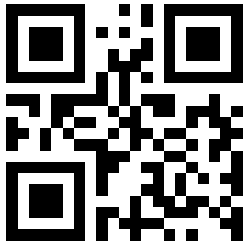


MHNS190000471999 	INSTITUTED ON	:	30	06	1999
	REGISTERED ON	:	30	06	1999
	DECIDED ON	:	20	04	2026
	DURATION	:	Y	M	D
			26	09	21

**IN THE COURT OF 2nd Jt. CIVIL JUDGE JUNIOR DIVISION,
AT YEOLA, DIST. NASHIK.**

[Presided over by Jahangir R. Pathan(B.A. LL.M)]

REGULAR CIVIL SUIT NO. 128 OF 1999

Exh.322

1. **Khalil Ahmed Ismile Ahmed,**
Age: 40 years, Occu: , Agri.,
2. **Akil Ahmed Ismail Ahmed Pirjade,**
Age : 30, Occu: Agri.,
3. **Sugrabi Mard Ismail Ahmed Pirjade,**
Age : 65, Occu : Agri.,
4. **Rajiya Begam Ismail Ahmed Pirjade,**
Age : 28, Occu :Agri.,
5. **Arefa Begam Ismail Ahmed Pirjade,**
Age : 25, Occu :Agri.,
6. **Asifa Begam Ismail Ahmed Pirjade,**
Age : 22, Occu :Agri.,
All R/o. Pirjada Bagh, Kachari Road, Yeola,
Tal. Yeola, Dist. Nashik.

....Plaintiff

..Versus...

1. **Jamir Ahmed Gasansir Pirjade,**
Age: 55 years, Occu: Agri.,

2. Bilal Ahmed Gasansir Pirjade,(Abated)
(Legal heirs of defendant No.2

2A. Rehana Bilal Ahmed Pirjade,
Age: 25 years, Occu: Agri.,

2B. Javed Bilal Ahmed Pirjade,
Age: 19 years, Occu: Agri.,

2C. Tehsinbano Bilal Ahmed Pirjade,
Age: 19 years, Occu: Agri.,

3. Ikbal Ahmed Masrur Ahmed Pirjade,
Age: 50 years, Occu: Agri.,

4. Shakil Ahmed Masrur Ahmed Pirjade,
Age: 45 years, Occu: Agri.,

5. Sultan Ahmed Sayyed Suleman
Pirjade,(Abated)
(Legal heirs of defendant No.5)

5A. Shamabano Sultan Ahmed Pirjade,
Age: 65 years, Occu: Agri.,

5B. Nasimbano Aslam Shaikh,
Age: 32 years, Occu: Agri.,

5C. Jakir Ahmed Sultan Ahmed Pirjade,
Age: 30 years, Occu: Agri.,

5D. Jabinbano Mohammad Nadim
Shaikh,
Age: 28 years, Occu: , Agri.,

5E. Jitanbano Shaikh Imran,
Age: 26 years, Occu: , Agri.,

5EE. Nyajodddine Sultan Ahmed Pirjade,
Age: 24 years, Occu: , Agri.,

5U. Shahin Mohammad Jakir Shaikh,
Age: 21 years, Occu: , Agri.,

5UU. Afrin Mohammad Imran Shaikh,
Age: 19 years, Occu: , Agri.,

5F. Hina Kausar Mohammad Wasim,
Age: 18 years, Occu: , Agri.,

6. Jalil Ahmed Ismail Ahmed Pirjade,
Age: 35 years, Occu: , Agri.,
All R/o. Kachari Road, Yeola,
Tal. Yeola, Dist. Nashik.

7. Mohammad Yusuf Haji Isa,
Age: 45 years, Occu: , Agri.,
R/o. Islamabad, Near Water Tank, Malegaon,
Tal. Malegaon, Dist. Nashik.

8. Jabbar Rajjak Shaikh,
Age: 37 years, Occu: , Agri.,
R/o. Nagde, Tal. Yeola, Dist. Nashik.

9. Shaikh Sharekh Dastgir,
Age: 35 years, Occu: , Agri.,
R/o. Jahagirdar Colony, Court Road, Yeola,
Tal. Yeola, Dist. Nashik.

10. Changdev Dada Lonare,
Age: 45 years, Occu: , Agri.,
R/o. Angangaon, Tal. Yeola, Dist. Nashik.

....Defendants

Claim : **Suit for partition by meets and bounds for**
declaration that sale-deed is not binding and for
mense profit.

Appearances:

Mr. J. E. Kalantri	: Learned Advocate for the plaintiffs
Mr. G. N. Kulkarni	: Learned Advocate for the defendant No. 1 to 5
Mr. M. A. Jahagirdar	: Learned Advocate for defendant No. 7
Mr. S. H. Shah	: Learned Advocate for defendant No. 9 and 10

J U D G M E N T

(Delivered on 20th Day of April 2026)

This is suit for partition by meets and bounds, for declaration that sale-deeds are not binding and for *mense* profit instituted by a Mohammedan under the Mohammedan Laws. Defendant No. 7 setup counter-claim and claimed the reliefs of partition, *mense* profit, permanent injunction, restraining the defendants from alienating the suit lands, declaration that the sale transactions and partition deeds are void and not binding on him

2. The case of the plaintiffs, in short, is as under:

The properties situated at Yeola, Tal. Yeola within the Municipal boundaries of Yeola which are given in tabular form:

