khandala and Zingabai Takli respectively, in accordance with the shares of the parties.
13. Preliminary decree be drawn accordingly.

Place : Ramtek
Date : 16/05/2026

(S.M. Sarode)
Civil Judge Senior Division,
Ramtek

Endorsement

Case argued on	:	16.05.2026
Judgment dictated on	:	16.05.2026
Transcription ready on	:	16.05.2026
Judgment checked and signed on	:	16.05.2026

CERTIFICATE

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

Name of Stenographer : R. J. Khobragade -Stenographer(Grade II)