

MHNS170004012008



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Duration : Y M D
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IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION,
NANDGAON (NASHIK)
(Presided over by Shri J. M. Agnihotri)

REGULAR CIVIL SUIT No. 59/2008

Exh.141

1.	Shankar Murlidhar Walekar, Age: 42, Occ: Agriculturist and Lawyer,
2.	Balasaheb Murlidhar Walekar, Age: 39, Occ: Agriculturist,
3.	Mahesh Murlidhar Walekar, Age: 35, Occ: Agriculturist,
4.	Lata vikas Walekar (deceased) since deceased through her legal heirs; 4.1 Pavan Vikas Walekar, Age: 26, Occ: Agriculturist, 4.2 Rohan Vikas Walekar, Age: 22, Occ: Agriculturist, Sr. No. 1 to 4.2 R/o. Dheku, Tal- Nandgaon, Dist- Nashik. 4.3 Komal Kalpesh Zarekar, Age: 25, Occ: Housewife, R/o- Kasabkheda Tal. Dist- Aurangabad.
5.	Aasha Madhukar Nagarkar, Age: 50, Occ: Housewife, R/o-3122, Shivkrupa, Khuntavli Ambernath, Tal- Ambernath, Dist-Thane
6.	Vandana Shivnath Chunuke,

	Age: 38, Occ: Housewife, R/o- Devlana, Tal- Kannad, Dist- Aurangabad.
7.	Bharti Dilip Sakhare, Age: 44, Occ:Job, R/o- Yamunabai Chul, Room No.16, Mori Road, Mahim, Mumbai
8.	Sanjay Bhimashankar Kasodkar, Age: 42, Occ:Labour,
9.	Dipak Bhimashankar Kasodkar, Age: 38, Occ:Tea Stall, Both Sr. No. 8 and 9 R/o- Shivshakti colony, 23/B, Behind new pratapmill, Chitod Road, Tal. Dist- Dhule.
10	Ajay Bhimashankar Kasodkar, Age: 40, Occ:Tent House work, R/o- Near Sidhesvar Mangal Karyalaya, Pimpalgaon Basvant, Tal- Niphad, Dist- Nashik.
11	Bharti Santosh Sakhare, Age: 30, Occ:Housework, R/o- Santosh Lingayat Colony, Behind Sidharth Hotel, Near Nasardi pool, Nashik.
	PLAINTIFFS...

VERSUS

1.	Savitribai Br, Guruling Walekar, Age: 70, Occ: Houselhold
2.	Vijay Guruling Walekar, Age: 35, Occ: Labour, Both 1 and 2 R/o:- Patnadevi Road Chalisgaon, Dist:- Jalgaon
3.	Ranjana Vasant Gadkari, Age: 45, Occ: Housework and Hotel, R/o:- Daily Bajar, Near Water Tank,Nagad road,

	Tal.:- Nandgaon, Dist:- Jalgaon
4.	Sanjivani Baban Jalnekar, Age: 38, Occ: Housework , R/o:- Lingayat colony, Devlaligaon, Nashik road, Nashik.
5.	Sudam Mahadu Rathod, Age: 40, Occ: Agriculturist, R/o.Dheku Kh. (Tanda), Tal.:- Nandgaon, Dist.:-Nashik.
	DEFENDANTS....

Shri. S. M. Walekar Learned Advocate for Plaintiffs.
Shri.B. R. Chaudhari, Learned Advocate for Defendant No.5.
No W.S. - Defendnat nos. 1 to 3
Ex-parte - Defendant No.4

JUDGMENT

(Delivered on 27th March, 2026)

1. This is a suit for declaration that the sale deed in respect of property mentioned in para 2B below is void and not binding on the plaintiffs and for partition and separate possession in respect of property mentioned in para 2A and 2B below.

Description of the suit property :-

2. Old Survey No.46 and new Gat No.133 situated at Mouje Dheku Kh., Tal-Nandgaon, Dist-Nashik, area admeasuring

5H, 58R, Pot Kharab 0H, 37R total area 5H, 95R. The said land is also known as 'Dongrya' in local terminology. It is surrounded by:-

Towards East :- Gat No.116,132,131,130 and 129,

Towards West :- Gat No.109,

Towards South :- Gat No.100,134 and 135,

Towards North :- Gat No. 110 and Forest.

Said property is divided into 'A' and 'B' :-

(A) Old survey No.46 and new Gat No.133 situated at Mouje Dheku kh., Tal- Nandgaon, Dist- Nashik area admeasuring 0H, 58R, Pot Kharab 0H, 12R, total area 0H, 70R surrounded by :-

Towards East :- Gat No.116 and 132,

Towards West :- Gat No.109,

Towards South :- Property (B) in Gat No.133,

Towards North :- Gat No. 110 and Forest.