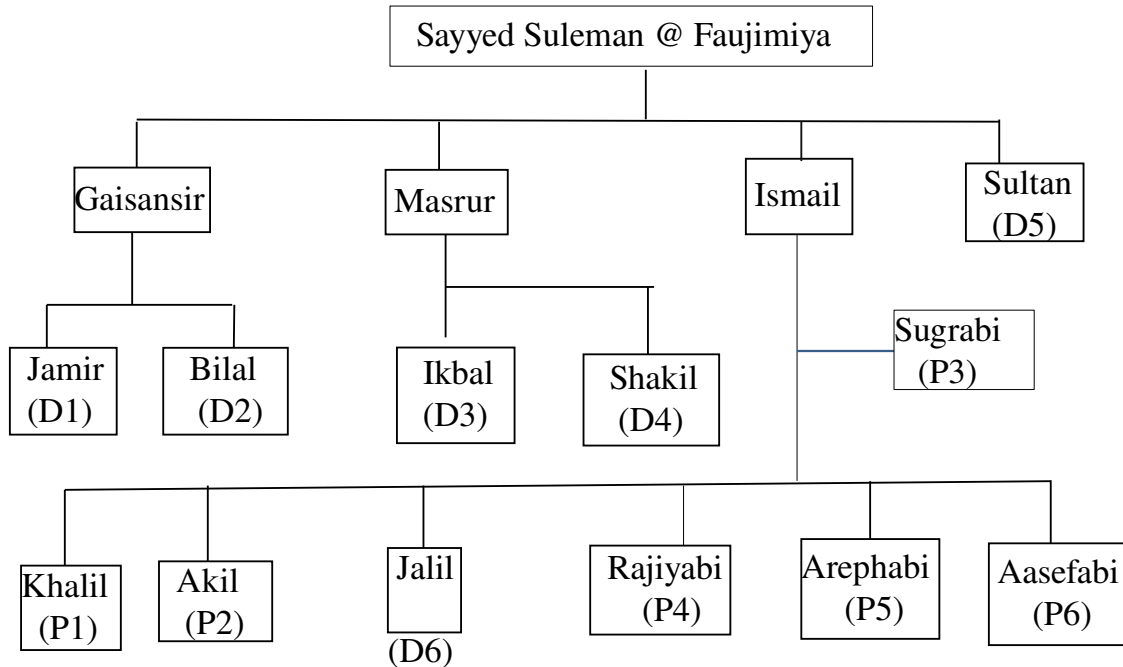
Survey No.	Admeasuring Area	Bounded towards			
		East	West	South	North

3/1 to 3/1	4.80.59	Survey No. 3	Road	Survey No. 4 and 5	Gavthan
Area 12140. 50 Sq. Meter, Non-Agricultural, Total Area 6H 02R					
3/1 to 3/2	0.32	Survey No. 6	Survey No. 3	Survey No. 5	Survey No. 3
5	06.84	Survey No. 6	Survey No. 04	Survey No. 106, Road	Survey No. 3
6/1A	07047	Survey No. 7, 9, 10, 5	Survey No. 5	Road	Survey No. 6
7	08.31	Survey No. 8	Survey No. 6	Road	Survey No. 9

(The above properties are being hereinafter referred as ‘**the suit properties**’).

3. The main ancestor, Sayyed Suleman @ Foujimiya, had four sons, namely Gaisanpir, Masrur, Ismail, and Sultan. The plaintiffs and Defendant No. 6 are the children and wife of deceased Ismail, son of Sayyed Suleman. Defendant Nos. 1 and 2 are the sons of Gaisanpir, while Defendant Nos. 3 and 4 are the sons of Masrur. Defendant Nos. 5A to 5F are the legal heirs of Sultan. Defendant Nos. 2A to 2C are the legal heirs of original Defendant No. 2. Defendant No. 7, Mohammad, claims to be the son of the deceased daughter of Suleman. Defendant Nos. 8 to 10 are

subsequent purchasers. The genealogy mentioned in the plaint is as under:



4. The suit properties were owned and possessed by Sayyed Suleman @ Foujimiya. The plaintiffs and defendant Nos. 1 to 7 being heirs, they have right in the suit properties as per Mohammedan Law. Before 1966 four sons of Sayyed @Foujimiya were residing together. However, in the year 1966 as to avoid technicalities of Ceiling Act it was decided not to keep the entire property in one name. Defendant No. 1 was clever and cunning person and he was looking after the transactions. On the contrary father of the plaintiffs was no knowledge about the transactions. Therefore, in the year 1966 defendant No. 1 (Jamir) sold out some of the properties of joint family and on the same day one registered partition deed was executed. However, it was told to Ismail that for family arrangements only that

partition deed was being executed. It was not partition by meets and bounds. Therefore, the plaintiffs deny the partition deed. As there was no partition by meets and bounds and partition deed was executed to avoid technicalities of Ceiling Act, the plaintiffs and their father Ismail never challenged the partition deed.

5. On the basis of said partition deed names were recorded in the revenue record. Thereafter, as there were disputes between father of the plaintiffs and Gaisanpir they were residing separately. In fact, as there was no partition, their transactions were united. Thereafter, again dispute arose and talks took place about partition. Therefore, defendants on 23/03/1994 being part of partition effected recording of name in revenue record of Land Survey No. 6/1A and Survey No. 5 admeasuring 2H 41R. Similarly, on 02/09/1993 the defendants admitted to give land in Survey No. 2/1A and 7 about 7 acres. Accordingly, assurance agreement (हमीपत्र) was executed on 02/09/1993. The said original document is in possession of the defendant No. 1 and copy of it is with the plaintiff. The process of partition is still continuing one and work of effecting of partition is still going on. The share is given to the plaintiffs in house City Survey No. 4866 in the year 1999 that was also a part of process of partition. It was agreed by the document dtd. 02/09/1993 that land admeasuring 2 acres in survey No. 3/1/A/1 and 4 acres in survey No. 7 was to be given to the plaintiffs till date 30/03/1998. However, thereafter, the

defendants denied to effect the partition by meets and bounds and went on to avoid. Therefore, cause of action arose to this suit. During the pendency of this suit in the year 2021 the defendants have sold out some of the suit property in favor of the defendant No. 8 to 10 through registered sale-deed. Therefore, they are made party to this suit. Accordingly, the plaintiffs have instituted this suit for partition by meets and bounds and for declaration that sale-deeds in favor of the defendant Nos. 8 to 10 are not binding on them.

