

MHNG150001372011



Presented on : 02-03-2011

Registered on : 02-03-2011

Decided on : 17-04-2026

Duration : Y-15, M-01, D-15

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, HINGNA
DIST. NAGPUR**

(Presided over by Shri Vishal H. Khedkar)

R.C.S. No.: 17/2011

Exh. 127

- 1] **Gangubai wd/o Laxman Sakharkar (Died)**
through LRs....
 - 1-A] **Yogesh s/o Laxman Sakharkar,**
Age:-52 years, Occu.: -Private,
 - 1-B] **Premchand s/o Laxman Sakharkar,**
Age:- 49 years, Occu.: - Private,
 - 1-C] **Manda d/o Laxman Sakharkar,**
Age:- 47 years, Occu.: - Household Work,
All R/o:- Imamwada, Nagpur
- 2] **Smt. Ramabai w/o Charandas Wasnik,**
Age:- 70 years, Occu.: - Household Work,
R/o:- 22, High Court Society, Near SBI
Jaiprakash Nagar Branch, Nagpur
- 3] **Pandharinath s/o Chirkutrao Ramteke (Died)**
through LRs....
 - 3-A] **Vinay s/o Pandharinath Ramteke,**
Age:-37 years, Occu.: -Private,

- 3-B] Minal s/o Pandharinath Ramteke,**
Age:- 34 years, Occu.:- Private,
- 3-C] Abhijit s/o Pandharinath Ramteke,**
Age:- 31 years, Occu.:- Student,
3-a to 3-c R/o:- 56, Dahipura Layout,
Untkhana, Nagpur.
- 4] Purushottam s/o Chirkutrao Ramteke (Died)**
through LRs....
- 4-A] Smt. Sarla wd/o Purushottam Ramteke,**
Age:-54 years, Occu.:-Household Work,
- 4-B] Varun s/o Purushottam Ramteke,**
Age:- 22 years, Occu.:- Student,
- 4-C] Palash s/o Purushottam Ramteke,**
Age:- 20 years, Occu.:- Student,
4-a to 4-c R/o:-Imamwada, Nagpur.
- 5] Siddharth s/o Chirkut Ramteke,**
Age:- 60 years, Occu.:- Private,
R/o:- Chandramani Nagar, Lane No.2/R,
Post-Bhagwan Nagar, Nagpur-27
- 6] Nandan s/o Chirkutrao Ramteke (Died)**
through LRs....
- 6-A] Prabha wd/o Nandan Ramteke,**
Age:-53 years, Occu.:-Household Work,
- 6-B] Himanshu s/o Nandan Ramteke,**
Age:- 25 years, Occu.:- Student,
- 6-C] Ku. Mansi d/o Nandan Ramteke,**
Age:- 22 years, Occu.:- Student,

6-a to 6-c R/o:-Chandramani Nagar, Nagpur.

- 7] **Smt. Nalini w/o Pradeep Umre,**
Age:- 53 years, Occu.: - Household work,
R/o:- Chandramani Nagar, Lane No. 2/R,
post-Bhagwan Nagar, Nagpur-27.
- 8A] **Smt. Pramila wd/o Shravan Ramteke,**
Age:- 62 years, Occu.: -Household Work,
- 9] **Amol s/o Shravan Ramteke,**
Age:- 37 years, Occu.: -Private,
Both 8-a & 9 R/o:- Imamwada Slum,
Jattarodi Chowk, Nagpur.

... Original Plaintiffs/
Defendants of counter-claim

Versus

- 1] **Damodar s/o Mahadeo Khobragade (Died)**
through LRs....
- 1-A] **Jayashree w/o Domaji Wankhede ,**
through LRs....
- 1-A-i] Dr. Swapnil s/o Domaji Wankhede,**
Age:-43 years, Occu.: -Doctor,
R/o:- Plot No.7, Santaji Society,
Manish Nagar, Nagpur.
- 1-A-ii] Montu d/o Domaji Wankhede,**
Age:-36 years, Occu.: -Doctor,
R/o:- Plot No.7, Santaji Society,
Manish Nagar, Nagpur.

- 1-B] Vijaya wd/o Pandharinath Ramteke (Died)**
Her legal heirs are already on record vide
Plaintiff No. 3-A to 3-C
- 1-C] Prashant s/o Damodar Khobragade (Died)**
through Lrs.....
- 1-C-i] Smt. Seema wd/o Prashant Khobragade**
Age:-55 years, Occu.: -Service,
- 1-C-ii] Ku. Pratiksha d/o Prashant Khobragade**
Age:-28 years, Occu.: -Student,
- 1-C-iii] Ku. Priyanka w/o narendra Jadhav**
Age:-32 years, Occu.: -Student,
R/o:- 56, Untkhana, Nagpur
- 1-D] Suhas s/o Damodar Khobragade**
Age:-55 years, Occu.: -Service,
- 1-E] Meenakshi wd/o Madhukar Gajbhiye,**
R/o:- C/o:- Saurav Chakravarty, D2 Building,
Flat No. 1005, Mahendra Antheia,
Pimpri-Nehru Nagar Road,
Pimpri, Pune-411018
- 1-F] Ku. Sadhana d/o Damodhar Khobragade(Abated)**
- 1-G] Chandrahas s/o Damodhar Khobragade, ,**
Age:-50 years, Occu.: -Service,
Both defe. 1F and 1G R/o:- 56, Untkhana,
Dahipura Layout, Nagpur.
- 2] Monohar s/o Mahadeo Khobragade,**
Age:-85 years, Occu.: -Retired,