(B) Old survey No.46 and new Gat No.133 situated at Mouje Dheku kh. Tal- Nandgaon, Dist- Nashik area admeasuring 5H, 0R, Pot Kharab 0H, 25R, total area 5H, 25R surrounded by :-

Towards East :- Gat No.132,131,130 and 129,

Towards West :- Gat No.109,

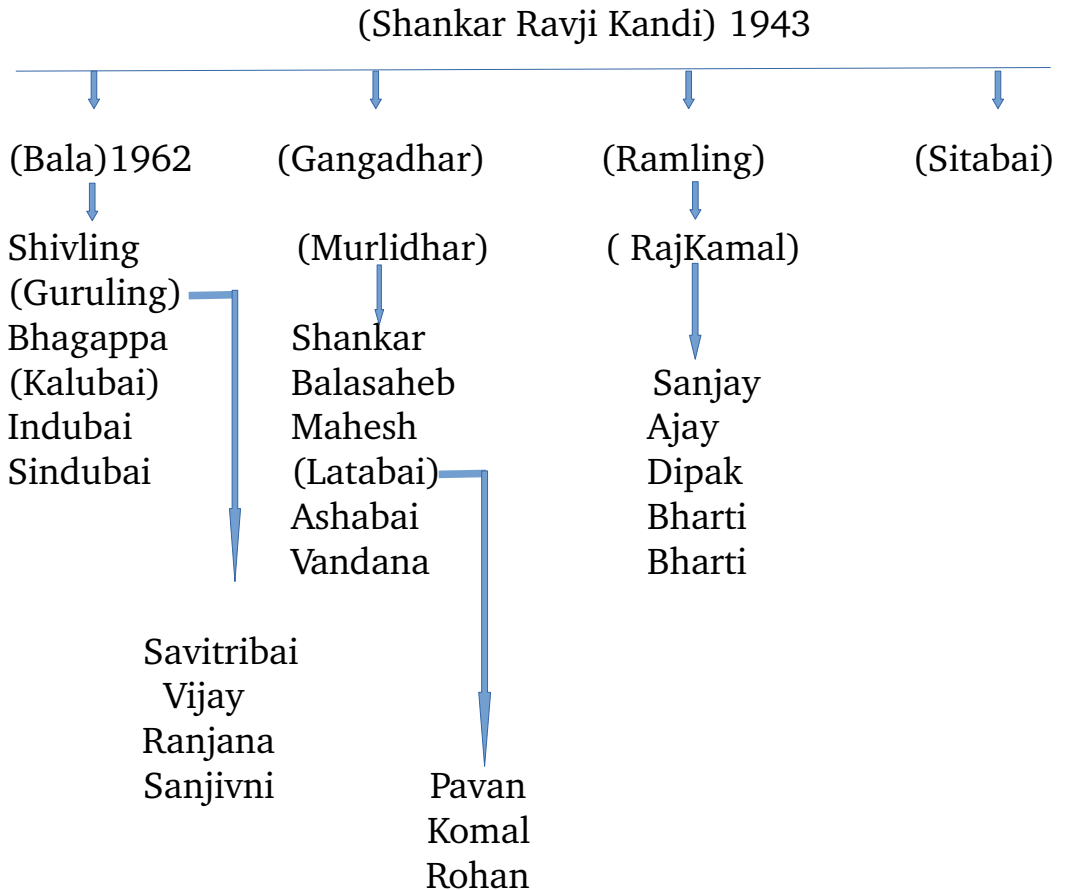
Towards South :- Gat No.134,

Towards North :- Gat No.133 (A).

Said properties are the subject matter of the present suit and therefore these are hereinafter commonly referred to as 'the suit property' and separately referred to as suit property 'A' and

suit property 'B.'

3. Genealogy of plaintiffs and defendant nos. 1 to 4 as mentioned in the plaint is reproduced as under :-



4. Plaintiffs and defendant Nos. 1 to 4 are related to each other. Defendant No.5 is not a member of the family of the plaintiffs and defendant Nos. 1 to 4. Suit property is joint family property of plaintiffs and defendant nos. 1 to 4. Plaintiffs are having undivided interest in the suit property. Even then defendant Nos. 1 to 4 on dt. 15/09/2005 sold the suit property 'B' to defendant No.5 and therefore, defendant No.5 is made

party to the present suit.

5. On dt.13/09/1902 the State Government allotted old survey No.46 and new Gat No.133 to Shankar Ravji Kanadi (मुळ पुरुष) on new terms and conditions by order of Mamledar, Nandgaon bearing No.189. Shankar Ravji Kanadi was in possession and cultivating Gat No.133 from dt.13/06/1902 till his death dt.15/12/1943. But due to some unavoidable reasons the 'Kabulayat' left to be executed to the government. Shankar Ravji Kanadi had three sons namely Bala, Gangadhar and Ramling and one daughter namely Sitabai. His wife Kasabai died during his lifetime. As Shankar Kanadi died in the year 1943, his daughter Sitabai would not get any right in the joint family property as Hindu Succession Act 1956 was not in existence at the time of his death. Sitabai is also no more.