6. Defendant Nos 1 to 5 appeared in the suit and filed their written-statement at Exh. 17. They have denied the suit. It is contended by them that already the partition has been effected in the year 1966 by registered partition deed. Despite that no property was remained to be partitioned. The plaintiffs included the properties of defendants and not included the properties which are in their name in the suit property. The plaintiffs have sold property of their share. As per Mohammedan Law there is no concept of re-partition. The entire property has not bought in common hotchpot. The description and area of suit properties are wrongly mentioned. It is further contended on 04.10.1966 partition took place between the heirs of deceased Suleman by registered partnership deed. In that partition land admeasuring 9 Acres 20 Guntas in Survey No. 6, land admeasuring 2 Acres 30 Guntas, in land Survey No. 3 alongwith well and trees were allotted to the

share of the father of the plaintiffs. At the time of said partition the existing debt of Rs. 4750 was liable to be paid by the defendants. Father of the plaintiffs were not required to pay any debt. The land which was allotted to his share was free from encumbrances. Therefore, less land than others were allotted to father of the plaintiffs. Accordingly, on the basis of said partition deed mutation entry No. 882 was recorded in the year 1966 itself and since then the plaintiffs and defendants were residing separately and they never resided together. After that partition father of the plaintiffs made alienation to the following lands of his share.

Survey No.	Admeasuring Area	Date	To whom sold
3/1/B	39 Guntas	15/03/1976	Haji Mohammad Rehamtulla Gaji
3/1/B/1	39 R	15/03/1976	Haji Mohammad Rehamtulla Gaji
6/1/B	1 Acre 2Guntas	28/02/1975	Haji Mohammad Umar Haji Rehemtulla Gaji
6/1/B	3 Acre 30 R	14/02/1975	Haji Mohammad Umar Haji Rehemtulla Gaji
6/1/B	3 Acre 38 Guntas	18/07/1973	Mohammad Husain Abdul Wahib
6/1/B	4 Acre	01/06/1971	Mohinuddin Haji Rehmtulla

			Gaji & Mohammad Ibrahim Haji
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7. The consideration amount was received by the father of the plaintiffs alone. However, the defendants not alienated their land after partition. There was partition of house property City Survey No. 4866. However, Suit RCS No. 146/1998 was unnecessarily filed. In that suit compromise deed was took place and house was partitioned. However, in fact house property was partitioned long back ago. Therefore, there is no question of re-partition. The defendants denied the factum of execution of document dtd. 02/09/1993 and submitted that the father of the plaintiffs sold out entire land of his share and plaintiffs requested to defendant to give more land. Therefore, the defendants voluntarily gave the land to the plaintiffs by showing mercy in Survey No. 5 admeasuring 81R, Survey No. 6/1/A admeasuring 1H 60R total admeasuring 6 Acre irrigated land due to the love and affection. It is admitted that the said land has been given on the basis of affidavit. Merely because the defendants gave some land to the plaintiffs, it does not mean that process of partition was continued. The defendants in Survey No. 3/1/3/B converted land in non-agricultural purpose and by making plots they sold the plots. Therefore, due to grudge the plaintiffs have filed this false suit for blackmailing and

grabbing money. Lastly, the defendants prayed for dismissal of suit with compensatory cost.

8. Defendant No. 7 was not initially party in the suit. However, by moving application on Exh. 54 he asked to be joined in the suit. Therefore, by order of the Court on Exh. 54 defendant No. 7 was added in the suit. Defendant No. 7 contested the suit vide written-statement at Exh. 67. Defendant No. 7 claimed that deceased Suleman was having four sons and one daughter i.e. Mustak Jahanara and defendant No. 7 is being sole son and heir of deceased Mustak Jahanara is also legal heir of deceased Sayyed Suleman. Mustak Jahanara was married to the father of defendant No. 7. She died living behind defendant No. 7 as only legal heir. The suit lands were never partitioned amongst all the legal heirs of deceased Sayyed Suleman. By way of family arrangements names of only sons were recorded in the revenue record. At the time of partition in the year 1966 share was not given to the mother of defendant No. 7. Behind her back four sons of Suleman to grab the property and to keeping away from the legitimate share, fraudulently and intentionally not included mother of defendant No. 7 and behind her back got executed registered partition deed. She was not party to the said deed. His mother was illiterate and *Pardanashin* lady. She was not aware of affairs of brothers. As per Mohammaden Law being daughter Mustak Jahanara was entitled for her share to the tune of 360 out of 3240. The alleged partition

deed is illegal and void and not binding on defendant No. 7 and he is entitled for the partition and separate possession to the extent of his mother's share. The subsequent alienation's made by the heirs of deceased Suleman by sale deeds are as follows;

Sr. No.	Sale deed No.	Date of Execution of Sale deed
1.	2168/1996	04/10/1996
2.	2167/1966	03/10/1966
3.	439/1971	01/06/1971
4.	440/1971	01/06/1971
5.	130/1975	14/02/1975
6.	186/1975	28/02/1975
7.	173/1986	15/03/1976
8.	203/1978	21/02/1978

9. Sale deeds in respect of House Nos. 4866 and 4821 and sale deed by Khalil Ahmed in the year 2010 are being void and not binding on this defendant. The suit properties were never partitioned by meets and bounds and share of his mother was not given. Therefore, the defendant No. 7 setup counter-claim and claimed the reliefs of partition, mense profit, permanent injunction, restraining the defendants from alienating the suit lands, declaration that the partition deed and sale transactions are void and not binding on defendant No. 7.

10. Defendant Nos. 1, 3, 4, and 5 resisted the counter claim by filing counter written-statement on Exh. 77. They denied relation with mother of defendant No. 7. It is contended that that defendant No. 7 has collusion with the plaintiffs. He has no right in the suit properties. The counter claim is not within limitation. Mother of defendant No. 7 Mustak Jahanara died in the year 1986. Neither his mother nor defendant No. 7 challenged the partition deed till filing of this counter claim. Lastly, they prayed for the dismissal of the counter claim.

11. The heirs of deceased defendant Nos. 2, 3, and 5 have adopted their previous written statement by filing pursis on Exh Nos. 96, 110 and 197 respectively.

12. Defendant Nos. 8 and 9 not filed written statement. Therefore, the suit was proceeded against them without their written statement.