R/o:- Building No.215/8451,
Yug Pravartak Housing Society,
Kannamwar Nagar-I, Vikroli(East),
Mumbai-400083

3] Wasudeo s/o Mahadeo Khobragade

Age:-75 years, Occu.: -Retired,
R/o:- Plot No. 79, Krushinarara
Progressive Society, Nagpur

4] Shraddhanand s/o Mahadeo Khobragade

Age:-72 years, Occu.: -Retired,
R/o:- Building No.412/5013,
Arambha co-op. Housing Society,
Tagore Nagar-7, Vikroli(East),
Mumbai-400083

... **Original Defendants/
Plaintiffs of counter-claim**

Claim : Suit for Partition and Separate possession

Counter Claim:- For Declaration and permanent injunction

Appearance:-

For original plaintiffs:- Ld. Adv. Mr. Ashish C. Wasnik

For original Deft. Nos. 2 to 4 :- Ld. Adv. Mrs. R. G. Nitaware

For Lrs of original deft. No. 1 :- Ld. Adv. Mrs. R. j. Gawai

Judgment

(Delivered on 17th of April, 2026)

This suit is instituted for partition and separate possession of the suit properties. In which, the defendants filed counter claim for declaration of title over the suit properties and also for injunction to restrain the original plaintiffs from causing obstruction to their possession as well as from alienating the suit properties.

The Original plaintiffs' claim in short is as follows:

02. The original plaintiffs contended that the deceased Mahadeo Khobragade had four sons and three daughters. Plaintiffs Nos. 1 and 2 are real sisters and married daughters of late Mahadeo Jago Khobragade. Plaintiff Nos. 3, 4, 5, 6, and 7 are legal representative of their deceased sister Vithabai, who died in the year 2006. Plaintiff Nos. 8 and 9 are legal representatives of Vithabai's deceased son Shravan, who died on 13.11.2004. Defendant Nos. 1 to 4 are real brothers of plaintiff Nos. 1 and 2 and late Vithabai. Late Mahadeo Khobragade died in the year 1988, intestate, living behind agricultural land having Survey No. 43 admeasuring 2.22 HR situated at Godhani (R) Tq. Hingna Dist. Nagpur and Survey No. 93 admeasuring 1.95 HR situated at Gumgaon Tq. Hingna Dist. Nagpur (Hereinafter referred as 'the suit properties' for short). The lands are dry crop agricultural lands recorded in names of the four brothers and the three sisters after death of Mahadeo

Khobragade. After the death of smt. Vithabai names of her LR's are recorded in place of her. The revenue authorities have recorded names of all the brothers and sisters being LR's of late Mahadeo. The defendants have filed appeal before the Sub-Divisional officer Nagpur, belatedly and claiming false and untenable grounds. The plaintiffs are contesting the matter before the authority. However, it is worthwhile to note that the heirship inquiry was made 20 years back and the defendants have filed appeal in the year 2009, with a malafide intention to further delay the plaintiffs, their due share in the suit properties. The plaintiffs have all along been demanding their share in the suit property from the defendants, whenever they had occasion to meet. However, they have been giving evasive replies assuring all along that their due share would be given to them in due course. Finally, plaintiffs issued legal notice demanding the separate share in the suit properties. The defendants have given untenable and false reply to the notice.

03. The plaintiffs further contended that the cause of action for the suit arose in the year 1988 when late Mahadeo Khobragade died and exists continuously thereafter. The plaintiffs did not file the suit earlier because the defendants had not denied their claim and cognizance of their right was already taken by the revenue authorities. The plaintiffs recently received the copy of application for condonation of delay in filing mutation appeal before the SDO and find that they are falsely trying to deny the legal rights of the plaintiffs. The plaintiffs

have therefore, issued legal notice to the defendants through their counsel on 25.11.2010 and demanded separate possession of their shares. The plaintiffs have given false and legally untenable reply on 16.12.2010. Hence, they are constrained to institute this suit for partition and separate possession of the suit properties.

04. Original defendants / the plaintiffs of counter-claim filed counter claim with their written statement at Exh. 11 and resisted the claim of plaintiffs. They admitted the relations of parties. They also admitted that late Mahadeo Khobragade had four sons and three daughters. They also admitted that Vithabai died in the year 2006 and she had five sons and one daughter. They also admitted that, her son Shri Shrawan pre-deceased her in the year 2004. They also admitted that Mahadeo Khobragade died in the year 1988. But they denied that Mahadeo Khobragade died intestate leaving behind him the suit properties. They further contended that the suit properties were originally dry crop land. They thereafter developed the said land and converted the said dry crop land into an irrigated land by spending huge amount. The original plaintiffs have illegally and unauthorisedly recorded their names in the record of right of the aforesaid land by providing false and frivolous information to the revenue authorities. When the original plaintiffs have recorded their names, at that time, the defendants were engaged in their job at different places and therefore, they could not take the objection to the mutation of the names of original

plaintiffs in the record of right of the aforesaid land. In fact, the aforesaid lands are absolutely and legally owned and possessed by the defendants after the death of their father late Mahadeo Khobragade.