6. After demise of Shankar Kanadi names of his three sons namely Bala, Gangadhar and Ramling were entered as legal heirs to the suit property vide mutation entry No.185. Duirng the lifetime of Bala the suit property was entered in his name as 'Karta' of Hindu Joint family and apart from the said property Bala had got property bearing Gat no.15, old Survery no.52/1/8 from the government. (अविभाज्य शर्तीचे). These two properties were recorded in the name of Bala. As Shankar Kanadi had not executed 'Kabulayat' due to some unavoidable reasons, after his

death Bala had executed 'Kabulayat' to the government in the year 1957 on behalf of all heirs and as 'Karta' of Hindu joint family. Bala died in the year 1962 leaving behind four sons namely Shivling, Guruling, Bhagappa and Kashinath and three daughters namely Kalubai, Indubai and Sindubai. A daughter namely Kalubai and all four sons are dead. In the year 1962 names of four sons and three daughters of Bala were entered to the revenue records of the suit property as heirs of Bala.

7. In the year 1984 elder son of Bala Namely Shivling vide order passed by Tehsildar bearing No. RTS/SR/17/1984 deleted names of Kalubai, Indubai and Sindhubai from all the properties entered in the name of Bala and had effected partition of the said properties standing in the name of Bala in all brothers. Said partition was effected on certain terms. As per that partition, mutation entry No.10 was effected and Gat No.15 was partitioned between the three brothers namely Shivling, Bhagappa and Kashinath and suit property i.e. old survey No.46 and new Gat No.133 was given to the share of Guruling vide mutation entry No.156. But while allotting said property to Guruling names of Gangadhar and Ramling were also kept as it is in other rights column of the property. As names of Kalubai, Indubai and Sindhubai were deleted from the property and for that reason they are not made parties in the present suit.

8. In the year 1987 on the basis of an application filed by Guruling the names of heirs of Gangadhar and Ramling were entered in other rights column of old survey No.46 and new Gat No.133 vide mutation entry No.219. On dt.11/05/1987 Guruling has given an application and thereby illegally deleted the names of heirs of Gangadhar and Ramling from other rights column of the suit property and his only name was entered on the revenue record as owner and possessor. After the death of Guruling the names of his heirs i.e. defendant Nos. 1 to 4 were recorded to the revenue record.

9. Plaintiffs are having undivided share in the suit property. As the suit property was allotted by the government to Shankar, defendant Nos.1 to 4 should have taken permission of District Collector/Commissioner prior to effecting sale transaction and without taking such permission they have sold the suit property 'B' on dt. 15/09/2005 to defendant No.5 and for this reason said sale deed has become illegal and void. Plaintiffs have taken objection for entering names of defendant No.5 to the revenue record of the suit property 'B' but revenue authorities by joining hands with defendant No.5 had effected mutation entry No.549 and has given effect of the said entry on 7/12 extract and Form 6B of the suit property. Plaintiff No.1 had challenged said mutation entry no. 549 by preferring RTS Appeal No.31/06 before Sub-Divisional Officer, Malegaon. Due to technical reasons appeal came to be dismissed but SDO ordered

for cancellation of mutation entry No.549. Against the said order of dismissal plaintiff No.1 preferred Appeal No. 149/07 before Additional Collector Nashik and defendants also filed cross appeal against the order of cancellation of mutation entry No.549. Both these appeals are pending. Talathi has cancelled mutation entry No.549 and accordingly deleted name of defendant No. 5 from the revenue records.

10. By getting angry over the same defendant No.5 by joining hands with defendant Nos. 1 to 4 and in order to avoid undivided share of plaintiffs in the suit property had filed RCS No. 55/2007 for perpetual injunction and the same is pending. In that suit plaintiff No.1 filed an application for adding himself as party and the same is also pending.

11. As the suit property was allotted to original ancestor of plaintiffs and defendant Nos. 1 to 4 and the suit property is joint family property of plaintiffs and defendant Nos. 1 to 4, plaintiffs have undivided share in the suit property. Defendant Nos. 1 to 4 were having no right to sale suit property 'B' to defendant No.5. Hence, plaintiffs are constrained to file this suit for partition, separate possession of the suit property and also for declaration that sale deed executed by defendant Nos.1 to 4 in respect of suit property 'B' in favour of defendant No.5 is not binding upon them.

12. Defendant No.5 by filing written statement below Exh.15 resisted the suit. Defendant No.5 denied that suit property was allotted to Shankar i.e. original predecessor of plaintiffs and defendant Nos.1 to 4. He also denied the fact that plaintiffs are having undivided share in the suit property. He contended that as per contention of the plaintiffs in the year 1957 Bala has executed 'Kabulayat' in respect of the suit property which is of new terms, but in that respect plaintiffs have not asked for any relief in any court till filing of this suit and therefore suit is not within limitation. He further contended that when once the partition was effected in the year 1984 then again it is not necessary to make partition of the suit property. It is further contended that the persons whose names were deleted from 7/12 extract of the suit property in the year 1987, those persons during their lifetime have not made any complaint against Guruling, Bala and plaintiffs are taking contrary stand which is not permissible in the law. The persons whose names were deleted had no objection and therefore, they had not challenged the same during their lifetime.

13. Defendant No.5 further contended that plaintiffs have not made all necessary parties as parties to the suit and have also not included all necessary properties which are standing in the names of plaintiffs. Therefore, on the ground of non joinder of necessary parties and non joinder of necessary properties the suit is liable to be dismissed.