13. Defendant No. 10 filed his written statement at Exh. 300. He denied the suit of the plaintiffs. He further pleaded that this court has no pecuniary jurisdiction, the plaintiffs not paid proper court fees. This defendant purchased the property for consideration of Rs. 1,36,65,000/-. This defendant is Bonafide purchaser as he paid valuable consideration as there is no injunction orders there is no prohibitory orders. The defendants purchased the property. Now, on the basis of registered sale deed

defendant No. 8 to 10 became owner and possessor of property of their sale deed.

14. In support of the claim the plaintiffs relied upon oral as well as documentary evidence. The plaintiff No. 1 examined himself on behalf of plaintiff Nos. 1, 4 to 6 as a sole witness at Exh. 115. The plaintiffs relied following documentary evidence and closed their evidence by filing pursis at Exh. 112.

Documentary as well as Oral Evidence of Plaintiffs:

Sr. No.	Exh.	Document
1.	115	PW-01, Khalil Ahmed Gaisansir Ismail Ahmed
2.	135	Copy of Sale-deed No. 2166, dtd. 03/10/1966
3.	134	Copy of Partition-deed No. 2168, dtd. 04/10/1966

15. Defendant Nos. 1 to 5 not adduced any documentary as well as oral evidence.

16. Defendant No. 7 examined himself at Exh. 127 and another witness Kazi Rafiyoddin Gayasuddin at Exh. 174. Defendant No. 7 relied upon following documentary evidence and closed their evidence by filing pursis at Exh. 181.

Documentary as well as Oral Evidence of defendant No. 7:

Sr. No.	Exh.	Document
1.	127	DW-01, Mohammad Yusuf Haji Isa

2.	174	DW-02, Kazi Rafiyoddin Gayasuddin
3.	133	Death Certificated of Mustak Jahanara
4.	141	Affidavit of Defendant No. 7 before SDM, dtd. 13.01.2015
5.	142	Legal heir table of Defendant No. 7 from Talathi Malegaon, Dist. Nashik
6.	143	Copy of Sale-deed No. 2168 , dtd. 03/10/1966
7.	144	Copy of Partition-deed No. 2166, dtd. 04/10/1966
8.	145	Copy of Sale-deed No. 2167, dtd, 03/10/1966
9.	146	Copy of Sale-deed No. 439, dtd. 01/06/1971
10.	147	Copy of Sale-deed No. 440, dtd. 01/06/1971
11.	148	Copy of Sale-deed No. 130, dtd. 14/02/1975
12.	149	Copy of Sale-deed No. 203, dtd. 21/02/1978
13.	150	Copy of Sale-deed No. 186, dtd. 28/02/1978
14.	151	Copy of Sale-deed No. 2167 , dtd. 03/10/1966

17. Defendant No. 10 examined himself at Exh. 313 and he relied upon his sale-deed No. 1153/2021, dtd. 18/03/2021 at Exh. 316.

Submissions on behalf of the Plaintiffs (Exh. 312):

18. The plaintiffs have filed written notes of arguments at Exh. 312. It is contended that defendants No. 1 to 5 neither entered the witness box nor subjected themselves to cross-examination. Hence, adverse inference is required to be drawn against them. The plaintiffs assert that they have succeeded in proving their claim. The relationship between the parties has not been denied.

Although the plaintiffs initially denied relationship with defendant No. 7, the evidence of defendant No. 7 and his witness, Kazi, establishes that the mother of defendant No. 7 is the daughter of deceased Suleman. Consequently, the plaintiffs, being legal heirs of the deceased son of Suleman, are entitled to partition. The suit properties continue to be joint family properties, and partition has not been effected by metes and bounds. The factum of partition remains incomplete. Therefore, the plaintiffs have an undivided share in the suit property and are entitled to partition. Accordingly, the learned advocate for the plaintiffs has prayed for decreeing the suit.

Submissions on behalf of Defendants No. 1 to 5 (Exh.317):

19. Defendants No. 1 to 5 have filed written notes of arguments at Exh. 317. They contend that partition was effected by a registered partition deed in the year 1966. Since then, neither the plaintiffs nor their father during his lifetime challenged the said partition deed or the corresponding revenue entries. The partition was acted upon and accepted by both parties, which is evident from the admissions made by the plaintiffs in cross-examination. The plaintiffs remained inactive for several decades, and therefore the partition must be accepted. It is further submitted that under Muslim law, there is no concept of re-partition. The plaintiffs have not included properties sold by their father. The suit is hopelessly barred by limitation. In a previous suit, RCS No. 247/2014, the plaintiffs admitted

the fact of partition. The relationship between Suleman and the mother of defendant No. 7 (Jahanara) has not been proved. The plaintiffs have not sought cancellation of the partition deed. Hence, both the suit and the counterclaim of defendant No. 7 are liable to be dismissed. The learned advocate in support of his argument relied upon the following citations:

1. *Digambar Adhar Patil Vs. Devram Girdhar Patil(Died) and Anr., 1995 STPL(LE) 19942 SC.*
2. *Rohit Singh & Ors. Vs. State of Bihar (Now State of Jharkhand) & Ors., 2006 48 AIC 84.*
3. *Kazi Ahmed Mohiuddin Farooqui Vs. State of Maharashtra & Ors., 2010(3) Bom. C.R. 174.*

Submissions on behalf of Defendant No. 7:

20. The learned advocate for defendant No. 7 has vehemently argued that the partition deed of 1966 is illegal and void, as the mother of defendant No. 7, being one of the heirs, was not made a party to the said partition. The partition was effected behind her back and is therefore not binding on defendant No. 7. It was incumbent upon the opposite party to establish that deceased Jahanara had knowledge of the partition deed, which they failed to prove. Consequently, neither Jahanara nor defendant No. 7 had knowledge of the partition until much later. Hence, the period of limitation would not commence against them until such knowledge was acquired. Upon learning of the partition, defendant No. 7 filed an application to be impleaded in the suit and subsequently filed a counterclaim

seeking partition. As Jahanara, being the daughter of deceased Suleman, was entitled to a share in the suit properties under Mohammedan law, defendant No. 7, as her heir, is entitled to claim partition. The sale deeds executed in respect of suit properties are not binding on defendant No. 7, as they were executed without the participation of his mother. Learned advocate further submitted that defendant No.1 to 5 not examined themselves and therefore, the claim of this defendant is to be accepted by drawing adverse inference. Accordingly, defendant No. 7 has prayed for decreeing the counterclaim. The learned advocate in support of his argument relied upon the following citations:

- 1. Noor Jahan Begum Vs. Abrar Ahmad Khan and Anr., AIR 1982 ALL 149.*
- 2. Iswar Bhai C. Patel alias Bachu Bhai Patel Vs. Harihar Behera and Anr., 1999 SCC Online SC 286.*
- 3. Muhammad Kaliba Rowther Vs. Muhammad Abdullah Rowther, AIR Mad 84.*
- 4. Mohammad Ismail and Anr. Vs. Khadirsa Rowther & Ors., 1982 SCC OnLine Mad 49.*

Submissions on behalf of Defendant No. 10:

21. The learned advocate for defendant No. 10 has argued that this Court lacks pecuniary jurisdiction to entertain the present suit, as the consideration amount mentioned in his sale deed exceeds Rs. One Crore. It is further submitted that as there was no prohibitory order, defendants No. 8 to 10 purchased part of the suit property from defendants No. 1 to 5 by paying valuable

consideration. They claim to be bona fide purchasers for value without notice. On these grounds, the learned advocate has urged that both the suit and the counterclaim be dismissed.

22. The issues were framed at Exh.34, which were recasted from time to time. I record finding against each issue for reasons recorded thereunder.

Sr. No.	ISSUES	FINDINGS
1.	Do the plaintiffs prove that the suit properties are ancestral properties of them and defendants?	Negative
1A.	Do the plaintiffs prove that sale-deed executed in favour of defendant No. 8 to 10 are illegal and not binding on share of plaintiffs?	Negative
2.	Are the plaintiffs entitled to partition of the suit properties? If yes, what share?	Negative
2A.	Does defendant No. 07 prove that, partition deed took place in between parties is null and void and not binding upon him?	Negative
2-B.	Does defendant No. 07 further prove that, the sale-deeds as alleged by him in written-statement are void ab-intio and not binding upon him?	Negative
2C.	Does defendant No. 07 further prove that, suit is hit by non-joinder of necessary parties and law of limitation?	Affirmative
2D.	Whether defendant No. 07 is entitled	Negative

	for declaration and injunction as prayed?	
2E.	Is defendant No. 07 entitled to partition and separate possession as sought?	Negative
3.	Are plaintiffs entitled to mesne profits as claimed?	Negative
4.	Do the defendants prove that there is already partition of the suit properties as contended?	Affirmative
5.	What order and decree?	As per final order.

:REASONS:**AS TO ISSUE NOS. 01, 1A, 2A, 2B and 4,:**

23. These issues are interlinked to each other. Therefore, for avoiding repetition I prefer to give reasons together. The plaintiffs have examined plaintiff No. 1 as sole witness. He in his affidavit of examination in chief reiterated the contents of plaint. Therefore, I avoid to repeat it. In the cross-examination he stated his grandfather Syed Suleman Faujimiya Pirjade died around 1956–57. He denied the suggestion that after his grandfather's death the property was mutated solely in the name of one son. He confirmed that mutation entry no. 744 was recorded after his grandfather's death, and that his grandfather owned lands bearing survey nos. 3, 4, 6, and 7. He admitted that a partition deed dated 04/10/1966 existed and bore his

father's signature, which he recognized, though he claimed he came to know of it only after his father's death in 1989. He acknowledged that the partition deed led to mutation entries, but denied having challenged them by appeal or revision.

24. He shown ignorance about several transactions allegedly executed by his father between 1971 and 1976, involving sales of portions of survey nos. 3/1B and 6/1B to various purchasers. He denied knowledge of whether his father had disposed of all his lands. He clarified that while his three sisters were married, they had not relinquished their rights, though some cousins had executed relinquishment deeds. He admitted that his father had four brothers and one sister, and that the family had lived jointly until he separated about 15–20 years earlier.

25. He further admitted that in 1994 he applied to the Talathi for mutation of survey nos. 6/1A and 5 in his name, supported by an affidavit, pursuant to which 1.60 hectares and 0.81 hectares respectively were recorded in his name. He acknowledged selling one acre from this holding to Mushtaq Ahmed Shaikh. He reiterated that under the 1966 partition his father had received about 11–12 acres, but that none of those lands remained with him now, as they had been sold by his father.

26. He conceded that his father died in 1990, and that the properties in his name had been sold before that. He

admitted that from 1966 until the filing of the present suit, neither he nor his father had raised any objection to the partition. He accepted that mutation entries nos. 418, 744, and 842 recorded the partition among the brothers, and that no appeal had been filed against them. He acknowledged that defendants Nos. 1 to 5 had subsequently partitioned their shares and sold plots therefrom, and that he himself had sold property for about nine to ten lakhs.

27. On cross-examination by defendant no. 7, he admitted that his paternal aunt was alive at the time of the 1966 partition but was neither called nor her signature taken on the deed. He confirmed that she died on 22/04/1986, leaving defendant no. 7 as her sole heir. He admitted that neither she nor defendant no. 7 had executed any relinquishment deed in favor of his father or other defendants, and that defendant no. 7 had not received any share in the properties. He accepted that some of the suit properties had been converted from agricultural to non-agricultural use and sold by defendants nos. 1 to 5.

28. From the testimony of the plaintiff, it emerges that the plaintiff's father, Ismail Ahmed, was allotted approximately 11–12 acres of land under the registered partition deed dated 04/10/1966, which the witness admitted bore his father's signature on the partition deed. The witness conceded that mutation entries were duly effected thereafter and that neither he nor his father challenged them until the institution of the present suit. He

further acknowledged that his father had sold substantial portions of the allotted lands prior to his death in 1990, and that the plaintiff himself subsequently sold part of the property mutated in his name in 1994. These admissions demonstrate that the partition was acted upon and accepted by the parties for decades, and that the suit has been filed only after long acquiescence. Taken together, the admissions establish that the partition deed of 1966 was genuine and operative, that the plaintiff's father derived benefit thereunder, and that the plaintiff's challenge is belated and untenable.