05. They further contended that the contents regarding filing of appeal by the defendants before the Sub Divisional Officer, Nagpur for deleting the names of plaintiffs from the revenue record of the aforesaid land are the matter of record. They are the legal and absolute owners of the suit properties as per the arrangement deed made and executed by their father late Shri Mahadeo Khobragade on 20.07.1986 and as per the said arrangement deed, the late Shri Mahadevrao Khobragade has distributed his agricultural land i.e. the suit properties in between the defendants. The execution of arrangement deed by late Shri Mahadevrao Khobragade was well within the knowledge of the plaintiffs, but in spite of having knowledge of arrangement deed dated 20.07.1986 and by taking the undue advantage of residence of defendant at other places, the plaintiffs have illegally and unauthorisedly recorded their names in the record of right came to know to the defendants in the year 2009 and therefore, they immediately made an application to the revenue authorities for deleting the names of plaintiffs from the record of rights of the said land. However, the revenue authority has not taken any steps to delete the names of plaintiffs from the record of right of the aforesaid land and therefore, the defendants have filed the revenue appeal before

the Sub Divisional officer, Nagpur and the same is subjudice before the S.D.O., Nagpur. The original plaintiffs were well aware about the execution of Arrangement Deed dated 20.7.1986 by late Shri Mahadevrao Khobragade in respect of the aforesaid land and therefore, the plaintiffs never asked for any partition in the aforesaid agricultural land till the year 2010.

06. They further contended that the plaintiffs have illegally, dishonestly and malafidely issued a notice demanding the share in the suit properties by taking undue advantage of their names appeared in the revenue record of the suit land. The defendants have, therefore, replied the said notice by way of their reply notice dated 16.12.2010. By way of the said reply notice, the defendants have informed the plaintiffs that, the the suit properties are absolutely and legally owned and possessed by them and the plaintiffs have no right whatsoever in the said land and therefore, asked them to withdraw the notice immediately and unconditionally, but despite of receiving the said reply notice, the plaintiffs have filed the instant false and frivolous and baseless suit against the defendants without having any cause of action before this Court and therefore, it is liable to be dismissed.

07. They further contended that they are the legal and absolute owners of the suit properties. The suit properties are in their peaceful possession and occupation of the plaintiffs of

counter-claim and they are cultivating the same personally and paying the revenue taxes and other taxes to the concern revenue authorities regularly. The suit properties were self acquired properties of Mahadeo Khobragade. He was the legal and absolute owners of the suit a properties. During the lifetime, the late Mahadev Jagobaji Khobragade had made an arrangement of his properties by executing 'Watnipatra' (Arrangement Deed) on 20.07.1986. Mahadeo Khobragade had made an arrangement of the suit properties by executing the Arrangement Deed and as per the said Arrangement Deed dated 20.07.1986, he had partitioned the aforesaid properties in between his four sons i.e. original defendants. He had also mentioned in the said Arrangement Deed that, he does not want to give any share to his daughters as his daughters are happy in their respective matrimonial houses. As the per Arrangement Deed dated 20.7.1986, the late Mahadeo Khobragade had made it very clear that, the suit properties will be divided in between his sons only and accordingly they became the sole legal and absolute owners of the suit properties. The original plaintiffs have no right to claim any kind of share in the suit properties. Therefore, they are constrained to file this counter claim for declaration that they are the only legal and absolute owners of the suit properties and original plaintiffs are not entitled to partition of the suit properties. They are also constrained to make prayer of injunction to restrain the original plaintiffs from causing obstruction to their possession of the suit properties as well as restraining them from creating the third party interest in

the suit properties.

08. Original plaintiffs also filed their written statement counter claim at Exh. 18 and resisted the contents the counter claim and denied the execution of family arrangement / Watnipatra dated 20/07/1986.

09. During the pendency of suit, original plaintiff Nos. 1, 3, 4 and 6 died. Their LR's are taken on record. They continued their respective claim.

10. During the pendency of suit, original defendant No. 1 also died. His LRs are also taken on record. Out of them, legal representative Nos. 1-A(1), 1-A (2), 1-C (A), 1-C (B), 1-C (C), 1-D, 1-E and 1-G filed their written statement at Exh. 111 and admitted the entire claim of original plaintiffs. They contended that they want the suit properties to be equally distributed by giving 1/7th share to each of his 7 LR's.

11. LR's No. 1-B of original defendant No. 1 also died during the pendency of suit. But since her LR's are already on record as the original plaintiff Nos. 3-A to 3-C, they are not taken separately on record.