14. Suit property 'B' was owned and possessed by defendant Nos.1 to 4 who sold the same to defendant No.5 on dt. 15/09/2005 for the consideration amount of Rs. 85,000/-. On that day itself defendant Nos. 1 to 4 handed over possession of the suit property 'B' to defendant No.5 and since then defendant No.5 has been enjoying the suit property 'B' as owner of the same. Therefore, plaintiffs have no right to ask for declaration in respect of sale deed. He also denied that suit property was of joint family property of plaintiffs and defendant Nos. 1 to 4. On the other hand he contended that as plaintiff No.1 is an Advocate and he has every knowledge of court procedure and in order to grab money illegally from defendant No.5, plaintiff No.1 used to make such applications and take legal actions. Hence, on these grounds defendant No.5 has prayed for dismissal of the suit.

15. Defendant Nos.1 to 3 though appeared in the suit did not file their written statement. Hence, suit was proceeded without written statement of defendant Nos. 1 to 3. Defendant No.4 though served with suit summons did not appear and hence, suit was proceeded ex-parte against defendant No.4.

16. My Learned Predecessor framed issues and additional issues at Exh.19. I am reproducing those issues and additional issues along with my findings there on are as under;

SR.NO.	ISSUES	FINDINGS
(1)	Whether the plaintiffs prove that, the suit properties are joint family properties of their and defendant nos. 1 to 4 ?	YES
(2)	Whether the plaintiffs prove that, a sale deed executed by defendant nos. 1 to 4 in respect of the schedule property "B" is not binding upon them?	YES, TO THE EXTENT OF THEIR UNDIVIDED SHARES.
(3)	Whether the plaintiffs prove that, they are entitled to partition and separate possession? If yes what are shares of respective parties?	YES, PLAINTIFFS ARE HAVING 2/3 SHARE IN COMMON
(4)	Whether the plaintiffs are entitled to mesne profit?	YES, ONLY IN RESPECT OF SUIT PROPERTY 'A'
(5)	Whether the suit is barred by law of limitation?	NO
(6)	What order and decree?	AS PER FINAL ORDER
ADDITIONAL ISSUES		
(7)	Whether the suit is bad for non-joinder of necessary parties?	NO
(8)	Whether the suit is bad for non-joinder	NO

of necessary properties ?

:REASONS:

17. In order to prove the claim the plaintiffs have examined plaintiff No.1 Shankar Murlidhar Walekar as PW1 at Exh.22. As against this defendant no.5 Sudam Mahadu Rathod has examined himself as DW1 by filing evidence affidavit below Exh.74. Both the parties relied on the documentary evidence. I have perused all the documents placed by both the parties on record. Relevant documents will be referred hereinafter as and when required during the discussion.

ISSUE NO.1:-

18. Plaintiff No.1 Shankar (PW1) deposed below Exh.22 that the suit property was given by the government to Shankar Ravji Kanadi on dt.13/06/1902. The suit property was of new terms. Deceased Shankar was cultivating the suit property since dt.13/06/1902 to dt.15/12/1943 i.e. till his death. But due to some unavoidable reasons 'Kabulayat' was left to be executed by him in respect of the suit property. He further deposed that after the death of Shankar, names of his three sons Bala, Gangadhar and Ramling were mutated on 7/12 extract of the suit property. He further deposed that in the year 1957 Bala had executed 'Kabulayat' in respect of the suit property to the Government on behalf of and as 'Karta' of joint family. Bala died in the year 1962 leaving behind four sons and three daughters. Elder son of Bala

namely Shivling has effected partition of the suit property in the year 1984 and he allotted the suit property to the share of Guruling vide mutation entry No.156. Shivling has also made partition of the separate property of Bala between himself and other two brothers except Guruling. After the death of Gangadhar and Ramling the names of their heirs were entered on the revenue record of the suit property vide mutation entry No.219 in the year 1987. He further deposed that on dt. 11/05/1987 Guruling by making an application to revenue authority has illegally deleted the names of heirs of Gangadhar and Ramling by keeping his name only on 7/12 extract of the suit property. After demise of Guruling names of defendant Nos.1 to 4 were entered on revenue record as legal heirs of Guruling. Therefore, from the oral evidence of the plaintiff Shankar (PW1) it appears that it is case of the plaintiffs that though Bala had executed 'Kabulayat' in respect of the suit property in the year 1957 but the said 'Kabulayat' was executed as 'Karta' of the joint family and on behalf of members of the joint family. Therefore, it is the case of the plaintiffs that the suit property is still joint family property of the plaintiffs and defendant Nos.1 to 4 and the plaintiffs are having 2/3 share in the suit property.