29. It is an admitted position that deed of partition between the four sons of deceased Suleman was effected in the year 1966 by way of a registered partition deed. On the basis of the said deed, their respective names came to be recorded in the revenue record. Neither the deceased Ismail nor the present plaintiffs challenged the partition deed or the consequential revenue entries until the filing of the present suit in 1999, i.e., after a lapse of 32 years. It is not the case of the plaintiffs that the partition deed was unregistered. It is settled law that a registered document carries its own sanctity and cannot be lightly disturbed. As per the definition of "notice" under the Transfer of Property Act, registration itself constitutes notice. After partition said Ismail sold out various lands which were allotted to his share. Therefore, it can be safely inferred that both the deceased Ismail and the plaintiffs had knowledge of the

partition deed. Further, it is borne out from the record that after the death of Ismail, the plaintiffs themselves sold a substantial portion of the share allotted under the partition, thereby acting upon and accepting the partition. In view of this conduct, the contention of the plaintiffs that the partition was not effected with metes and bounds cannot be accepted. Accordingly, the claim of the plaintiffs on this aspect fails.

30. Furthermore, the plaintiffs have not whispered a single word regarding the alienations effected by their deceased father during his lifetime, nor have they offered any explanation in that regard. There is no pleading as to what happened to the consideration received from the said sales. As rightly contended by the defendants, the father of the plaintiffs disposed of a substantial portion of his share through six different sale deeds executed after the partition deed. From the recitals of the partition deed, it appears that only the father of the plaintiffs separated his share, while the remaining three sons of deceased Suleman continued jointly. After the said partition, the father of the plaintiffs sold the lands falling to his share. If the partition had not been effected, there is no reason why the father of the plaintiffs would have sold the lands by executing six different sale deeds in his individual capacity. No explanation has been forthcoming from the plaintiffs in this regard. These circumstances are sufficient to suggest that

the partition was not only effected but was also accepted and acted upon.

31. The plaintiffs have pleaded that an agreement was executed by the defendant in the year 1993, under which additional land was to be allotted to them. However, the alleged bond agreement on stamp paper has not been produced on record. It is the contention of the plaintiffs that a copy of the said agreement is in their possession, while the original remains with the defendant. If that were so, the plaintiffs were at liberty to adduce secondary evidence in support of their claim. No such course has been adopted. In absence of production of the alleged agreement or any admissible secondary evidence, the assertion of the plaintiffs regarding allotment of additional land by the defendant in 1993 cannot be accepted as proved. Accordingly, the plea of the plaintiffs on this aspect fails.

32. Next vital aspect is in respect of relationship of defendant No. 07. Defendants No. 1 to 5 have specifically denied the relationship with the mother of Defendant No. 7 and consequently with defendant No. 7. In this regard defendant No. 7 has examined himself by filing an affidavit of examination-in-chief, wherein he has reiterated the pleadings already placed on record. Therefore, detailed reproduction thereof is avoided to obviate redundancy. In the cross-examination he deposed that he had studied up to the seventh standard and was conversant with Marathi. He was born on 01/06/1968 at Malegaon. His father, Haji

Sheikh Isa Sheikh Chand, died around 2005 at the age of 80–81 years. He confirmed that his mother was the daughter of Syed Suleman Pirjade. His mother died in 1986 at the age of about 60–70 years. He possessed the original *nikahnama* of his mother's marriage, which recorded that at the time of marriage his father was 45 years old and his mother 25 years old. His maternal uncle, Masroor Ahmed, solemnized the marriage. He affirmed that his mother's death occurred at Malegaon and that only the fourth wife of his father was alive at present.

33. He admitted that he had obtained a xerox copy of the partition deed dated 04/10/1966 from the Tehsil office, though he did not have the original. He stated that he came to know of the present suit in March 2010 and had applied to be joined as a party in 2009. He acknowledged that the documents filed by him bore the signature of Masroor Ahmed Syed Suleman Pirjade, and that the signatures were in Marathi.

34. He further stated that he had obtained copies of certain documents in 2007, and thereafter filed an application in 2010 to be impleaded. He denied that he had possession of the partition deed since 1966. He stated that his mother was third wife of his father. He relied upon his mother's *nikahnama* to establish his relationship. He admitted that he had obtained his mother's death certificate dated 19/11/1979, and reiterated that his maternal grandfather's name was Syed Suleman Madumiya Pirjade.

He denied that this was a false name. He confirmed that his grandfather died in 1943.

35. He admitted that mutation entry no. 418 was effected after his grandfather's death in 1943, recording the names of four sons, but asserted that one heir, namely a daughter, was suppressed. He did not lodge any objection against mutation entry no. 418 before the revenue authorities. He acknowledged that his mother had not taken any steps to claim her share. He admitted that the partition deed of 1966 was acted upon and entries were made in the revenue records, and that he had obtained copies of several mutation entries but had not challenged them in any court. He denied knowledge of sales effected by the plaintiff or defendants. He admitted that he had sought injunction against Jameer Ahmed and others, which was dismissed, and that he had filed a notice of *lis pendens* under Section 52 of the Transfer of Property Act before the Sub-Registrar. He denied that he was falsely impleaded or that he had colluded with the plaintiff. He insisted that his mother was indeed the sister of Sultan Ahmed, Masroor Ahmed, Ismail Ahmed, and Gayas Nasir, and that he was entitled to a share in the suit property.

36. Defendant No. 7 examined Qazi Rafiyoddin Gyasuddin, who deposed that he is a permanent resident of Yeola and presently functioning as the city Qazi, having succeeded his father, Qazi Gyasuddin Badruddin. His father officiated marriages within the Muslim community at Yeola

and maintained the nikah register. Pursuant to summons from the Court, the witness produced the original register along with certified copies thereof. He testified that entry no. 104 in the register records a nikah solemnized on 06/04/1967 at Malegaon between Haji Sheikh Isa Sheikh Chand, aged 45, and Mushtaq Jahan Ara, daughter of Syed Suleman Pirjade, aged 25. The marriage was conducted by his father in accordance with Muslim law, in the presence of witnesses Abdul Razzaq and Mohammed Saheb Abdul Karim, with Haji Gulam Rasool acting as vakil. The bride's brother, Masroor Ahmed, was present as *wali* and consented to the marriage. The register bears the original signatures of the parties, witnesses, vakil, and the officiating Qazi, together with the official seal. A sum of Rs. 1001 was fixed as mehr. The witness confirmed that he himself was present at the ceremony and, owing to his father's cataract, he wrote the contents of the register entry in his own handwriting. He further stated that he has continued to act as city Qazi after his father's death in 2000, and that the register remains in his custody. He produced certified copies of the entry and translations in English and Devanagari script, affirming their correctness.