12. LRs No. 1-F is seen to be died from the death certificate annexed with list Exh. 101. Since no steps taken to bringing his LRs on record within stipulated time, the suit upto

her extend is automatically abated.

13. Heard Ld. Advocate Mr. Ashish C. Wasnik for original plaintiffs and Ld. Advocate Mrs. R. G. Nitnaware for original defendant Nos. 2 to 4. This Court also gone through the written notes of arguments (Exh. 125 and 126) filed by the both parties on record.

14. Following issues are framed by my learned predecessor at Exh. 20, to which I have given my findings with reasons given there below:

No.	Issues	Findings
1)	Does original plaintiffs prove that, they have share in suit properties?	..Yes.
2)	Does original defendants prove that, they became the absolute owners in view of the arrangement deed dated 20/07/1986 executed by deceased Madhav Jagobaji Khobragade?	..No.
3)	Whether original plaintiffs are entitled for partition and separate possession ?	..Yes.
4)	Whether original defendants / plaintiffs in counter-claim entitled for declaration ?	..No.
5)	Whether original defendants / plaintiffs in counter-claim are entitled for perpetual injunction?	..No.

6)	What order and decree?	The suit is decreed with costs and counter claim is dismissed with costs.
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Evidence adduced by parties:-

15. The plaintiffs in support of their claim filed the affidavit of examination in chief of plaintiff No. 4 of Purushottam s/o Chirkut Ramteke as PW-1 at Exh. 22. The plaintiff also filed affidavit of examination in chief of Shri Yogesh Laxman Sakharkar as PW-2 at Exh. 39. The plaintiffs also placed their reliance upon following documentary evidence:-

- i. The certified copy of 7/12 extract is at Exh. 34,
- ii. The certified copy of 7/12 extract is at Exh. 35,
- iii. Office copy of Notice is at Exh. 36 and thereafter, the plaintiffs closed their evidence by filing pursis at Exh. 40

16. Per contra, original defendants filed their affidavit of examination in chief of defendant No.3 of Wasudeo Mahadev Khobragade as DW-1 at Exh. 44. Defendants also filed affidavit of examination in chief of Waman Namdeorao Walke as DW-2. Defendants also examined Narendra Kevalram Tabhane, who is circle officer of Gumgaon Tq. Hingna Dist. Nagpur as DW-3. Defendants also placed their reliance upon following documentary evidence:-

- i. Office Copy of application dtd. 03/09/2010 to sub divisional officer for remove name Vithabai Ramteke and Ramabai Wasnik in 7/12 extract is at Exh.45,
- ii. Office copy of application dtd. 07/07/2010 to Sub Divisional Officer is at Exh. 46,
- iii. Reply of Notice is at Exh.47,
- iv. Certified copy of 7/12 extract is at Exh.48,
- v. Certified copy of Gav-Namuma 8-A is at Exh.49,
- vi. Certified copy of 7/12 extract is at Exh.50,
- vii. Certified copy of Extract of 8-A is at Exh.51,
- viii. Certified copies of Mutation entries are at Exh. 52 to 56,
- ix. Certified copy of Adhikar Abhilekh Panji is at Exh.57,
- x. Copy of letter to CJJD & JMFC, Hingna is at Exh.64,
- xi. Copy of letter to CJJD & JMFC, Hingna is at Exh.65,
- xii. Arrangement /Partition deed dtd. 20/07/1986 is at Exh.118 and thereafter, the defendants closed their evidence by filing pursis at Exh. 124.

17. Lrs of original defendant No. 1 failed to lead evidence so, the suit is proceeded without their evidence by order passed below Exh. 01 on 09/01/2026.

REASONS

Issue Nos. 1 to 3 :-

18. Since these issues are interlinked and based upon

the common evidence, these are taken together for discussion, in order to avoid repetition

19. These issues are related to right and interest of the parties in the suit properties, which are claimed through suit as well as counter-claim. Therefore, the fate of suit is based upon the finding of these issues.

20. In the suit for partition, the contentions regarding relations of parties are having immense value. In the present suit, from the pleading of both parties, it seems that the relations of parties are not in dispute. It is not in dispute that Mahadeo Khobragade is common propositus of the family of plaintiffs and defendants. It is not in dispute that the original plaintiff Nos. 1 and 2 and also deceased Vithabai are real sisters and married daughters of deceased Mahadeo Khobragade. It is also not in dispute that plaintiff Nos. 3 to 9 are the legal representatives of deceased Vithabai, who was the sister of plaintiff Nos. 1 and 2 and daughter of deceased Mahadeo Khobragade. It is also not in dispute that original defendant Nos. 1 to 4 are the son of deceased Mahadeo Khobragade and brother of plaintiff Nos. 1, 2 and also of deceased Vithabai. Section 58 of the Indian Evidence Act, 1872, states that facts admitted by parties or their agents before or during a hearing do not require proof. Therefore, in the present suit, there is no need to discuss more about the relations of parties, which are admitted by parties.