19. The plaintiffs have produced on record various documents in order to establish that the suit property is joint family property of the plaintiffs and defendant Nos.1 to 4. The

plaintiffs produced form Nos.7C in respect of the suit property for the year 1917-1922, 1922-1927 and 1927-1930 which are produced below exhibit Nos.23,24 and 25 respectively. Upon perusal of said documents it is seen that the suit property was of new terms and was allotted by the Mamledar order bearing No.189 dt.13/06/1902 in favour of Shankar Ravji Kanadi. These three documents show that the name of Shankar Ravji Kandi is mentioned on form Nos.7C of the suit property as owner and cultivator of the same. Thereafter, the plaintiff produced on record 7/12 extract of the suit property which is at Exh.26. Said document mentions the name of Shankar Ravji Kanadi as owner and possessor of the suit property. Said 7/12 extract is for the year 1931-32 to 1940-41. The above four documents evidence that the suit property was allotted to Shankar Ravji Kanadi by the order of Mamledar of dt.13/06/1902 and since then till the year 1941 Shankar Kanadi was cultivating the suit property. Document below Exh.28 is death certificate of Shankar which shows that he died on dt.15/12/1943. Document at Exh.29 is mutation entry No.185 and the same is in respect of entering the names of heirs of Shankar to the suit property. This mutation entry shows that the name of Bala is entered as legal heir of deceased Shankar and names of Gangadhar and Ramling were mutated as legal heirs of Shankar in other rights column of the suit property. It is dt.27/10/1945. Thereafter, the plaintiffs produced at Exh.30, 7/12 extract of the suit property for the year 1961-62 to 1971-72. This document shows that after the death of Bala, names of his four sons namely Shivling, Guruling,

Bhagappa and Kashinath and three daughters kalu, Indu and Sindhu were recorded on 7/12 extract as legal heirs of deceased Bala. This document further shows that names of Gangadhar and Ramling are mutated in other rights column of 7/12 extract. At Exh.31 the plaintiff produced 'Kabulayat' executed by Bala Shankar Kanadi on dt.19/12/1957. On the upper side of said 'Kabulayat' it is written in clear words ' मुळ कबुलायत नसलेने नविन केली, नविन शर्तीने '. Further, it is also mentioned in the said 'Kabulayat' that said 'Kabulayat' was given effect since dt. 01/08/1902. These contents mentioned in the 'Kabulayat' clearly show that even though the 'Kabulayat' was executed by Bala but it was executed only because the original was not there. By virtue of this defendants cannot claim that the suit property was allotted to Bala in the year 1957. If it was given exclusively to the deceased Bala then its effect should not have been given since the year 1902, the year in which the suit property was allotted to Shankar and it would not have been written in the said 'Kabulayat' that 'मुळ कबुलायत नसलेने नविन केली, नविन शर्तीने '. Therefore, from the documents which are produced by the plaintiffs and which are referred above, it is clearly established that the suit property was allotted by the government to Shankar Ravji Kanadi and it was not allotted to Bala Shankar Kanadi. Exh.32 is a death certificate of Bala Kanadi.

20. But the real problem starts after the death of Bala

Kanadi. After the death of Bala names of his four sons and three daughters have been entered on the suit property as his legal heirs vide mutation entry No. 512 dt.30/05/1963. It is at Exh.33. Thereafter, elder son of Bala namely Shivling on dt.10/04/1984 has partitioned the property of deceased Bala bearing Gat no.15 between himself and his two brothers namely Bhagappa and Kashinath except Guruling. The mutation entry No.10 was effected regarding said partition it is at Exh.35. On the same day Shivling vide order of Tehsildar, Nandgaon dt. 10/04/1984 bearing order no TDS/SR/17/1984 has effected the partition of the suit property and he has allotted the whole suit property in partition to Guruling Bala Kanadi who was predecessor of present defendant Nos. 1 to 4. Mutation entry of the said partition bearing No.156 is produced at Exh.36. Thereafter, Exh.38 is a document regarding mutation entry No.219 by which names of legal heirs of Gangadhar and Ramling were recorded in other rights column of the suit property. Then document at Exh.39 is mutation entry no.221 dt.22/07/1987 which shows that on the application given by Guruling dt.11/05/1987 the names of predecessors of the plaintiffs which were mentioned in other rights column of the suit property were deleted and thereafter, by mutation entry no.291 (Exh.40) after the death of Guruling names of his heirs i.e. defendant nos.1 to 4 were recorded to the suit property.

21. As I mentioned earlier that the documents produced

by the plaintiffs such as 'Kabulayat', form 7C, 7/12 extracts of the suit property, mutation entry nos.185,219, all these documents are sufficient to establish that the suit property is a joint family property of Bala, Gangadhar and Ramling who were predecessors of the present plaintiffs and defendant nos. 1 to 4. It is further seen that all three branches namely Ramling, Gangadhar and Bala were having 1/3 share each in the suit property. Then the question arises when the suit property was of joint family property and branch of Bala was having only 1/3 share in the suit property then whether the partition effected by son of Bala, namely Shivling, of the suit property vide order of Tehsildar bearing No. RTS/SR/17/1984 dt.10/04/1984 is valid and legal one. Shivling as a son of Bala could have given only 1/3 share of the suit property to Guruling in the partition. Because Shivling was not having any right to give in the partition the whole suit property. Merely because said order of Tehsildar was given effect cannot lead to draw an inference that said partition is legal one. When the Shivling or it can be said the branch of Bala, himself was not having more than 1/3 share in the suit property then how he could legally transfer the whole suit property to Guruling by way of partition. Apart from this since dt.11/05/1987 the names of Ramling and Gangadhar were entered in other rights column of the suit property for 5 Aana 4 Paise each in the suit property. But it is seen that Guruling by giving an application has got deleted their names from the suit property. In this regard also it is necessary to mention that merely because the names of two branches i.e. Ramling and

Gangadhar were deleted from the suit property cannot itself lead to an inference that they have no concern with the suit property and they do not have any right in the suit property. Both these mutation entry nos.156 (Exh.36) regarding partition and 221 (Exh.39) regarding deletion of names are seem to be illegal.