37. On cross-examination, he admitted that his education extended up to the eleventh standard and that he had served as a teacher until retirement in 2008. He confirmed that his father had worked as Qazi since 1930, though he was not aware of any formal appointment letter

from the Wakf Board or Government. He acknowledged that the office of Qazi was hereditary in his family. He denied suggestions that he lacked authority to certify the register or that his testimony was fabricated to support Defendant No. 7. He maintained that the nikah entry was genuine, that he had personal knowledge of the ceremony, and that Mushtaq Jahan Ara was indeed the sister of Sultan Ahmed, Masroor Ahmed, Ismail Ahmed, and Gayas Nasir.

38. From the evidence of Qazi Rafiyoddin Gyasuddin, it is proved that the marriage solemnized on 06/04/1967 between Haji Sheikh Isa Sheikh Chand and Mushtaq Jahan Ara, daughter of Syed Suleman Pirjade, in presence of witnesses in accordance with Muslim law. The marriage was conducted by his father, the then city Qazi, with the consent of the bride's brother Masroor Ahmed acting as wali. The register bears the original signatures of the parties, witnesses, wakil, and the officiating Qazi, together with the official seal, and records the mehr of Rs. 1001. His evidence corroborates the existence of Mushtaq Jahan Ara as the daughter of Syed Suleman Pirjade and establishes her marriage to Sheikh Isa Sheikh Chand, thereby substantiating the claim of Defendant No. 7 as her legal heir.

39. Taken together, the evidence of the plaintiff, Defendant No. 7, and Qazi Rafiyoddin Gyasuddin demonstrates that Defendant No. 7 has established his status as the legal heir of Mushtaq Jahan Ara through

consistent testimony and corroboration by independent documentary evidence. Moreover, in cross-examination by Defendant No. 7, the plaintiff specifically admitted that Suleman had one daughter, namely Mushtaq Jahan Ara, and that Defendant No. 7, being her only son, is her sole heir. From this admission, coupled with the evidence of Defendant No. 7 and the Qazi, it is successfully established that the mother of Defendant No. 7 was the daughter of deceased Suleman. Accordingly, I hold that deceased Suleman was having one daughter Mushtaq Jahanara and four sons. Consequently, I also hold that the defendant No. 7, being only son, is sole heir of deceased Mushtaq Jahanara.

40. However, it has to be seen that whether the claim of defendant No. 07 against the property has been proved or not. Defendant No. 07 admitted that that his mother died in 1986. He acknowledged that mutation entry no. 418 was effected after the death of his grandfather in 1943, recording only four sons, but asserted that one heir, namely a daughter, was suppressed. He conceded that the partition deed dated 04/10/1966 was acted upon and entries were made in the revenue records, and that he had obtained copies of several mutation entries but had not challenged them before any authority until his impleadment in 2010. He denied collusion with the plaintiff and insisted that his mother was indeed the sister of Sultan Ahmed, Masroor Ahmed, Ismail Ahmed, and Gayas Nasir. These admissions

demonstrate that the partition deed of 1966 was genuine and operative, that the family acted upon it for decades.

41. Learned counsels for the plaintiff and defendant No. 7 have argued that Defendant Nos. 1 to 6 did not enter the witness box and did not subject themselves to cross-examination, and therefore an adverse inference must be drawn against them. In support of this contention, reliance was placed on the judgment of the Hon'ble Supreme Court in Vidhyadhar v. Manikrao and another, AIR 1999 SC 1441 : (1999) 3 SCC 573 and Iswar Bhai C. Patel alias Bachu Bhai Patel Vs. Harihar Behera and Anr., 1999 SCC Online SC 286. However, the said decision is not squarely applicable to the facts of the present case. The primary reason is that the initial burden to prove the suit claim lies upon the plaintiff and defendant No. 07. In the present matter, there exists a registered partition deed. Unless and until the plaintiff establishes that the said partition deed is invalid, the burden does not shift upon the defendants to disprove it, particularly when the plaintiffs have failed to challenge the deed for a long and considerable period. The plaintiffs and defendant No. 07 have not succeeded in discharging their initial burden. Consequently, the defendants were not required to enter the witness box.

42. Moreover, even if it is accepted that, the burden of proving the factum of partition in the year 1966 lay upon the defendants. However, for proving a fact, it is not always necessary for a party to enter the witness box. A fact may be

proved by adducing documentary evidence, by admissions given by the adverse party, or by the conduct of the parties. The party who is bound to prove a fact can discharge that burden through admissions elicited in cross-examination. In the present case, the execution of the registered partition deed in the year 1966 is not a disputed fact. As held in the foregoing paragraphs, the partition deed was executed and acted upon. Subsequent to the said partition, the father of the plaintiffs alienated various lands which had been allotted to his share. If in fact no partition had been effected, the father of the plaintiffs would not have been competent to sell those lands. Moreover, those alienated properties are not included in the present suit, and no explanation has been offered by the plaintiffs in that regard. From these circumstances, it can be reasonably inferred that the partition was duly effected and acted upon. Therefore, merely because the defendants did not enter the witness box, their case does not fail. They have discharged their burden through cross-examination and documentary evidence. As such, the citation relied upon by the plaintiffs is of no assistance to them.

43. In view of the foregoing reasons, I hold that the partition of the suit properties was duly effected in the year 1966 through a registered partition deed. Consequently, upon such partition, the suit properties ceased to retain the character of ancestral property. The parties to whom shares were allotted under the partition became the absolute

owners thereof, and each accordingly disposed of his respective properties to various persons. Consequently, I record findings against Issue No. 1, 2A in negative and Issue No. 4 in affirmative. Similarly, I record findings against Issue No. 1A and 2B in negative.