21. In the suit for partition, the contention of parties regarding the nature of suit properties are so important to adjudicate the real controversy between the parties. In the present suit, it is also not in dispute that the common propositus of both parties i.e. deceased Mahadeo Khobragate was the original owner of suit properties. The original plaintiffs are not came with the case that the suit properties are of ancestral or coparcenary nature. More-over, they have also not brought any evidence about the same. Per contra, original defendants pleaded that the suit properties are self-acquired properties of deceased Mahadeo Khobragade. Purushottam (PW-1) deposed in his cross-examination that the suit properties were self-acquired properties of deceased Mahadeo Khobragade. Further, Yogesh (PW-2) also admitted in his cross-examination that the suit properties were owned by deceased Mahadeo Khobragade. The above admission from the plaintiffs' witnesses support the contentions of defendants regarding self-acquired properties of deceased Mahadeo Khobragade. Therefore, it becomes clear that the suit properties were self-acquired properties of deceased Mahadeo Khobragade.

22. It is contentions of original defendants that the common propositus Mahadeo Khobragade has executed '*the arrangement deed*'/ '*Watnipratra*' dated 20/07/1986 in their favour during his lifetime so, they became the absolute owner of suit property and so, the plaintiffs have no right to claim partition in the suit properties.

23. Admittedly said '*the arrangement deed*'/'*Watnipatra*' is unregistered document. Therefore, first of all it is necessary see that Whether '*the arrangement deed*' dated 20/07/1986, which is also referred as '*Watnipatra*' (partition deed) at some places in written statement/counter claim of defendants is lawful and admissible document to prove the partition or distribution of properties among original defendants?. It is core question which is required to be decided here.

24. Before proceeding further, it needs to mention here that there is difference between the arrangement deed and partition deed i.e. *Watnipatra*. A memorandum of family arrangement only records that a family settlement has taken place. If the arrangement was oral, acted upon, and accepted by all members, a written memorandum is treated as a *record of a past transaction*. Such a memorandum does not require compulsory registration under Section 17 of the Registration Act. It serves as evidence of the family settlement but does not, by itself, transfer property. If it is creating new right then, the memorandum of family arrangement also requires registration. A partition deed, on the other hand, is an *instrument of title*. If co-owners divide immovable property through a written deed, that deed creates and defines rights in the property. Under Section 17(1)(b) of the Registration Act, 1908, and Maharashtra Stamp Act, such a deed must be registered. An unregistered

partition deed is inadmissible as evidence and cannot be relied upon to prove title.

25. In the present suit, the original defendants placed their reliance upon deed (Exh. 118) by alleging that it is family arrangement. However, upon perusal of said deed, said deed is seen to be referred as partition deed from its title as well as its contents. This apart, as discussed earlier, the suit properties are self-acquired properties of deceased Mahadeo Khobragade and same fact is also seen to be pleaded by the original defendants. If it was position, then during his life time, there is no share of his sons i.e. original defendants. Therefore, the question of formal acceptance of share of the son by executing document of family arrangement does not arise. Therefore, the apparently said document is partition deed.

26. Now it is necessary to see that whether partition deed (Exh. 118) is admissible in evidence or not ?. The partition deed(Exh. 118) is unregistered instrument. As discussed earlier, the suit properties are self-acquired properties of deceased Mahadeo Khobragade and same fact is also pleaded by the original defendants. As discussed earlier, the suit properties are not seen to be ancestral and coparcenary properties. Therefore, the Section 6 of Hindu Succession Act does not come into picture. Therefore, neither the original plaintiffs nor original defendants have birth right in the suit properties. The such situation is governed by Section 8 read with schedule-I of Hindu

Succession Act. Therefore, during life time of deceased Mahadeo Khobragade, there is no right of his sons or daughters in his self-acquired property. But it is seen from the partition deed (Exh. 118), the executor has given his entire properties, without keeping any share, to his sons. It is also seen from said deed, the specific shares are given to the defendants by dividing the suit properties by metes and bounds (By actually dividing the suit properties in separate parts). Therefore, the document of partition deed (Exh. 118) is seen to be created the new rights in favour of original defendants by extinguishing the right of their father in his self-acquired property.

27. Ld. Advocate for original defendant Nos. 2 to 4 argued that the alleged partition is of the nature of family arrangement so, no registration is required for such type of document. She further argued that the deed (Exh. 118) was impounded and defendants have already paid required stamp duty so it is admissible in evidence. She further argued that the defendants have examined the witness of said deed and also proved its contents. She further argued that said deed (Exh. 118) is 30 years old document and so, its execution has presumptive value as per Section 90 of Indian Evidence Act. In support of said submission, she placed her reliance upon the cases of *Velaiah V/s. P. R. Ramasamy* (2002)2SCC 757) and *P Anjanappa (D) by Lrs V/s. A. P. Nanjundappa and ors* (2025 SCC Online 2358).