22. Learned advocate for the plaintiffs has vehemently submitted that revenue entries do not confer any title in the suit property and they are made only for fiscal purposes. In support of his submission he relied upon following judgments.

1. Bhaguji Bayaji Pokole and others Vs. Kantilal Baban Gunjwate and others cited in 1998 (1) Mh.L.J.276.

2. Gangaram Sakharam Dhuri Vs. Gangubai Raghunath Ayare and others 2007(5) Mh.L.J.136.

3. S.K. Galam Lalchand Vs. Nandulal Shaw Civil Appeal No.4177/2024.

4. Surajbhan and others Vs. Financial commissioner and others Civil Appeal No.1971 of 2007 SC.

23. There is no dispute regarding the ratio laid down in the citations supra. From the judgments supra one thing is clear that revenue entries cannot amount to transfer of title in favour of person in whose name the entries are made. In the present case even though Shivling has by way of partition allotted the

whole suit property in favour of Guruling but such partition and revenue entry in respect of partition does not confer or vest the ownership of the whole suit property into the Guruling. Because Shivling was not having more than 1/3 share in the suit property and therefore, he could have allotted only up to 1/3 share to Guruling and not more than that. Further, even though the Guruling has deleted the names of Ramling and Gangadhar from the 7/12 extract but such deletion of names cannot exclude the Ramling and Gangadhar from claiming their 1/3 share each in the suit property. In this scenario the above judgments squarely applies to the present case.

24. Oral evidence and documentary evidence on record adduced by the plaintiffs do clearly establish that the suit property is joint family property of plaintiffs and defendant nos. 1 to 4. It is further established that the suit property was allotted by the government to Shankar Kanadi. Merely because Shivling has effected partition of the suit property and Guruling has deleted the names of Ramling and Gangadhar from 7/12 extract of the suit property, cannot take away the undivided right and interest of the branch of Ramling and Gangadhar from the suit property. When the Shivling himself was not having a right to transfer more than 1/3 share in the suit property then in such case the partition effected by him evidences to be illegal and void. Merely because there is revenue entry in respect of partition and deletion of names which is in existence but as per

the judgments cited supra revenue entries cannot confer any right, title or interest in the property to any person. Therefore, mutation entry No.156 (Exh.36) and mutation entry No. 221 (Exh.39) cannot be said to be legal one and cannot take away status of the suit property as joint family property. Therefore, I have no hesitation to hold that the suit property is joint family property of plaintiffs and defendant Nos.1 to 4. Hence, I answer issue No.1 in the affirmative.

ISSUE NO.2:-

25. The suit property was the joint family property of plaintiffs and defendant nos. 1 to 4. Further, it is seen that there has been no partition of the joint family property by metes and bounds. As such the plaintiffs being the coparceners had undivided shares in the suit property when it was allotted to deceased Guruling by Shivling and also when suit property 'B' was transferred vide sale deed Exh. No.43 Defendant nos. 1 to 4 being individual coparceners cannot alienate the part of joint family property without consent of all others. A coparcener may only sell their own undivided interest, while a sell by a non Karta coparcener of the entire property is typically unauthorized. Defendant nos. 1 to 4 had no right to alienate the specific part of undivided property. Consequently said alienation is not binding on the undivided shares of the plaintiffs.

26. As per para 268(1) of Hindu Law by Mulla whether a member of a joint family governed by Mitakshara Law sales or mortgages more than his own interest in the joint family property, the alienation not being one for legal necessity or for payment by a father of an antecedent debt, the other members or persons to whom their interest in the property have passed are entitled to have the alienation set aside to the extent of their own interest therein. The alienation cannot be set aside in its entirety for according to the Hindu Law a coparcener can alienate his own interest in the joint family property. More over as per para 259 of the said Law, according to Mitakshara Law a coparcener may sale, mortgage or otherwise alienate for value his undivided interest in coparcenary property without the consent of the other coparceners . In view of these principles of Hindu Law, defendant nos. 1 to 4 had a right to dispose off the said property. However, the alienation made by defendant nos. 1 to 4 is valid to the extent of their share in the coparcenary property. Therefore, the impugned sale deed cannot be set aside in its entirety but it can be concluded that said sale deed (Exh.43) in respect of the suit property 'B' is not binding upon other branches of deceased Shankar i.e. the plaintiffs to the extent of their undivided interest therein. Hence, I answer issue no. 2 in the affirmative.

ISSUE NO.5:-

27. The suit for partition is governed by Article 110 of

the Limitation Act. The right to sue would commence from the date when the exclusion becomes known to the plaintiff. In the present case the first question which was asked to the plaintiff during his cross-examination was 'when he came to know about deleting the names of his father and uncle from 7/12 extract of the suit property'. In answer to this question the witness has specifically answered that in the year 2004 he came to know about the deletion of the names of his father and uncles from the 7/12 extract of the suit property. This answer which is brought by defendant himself on record clearly shows that the exclusion becomes known to the plaintiffs in the year 2004. The sale deed of the suit property 'B' which was executed by defendant nos. 1 to 4 in favour of defendant no. 5 on dt.15/09/2005. Assuming that the date of such sale gave rise to the cause of action then also the suit appears to be within limitation as provided under Article 110 of the Limitation Act. As per Article 110 of the Limitation Act the period for filing the suit would be 12 years and the time would begin to run when the exclusion becomes known to the plaintiff. Even if it is assumed that the exclusion became known to the plaintiffs in the year 2004 then in that case also the suit is within limitation period of 12 years. On the aspect of limitation learned advocate for the plaintiffs has relied upon following judgments.

1. Govind Vishvanath Bansode and others Vs. Manika Gangaram bansode and others 2008(3) Mah.L.R.289.

2. Suresh Gangadhar Dhapatkar and other Vs. Guruprasad Changdev Dhapatkar S.A. No.235/2020 .

3. Maruti Ramji Kendre Vs. Govind Manik Munde and others SA No.116 of 2025.

In all these judgments Hon'ble Bombay High Court has observed that the suit for partition is governed by Article 110 of the Limitation Act and the period for filing the suit is of 12 years which would begin to run when the exclusion becomes known to the plaintiffs. It is also held by the Hon'ble Bombay High Court in the case of Govind Bansode that mere absence of a member of a joint family would not amount to exclusion unless there is a voluntary abandonment of explicit exclusion. The mere fact that one of the coparcener is not in joint possession does not mean that he has been ousted. The possession of the family property by a family member must be held to be on behalf of himself and other members and possession of one is possession of all. These citations do squarely apply to the present case. Therefore, I have no hesitation to hold that suit filed by the plaintiff is well within limitation period of 12 years. Hence I answer issue no. 5 in the negative.

ADDITIONAL ISSUE NO.7. :-

28. The genealogy given by the plaintiffs in their plaint para no.3 is not disputed by any of the defendants. As per said genealogy and as per the case of the plaintiffs Shankar Ravji Kanadi was their original predecessor. Shankar died on dt.15/12/1943 leaving behind three sons namely Bala, Gangadhar and Ramling and a daughter Sitabai, who is also

died. As original ancestor i.e. Shankar was died in the year 1943 the succession opened upon his death i.e. on dt.15/12/1943. Admittedly on that date Hindu Succession Act, 1956 was not in existence. Therefore, on that date when the succession opened the daughter of deceased Shankar i.e. Sitabai would not have any right in the joint family property. The daughter i.e. Sitabai would not be a coparcener and would not be an heir. Therefore, daughter of Shankar, Sitabai, will not get any share in the joint family property as the succession was opened in the year 1943 and she was not a coparcener as the Hindu Succession Act, 1956 was not applicable. For this reason daughter of Shankar namely Sitabai cannot be said to be a necessary party to the present suit. Learned advocate for the plaintiffs in regard to this point has relied upon the judgment of *Hon'ble Apex Court in Kasabai Tukaram Karvar vs. Nivrutti civil appeal no.6076/2010 and Radhabai Balasaheb Shirke vs. Keshav Ramchadra Jadhav second appeal no.593/1987* in which the Hon'ble Apex Court has also held that in the year 1948 when the succession opened the daughter (appellant in that case) would not have any right and she would not be a coparcener which she undoubtedly is under the present dispensation in view of the sweeping developments which took place in the matter of succession which have been ushered in as a result of Hindu Succession Act and the changes that have been engrafted therein. The plaintiff daughter would not be an heir, in view of the notional existence of the adopted son by virtue of the doctrine relation back. The ratio laid down in the above cited judgment squarely applies to

the present case in hand. Therefore, as Sitabai, daughter of deceased Shankar, who would not be a coparcener and an heir is not a necessary party to the present suit.

29. It is seen from the genealogy and also from pleadings of the plaintiffs that there are three sons namely Bala, Gangadhar and Ramling to deceased Shankar. It means there are three branches and the plaintiffs are representing the branch of Gangadhar and Ramling. Defendant nos. 1 to 4 are representing the branch of deceased Bala. Learned advocate for the plaintiffs by relying upon the judgment of *Hon'ble Bombay High Court in Gumansingh Shivram Patil vs. Bhika Harsingh Patil in second appeal no.249/1992* submitted that it is not necessary to make all heirs as parties to the suit but it is sufficient to add in the suit head of the branch. I have gone through the said judgment in which Hon'ble Bombay High Court by mentioning the principle of Hindu Law by Mulla in paragraph no.332, in a suit for partition, the heads of all the branches are the necessary parties has observed that in partition suits due representation of branches is sufficient to settle the dispute at once and due representation of the branches through the parties to the suit is not fatal to the suit for partition. In this judgment the Hon'ble Bombay High Court by relying upon the paragraph no.332 of Hindu Law by Mulla has held that in a suit for partition the heads of all the branches are the necessary parties and it is not necessary to make all the heirs as parties to the suit. Admittedly

defendant nos. 1 to 4 are representing the branch of Bala and the plaintiffs are representing the branches of Ramling and Gangadhar. When the branch of Bala is represented by defendant nos. 1 to 4 and the plaintiffs are representing other two branches then the suit will not be hit by the principle of the non joinder of necessary parties due to absence of all the members of joint family. Hence, I answer issue no.7 in the negative.