28. Per contra, Ld. Advocate for original plaintiffs argued that said deed (Exh. 108) is creating new right in favour of plaintiffs. He further argued that it is not admissible and he has also raised objection at the marking it as exhibit number before Court Commissioner and it was also recorded. He further argued that mere marking exhibit to document does not make inadmissible document as admissible one. He further argued that since said deed is not admissible in evidence, the oral evidence which was led to prove its contents is also not admissible. He further argued that since said deed is not admissible, the theory of earlier partition is not proved so, the suit properties are still available for partition and so, the plaintiffs are entitled to their share in the suit properties. In support of said submission, he placed his reliance upon the case of *Siromani and anr V/s. Hemkumar and ors* (AIR 1968 SC 1299), *Smt. Indu V/s. Narsingh Das and ors* (2013 Raj 112), *A.C. Lakshmi pathy And Another vs A.M. Chakrapani Reddiar and ors* (AIR 2001 Mad. 135), *Santosh Anant Raut V/s. Pukharaj Chogmal Rathod and anr* (2010 (4) Mh. L. J. 22), *Ganduri Koteswaramma and anr V/s. Chakiri Yanadi and anr* (2012 (3) Civil LJ 504) and *Leelabai Dagduba Hingne and ors V/s. Bhikabai Shriram Pakhare* (2014 (4) Mh. L. J. 312).

29. Before proceeding further, it needs to see that whether the objection raised by original plaintiffs about admissibility of partition deed (Exh. 118) is tenable at this stage or not?. The document of partition deed (Exh. 108) has been

exhibited in the evidence of Waman (DW-2) which was recorded by appointing Court Commissioner. It is seen from said evidence that at the time of recording of his evidence, the original plaintiffs have taken objection for marking it as exhibit number. But it was not dealt at that time. But merely marking of exhibit number to a document by Court commissioner, does not cure its admissibility.

30. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as an exhibit, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. Therefore, the objection as to admissibility is permissible to raise at this stage also.

31. As discussed earlier, it is seen from the partition deed (Exh. 118), the executor has given his entire properties to his sons by dividing them by metes and bounds (By actually dividing the suit properties in separate parts). Therefore, the document of partition deed (Exh. 118) is creating the new rights in favour of original defendants by extinguishing the right of their father in his self-acquired property.

32. In the case of *Velaiah V/s. P. R. Ramasamy* (cited supra), the Hon'ble Apex Court observed that the partition deed under which there is not only a severance of status but also division of joint family properties by metes and bound, it requires registration under Section 17 (b) of Registration Act and without registration it is not admissible. The same observations have been given in case of *Siromani and anr V/s. Hemkumar and ors, Smt. Indu V/s. Narsingh Das and ors and A.C. Lakshmipathy And Another vs A.M. Chakrapani Reddiar and ors* (cited supra).

33. In the present matter, as discussed earlier, the partition deed (Exh. 118) is not only creating new right in favour of sons during life time of father in his self-acquired property by excluding his share but also divided the suit properties by metes and bound. Even alternative if we considered said deed as family arrangement, then also, the document which creating new right by extinguishing right of other, is also required to be executed by registered instrument

only. Therefore, said deed (Exh. 118) was required to be executed by registered instrument under Section 17 (b) of Registration Act by parties to rely upon it.

34. Section 49 of Indian Registration Act, states that no document required by section 17 to be registered shall (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the or as evidence of any collateral transaction not required to be effected by registered instrument. Therefore, the document requires registration is not admissible in evidence. Therefore, the partition deed (Exh. 118) is not seen to be admissible in evidence.

35. Ld. Advocate for original defendant Nos. 2 to 4 argued that the deed (Exh. 118) has been impounded and they have also paid necessary stamp duty so now said document is admissible in evidence. It seems from record that said partition (Exh. 118) has been impounded during trial and original defendants have already paid deficit Court fees. However, the payment of deficit stamp duty by impounding document and registration of document are two different things. A document

required to be registered compulsorily is not admissible in evidence even if the requisite stamp duty and penalty are paid as per provision of Stamp Act. Therefore, the act of payment of deficit Court fee does not perfect the value of registration of document. Therefore, no substance is found in the above submission of defendants.

36. Ld. Advocate for original defendant Nos. 2 to 4 also argued that a family arrangement recorded in writing, when relied upon only to explain how the parties thereafter held and enjoyed properties, does not require registration for that purpose. In support of said submission, she placed her reliance upon the case of *P. Anjanappa (D) by Lrs V/s. A. P. Nanjundappa and ors* (205 SCC Online Sc 2358. In said case, it is observed by Hon'ble Apex Court that a family arrangement recorded in writing, when relied upon only to explain how the parties thereafter held and enjoyed properties, does not require registration for that limited collateral use. However, in the present matter, the alleged deed (Exh. 118) is not seen to be executed for explaining right but it is creating new right in favour of defendants. Therefore, the observations given in above cited case are not applicable to matter in hand. So also, no substance found in the above submissions of defendants.

37. Ld. Advocate for defendant Nos. 2 and 4 also placed her reliance upon the case of *Mohindar Kaur V/s. Pargat Singh and ors* (2010 (4) Civil LJ 449). However, the observations

given in said case are seen to be given in the context of coparcenary property as well as also in context of consent decree. It is not the situation in the matter in hand. Therefore, the observations given in above cited

38. Ld. Advocate for original defendant Nos. 2 to 4 also argued that the partition deed (Exh. 118) is 30 years old document so, its execution as presumption under Section 90 of Indian Evidence Act. However, since the document itself is not admissible in evidence, the question of raising any kind of presumption does not arise. Therefore, no substance is found in above submissions of defendants.

39. From above discussion, it becomes clear that the document of partition deed (Exh. 108) being unregistered document is not admissible in evidence. Since the document itself is not admissible, the oral evidence of defendants' witnesses i.e. of Wasudeo (DW-1) and Waman (DW-2) is also not required to discuss more. The contention of original defendants regarding earlier partition is based upon the partition deed (Exh. 108) which is not admissible in the eye law. Therefore, the contentions of defendants that their father partitioned the suit properties and divided only among sons i.e. original defendants, is not seen to be proved. There is no other material which will show that the deceased Mahadeo Khobragade transferred the suit properties by any other way during his life time. Therefore, the deceased Mahadeo

Khobragade is seen to be instated. Therefore, the suit properties which is self acquired property of deceased Mahadeo Khobragade is seen to be available for partition and its partition is required to be done by succession as per Section 8 of Hindu Succession Act.

40. As discussed earlier, the relations of parties between interse as well as with deceased Mahadeo Khobragade are not in dispute. The original plaintiff Nos. 1 and 2, the predecessor of plaintiff Nos. 3 to 8 namely Vithabai and original defendant Nos. 1 to 4 being sons and daughters of deceased Mahadeo Khobragade are class-I heirs as specified in schedule-I of the Hindu Succession Act. Upon perusal of mutation entries (Exh. 52 to 56), their names are also seen to be mutated in revenue record as the heir or successor of deceased Mahadeo.

41. Defendants tried to challenged those entries by contending that these entries are taken behind their back without giving notice to them. In order to prove said fact, defendants also examined Mr. Tabhane (DW-3), who is circle officer of Gumgaon Tq. Hingna Dist. Nagpur. He deposed that since 2024, he was serving as Circle officer at Gumgaon Tq. Hingna Dist. Nagpur. He further deposed that the mutation entry Nos. 17 and 75 i.e. Exh. 52 and 55 are taken on the application heirs of deceased Mahadeo Khobragade but since these entries of the year 1990, said application was not found in their record. He further deposed that he could not state that

who made applications for said mutations. He further deposed that Talathi may have done enquiry while taking those mutation entries but he can not say sure about the same. He further deposed that they used to issue notice while taking mutation entries but he could not state that whether notices were issues while taking entry No. 17 and 75.

42. Defendants tried to bring on record that above mentioned mutation entries are taken behind their back and for that purpose, they have examined Mr. Tabhane (DW-3), who is circle officer. However, it is not came on record in his evidence to show that the notices were not issue while taking above mentioned mutation of the name of both parties after death of Mahadeo Khobragade. Further, Section 150 of Maharashtra Land Revenue Code provides the procedure for taking mutation entries. As per Section 150 (2) of the Code, whenever a Talathi makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein. The provision imposed duty on the concerned Talathi. Therefore, the conclusion can be drawn that the concerned Talathi while taking mutation entry performed his official duty properly. The contents of said mutation record are having presumptive value under Section 157 of Maharashtra Land

Revenue Code. Admittedly said presumption is rebuttable but nothing came on record to rebut it. Upon perusal of above mentioned mutation entries, it is seen that name of original plaintiffs along-with defendants have been mutated in the year 1990. Since then till 2010, original defendants have not raised any objection to those mutation entries. As per contentions of defendants, they were engaged in their job at different place so, they could not take objection to the above mutation entries. However, it is came on record in the cross-examination of Wasudeo (DW-1), who is original defendant No. 3, that he retired from service on 30/06/2000 and since 2000 to till 2011, he has not challenged said mutation. More-over, defendants have also not used said partition deed dated 20.07.1988 (Exh. 118) for mutation their name till filing of this suit. The conduct of defendants of remaining silent for long duration also supports the case of original plaintiffs regarding their right in the suit properties. This conduct also makes the original defendants' case about getting right to them on the basis of inadmissible partition deed, improbable.

43. Ld. Advocate for defendant Nos. 2 to 4 argued that the revenue entries does not create or extinguish the title nor has any presumptive value on title so, said entry is not having any value. In support of said submission, she placed her reliance upon the case of *Balwant Singh and ors V/s. Daulatsingh* (D) by Lrs (1997) 7 SCC 137) and *Jitendra Singh V/q. State of MP* (2021 SCC Online SC 802). It is observed by Hon'ble Apex

Court that “the mutation entries does not create or extinguish the title nor has any presumptive value on title.” Admittedly the mutation entries itself does not perfect any title. But the contents of said mutation record are having presumptive value under Section 157 of Maharashtra Land Revenue Code. It contents can be used for showing conduct of parties of making claim of their right and also show that conduct of other side of remaining silent for long time. In the present matter, the conduct original defendants of remaining silent makes their case about getting right to them on the basis of inadmissible partition deed, improbable.