ADDITIONAL ISSUE NO. 8 :-

30. Learned advocate for defendant no.5 by drawing attention of this court towards the answer given by the plaintiff Shankar in his cross-examination has submitted the suit is bad for non joinder of necessary properties. The plaintiff Shankar during his cross-examination has stated that apart from the suit property one house at Dheku kh. is their ancestral property, then it should have been included in the present suit and without making inclusion of the same the suit is hit by the principle of non joinder of necessary properties. As against this learned advocate for the plaintiffs has submitted that defendant no.5 is not a member of joint family of the plaintiffs and defendant nos.1 to 4 and therefore he cannot claim the suit is not maintainable on the ground of non joinder of necessary properties. In support of his submission learned advocate for the plaintiffs has relied upon the judgment of *Hon'ble Bombay High Court in second appeal no.1/2024 with civil application*

no.334/2024 in Sharanjeetsingh Mahendrasingh Jassar vs. Mirabai Sanjay Pachtore and others. I have carefully gone through the above cited judgment. The Hon'ble Bombay High Court while relying upon the judgment of *Hon'ble Apex Court in the case of Karupiah and another vs. C. Munniyappan and others reported in 2014 SCC online Mad660* has held that the subsequent purchaser or an alienee of the suit property is not a member of joint family and therefore an alienee cannot contend and cannot claim that the suit is not maintainable on the ground that all the joint family properties are not included. The judgment and the observations made in the same are squarely applies to the case in hand. In the present case defendant nos. 1 to 4 who are members of the joint family have nowhere disputed or denied the suit claim. Defendant no.5 admittedly is not a member of joint family of the plaintiffs and defendant nos.1 to 4 and admittedly he is subsequent purchaser/alienee and as per the ratio laid down in the above cited judgment, defendant no.5 has no legal right to contend that the suit is not maintainable on the ground of non joinder of necessary properties. In view of the observations made by the Hon'ble Bombay High Court, this issue needs to be decided in the negative and accordingly, I answer issue no.8 in the negative.

ISSUE NO.4 :-

31. Plaintiffs have demanded mesne profits from the date of institution of this suit. It is their case that vide sale deed

dt.15/09/2005 defendant nos.1 to 4 sold suit property 'B' to defendant no.5 and on the same day it was given in possession of defendant no.5. But, in this regard it is necessary to mention that defendant no.5 who is purchaser defendant, is not in wrongful possession of the suit property 'B'. He has purchased the same for valuable consideration from defendant nos. 1 to 4 and has obtained possession legally from them. Consequently, the plaintiffs are not entitled to claim mesne profits from defendant no.5 in respect of suit property 'B'. But, with regard to suit property 'A', it is undisputed that the suit property 'A' is in possession of defendant nos. 1 to 4. Therefore, defendant nos. 1 to 4 are enjoying the fruits of the suit property 'A'. Therefore, the plaintiffs are entitled to claim mesne profits in respect of suit property 'A' from defendant nos. 1 to 4. Hence, I answer issue no.4 in the partly affirmative and partly negative.

ISSUE NO.3 :-

32. Plaintiffs have proved that the suit property was allotted to Shankar who died leaving behind three sons namely Bala, Gangadhar and Ramling. It is further established that suit property is joint family property. It is further proved that the plaintiffs are representing the branch of Gangadhar and Ramling. Therefore the plaintiffs are having 2/3 share in common i.e. 1/3 share to the branch of Gangadhar and 1/3 share to the branch of Ramling. Thus, considering the above shares, plaintiffs are entitled for partition and separate

possession of their undivided 2/3 shares in common of the suit property. Hence, I answer to issue no.3 in the affirmative and in answer to issue No.6 I proceed to pass the following order:-

ORDER

- (i) It is hereby declared that sale deed Exh.43 in respect of suit property 'B' is not binding on the plaintiffs to the extent of their undivided interest therein.
- (ii) It is hereby declared that the plaintiffs have 2/3 share in common in the suit property 'A' and suit property 'B' and the plaintiffs are entitled to get separate possession of their 2/3 common share by following due procedure of law.
- (iii) Partition of lands be effected through Collector, Nashik under section 54 of the Code of Civil Procedure.
- (iv) Inquiry be held as to mesne profits of 2/3 share of the plaintiffs in the suit property 'A' from the institution of the suit until the delivery of the possession to them vide Order 20, Rule 12 of the Code of Civil Procedure.
- (v) Parties to bear their own costs.
- (vi) Preliminary decree be drawn up accordingly.

Nandgaon
Date :- 27/03/2026

(J. M. Agnihotri)
Civil Judge, Junior Division,
Nandgaon (Nashik)
(MH02817)

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