44. Further-more, Ld Advocate for original plaintiffs also placed reliance upon the case of ***Ganduri Koteswaramma and anr V/s. Chakiri Yanadi and anr*** (cited supra) and ***Leelabai Dagduba Hingne and ors V/s. Bhikabai Shriram Pakhare*** (cited supra). However, the observations given in these cases are seen to be given within ambit of Section 6 of Hindu Succession Act. But as discussed earlier, Section 6 of Hindu Succession Act is not applicable to the matter in hand. Therefore, the observations given in above cited cases are also not applicable to matter in hand.

45. Ld. Advocate for original plaintiffs also placed their reliance upon the case of ***Santosh Anant Raut V/s. Pukharaj Chogmal Rathod and anr*** (cited supra). However the observations given in said case are seen to be given within the

ambit of Stamp Act regarding impounding of document. In the present matter, the document of partition deed (Exh. 119) is seen to be impounded so, the observations given in said case is also not seen to be applicable to matter in hand.

46. From above discussion, it becomes clear that the suit properties are original owned by Mahadeo Khobragade, who is common propositus of both parties. It also becomes clear that Mahadeo Khobragade dies instead leaving the suit properties. The claim of original defendants which is based upon partition deed (Exh. 118), is not seen to be established. Therefore, the suit properties are seen to be available for partition and its partition is required to be done by succession as per Section 8 of Hindu Succession Act. As discussed earlier, the relations of parties between interse as well as with deceased Mahadeo Khobragade are not in dispute. The original plaintiff Nos. 1 and 2, the predecessor of plaintiff Nos. 3 to 8 namely Vithabai and original defendant Nos. 1 to 4 being sons and daughters of deceased Mahadeo Khobragade are class-I heirs as specified in schedule-I of the Hindu Succession Act. Therefore, they are entitled to entitle to equal share i.e. 1/7th share each in the suit properties. Therefore, the absolute ownership of defendants over the suit properties is also not seen to be established. Hence, issue Nos. 1 and 3 are answered in affirmative and issue No. 2 is answered in negative.

Issue No. 4 :-

47. As discussed in earlier issues, the original plaintiff Nos. 1 and 2, the predecessor of plaintiff Nos. 3 to 8 namely Vithabai and original defendant Nos. 1 to 4 being sons and daughters of deceased Mahadeo Khobragade are class-I heirs as specified in schedule-I of the Hindu Succession Act. They are entitled to entitle to equal share in the suit properties. Therefore, the absolute ownership of original defendants over the suit properties is not seen to be established. Hence, the original defendants are not entitled to declaration regarding same. Hence, issue No. 4 is answered in negative.

Issue No. 5 :-

48. By way of counter-claim, the original defendants sought injunction for protecting their possession as well as for restraining the original plaintiffs from creating third partly interest in the suit properties. As discussed earlier, it is seen that the plaintiffs are also co-owner of suit properties along-with defendants. It is settled principle of law that the possession of one co-owner is for all. Though the original defendants are in possession of the suit properties but their possession is for all co-owner. Therefore, it would not lawful to grant injunction against co-owner to restrain them from using their property.

49. So far as injunction regarding creating third party interest is concerned, the original defendants sought injunction

to restrain the original plaintiffs from creating third party interest in entire suit properties. As discussed earlier, there is also share of the plaintiffs in the suit properties. They have every right to deal with their respective share. Therefore, it will also not lawful to grant injunction to restrain them from dealing with their share. Hence, the original defendants are not entitled to injunction as prayed for. Hence, issue No. 5 is answered in negative.

Issue No. 6 :-

50. From above discussion, it is established that the original plaintiff Nos. 1 and 2, the predecessor of plaintiff Nos. 3 to 8 namely Vithabai and original defendant Nos. 1 to 4 being sons and daughters of deceased Mahadeo Khobragade are entitled to entitle to equal share i.e. 1/7th share each in the suit properties. Therefore, the absolute ownership of defendants over the suit properties is not seen to be established. Therefore, the suit is liable to be decreed and counter-claim is liable to be dismissed. The general rule is that the costs shall follow the event. There is no specific reason came on record to refuse the costs. Resultantly, following order is passed:

ORDER

1. The suit is decreed with costs.
2. The counter claim is dismissed with costs.
3. It is hereby declared that original plaintiff Nos. 1 and 2 and original defendant Nos. 1 to 4 are entitled to

1/7th share each in the suit properties. The original plaintiff Nos. 3 to 8 being heirs of deceased Vithabai are collectively entitled to 1/7th share in the suit properties. Legal representatives of deceased parties are entitled to succeed the shares of their respective predecessors.

4. Defendants, after paying necessary court fees, if they desires, are entitled to get their shares separated.
5. The decree in respect of the suit properties shall be sent to the Collector District Nagpur to effect partition of the suit agricultural land and to put the plaintiffs in separate possession of aforesaid shares vide Section 54 of the Code of Civil Procedure.
6. Decree be drawn up accordingly.
(Pronounced in the open court.)

Date : 17/04/2026

(V. H. Khedkar)
Civil Judge, Jr. Dn., Hingna,
Dist. Nagpur.