AS TO ISSUE No. 2C:

44. In this issue, two vital legal aspects arise for consideration: firstly, the non-joinder of necessary parties, and secondly, the bar of limitation. It has come on record that portions of the suit properties have been alienated to various persons. More significantly, defendant No. 7 has challenged all such sale deeds. However, neither the plaintiff nor defendant No. 7 has impleaded those purchasers in the present suit. The purchasers, having paid valuable consideration, have entered into possession of the properties from the dates of their respective sale deeds. In the absence of their joinder, the suit cannot be effectively adjudicated. Accordingly, all such purchasers are necessary parties. As they have not been impleaded either in the suit or in the counter-claim, I hold that the suit is vitiated by the legal principle of non-joinder of necessary parties.

45. The present suit is one for partition. Such a suit must be instituted within twelve years from the date of exclusion or ouster. I have already held that the partition was effected in the year 1966 through a registered deed, whereby the plaintiffs' father and the plaintiffs were

allotted their respective shares. Accordingly, the suit ought to have been filed within twelve years from that partition. Likewise, the mother of defendant No. 7 was excluded from the suit properties in 1966 itself. Hence, the counter-claim also ought to have been brought within twelve years from such exclusion or ouster.

46. The learned advocate for Defendant No. 7 has vehemently submitted that the claim for partition by one co-sharer against another is not subject to limitation unless it is shown that the plaintiff is debarred by ouster or adverse assertion. He relied upon citations *Mohammad Kaliba Rowther vs Muhammad Abdullah Rowther, AIR 1963 Mad 84: 1962 SCC OnLine Mad 98 and Mohammad Ismail and another vs Khadirsa Rowther and ors, AIR 1983 Mad 123: 1982 SCC OnLine Mad 49.*

47. However, I am unable to accept this submission of the learned advocate. In this regard, it is pertinent to note that a registered partition deed was admittedly executed in the year 1966, expressly excluding Jahanara, the mother of Defendant No. 7. Consequent to the said deed, separate revenue entries were recorded in 1966. Jahanara passed away in 1986, without ever challenging the partition deed during her lifetime. These circumstances clearly indicate that Jahanara stood excluded from the joint family property from 1966 and onwards. It is not the case of the plaintiffs that there was continued joint possession. On the contrary, the father of the plaintiffs alienated substantial portions

from his share after the partition, which further demonstrates that possession was also separated. Taken cumulatively, these facts establish that Jahanara was ousted from the joint family property in 1966 itself.

48. I have carefully considered the case laws relied upon by the learned advocate for defendant No. 7. In *Mohammad Kaliba Rowther* (supra), the Hon'ble Madras High Court held that where the appellant had never denied the alienee's title or his right to sue for partition and recover possession of his share, and had also not pleaded or proved ouster of the respondent, the possession of the property in the appellant's hands could not be treated as adverse. On that basis, the suit was held to be within limitation.

49. However, the factual matrix in the present matter is materially different. Here, a registered partition deed was executed in 1966, and the same was duly acted upon. After her marriage, Jahanara separated from her paternal family, and there was no question of continued joint possession. Importantly, Jahanara never challenged the partition deed during her lifetime.

50. Similarly, in *Mohammad Ismail* (supra), the Court dealt with the theory of oral partition. In contrast, the present case rests upon a registered partition deed, which carries greater evidentiary weight and legal sanctity. Therefore, both the citations relied upon are distinguishable

on facts and do not advance the case of defendant No. 7 in the present proceedings.

51. The learned advocate has further contended that in 1994, mutation entry No. 2306 was effected and the property was again partitioned, excluding Jahanara, and hence the present suit is within limitation. This submission is unsustainable. The said entry is merely a revenue record and cannot override or modify the registered partition deed of 1966. It is settled law that a registered document can only be canceled, varied, or superseded by another registered instrument or by a decree of a competent court. No such event has occurred in the present case. Moreover, the mutation entry was recorded on the basis of an affidavit, which cannot by itself effectuate alienation or partition of immovable property. Even if such entry is accepted, it does not confer any vested right upon Jahanara.

52. Accordingly, the suit ought to have been filed within twelve years from that partition. Likewise, the mother of defendant No. 7 was excluded from the suit properties in 1966 itself. Hence, the counter-claim also ought to have been brought within twelve years from such exclusion or ouster. Therefore, I record my finding on Issue No. 2C in the affirmative, holding that both the suit and the counter-claim are barred by limitation.

AS TO ISSUES NOS. 2, 2D, 2E and 3:

53. Ld. Advocate for the defendant No. 10 argued that this court has no pecuniary jurisdiction to entertain this suit as the amount of consideration of sale deed is Rs. 1,36,65,000/-. In this regard I am guided by judgment of i.e. Dilip Kushalchand (Srisrimal) Jain and Ors. Vs. Hardik Deepakbhai Ramani and Ors., Bombay High Court, Aurangabad Bench, Writ Petition No. 8968/2018, dtd. 5th May 2022. In that case Hon'ble High Court has held in the similar case that person who is not party to the sale-deed is not bound to value the suit as per consideration of sale-deed and is not bound to pay court fees accordingly. I reproduce para Nos. 24 and 26 of the said judgment.

24. From the above discussions in our judgment, Section 6(iv)(ha) would be applicable only to the Plaintiff who is a party to the sale-deed seeking declaration of avoidance of sale-deed. It would not be applicable to the Plaintiffs who are not party to the instrument seeking declaration of avoidance of sale-deed. Such Plaintiff would be governed by Section 6(iv)(j) as it is not susceptible to monetary evaluation.

26. In view of the above, answer to the reference is that the court fee payable in regard to a suit for declaration of the sale-deed to which the Plaintiff is not a party to the sale-deed binding on him and for consequential injunction would be governed by Section 6(iv)(j) of Maharashtra Court Fees Act.

54. The above case law is squarely applicable to the case in hand. In that case the same question has been arose and it was contended that person who is not party to the

sale-deed is also require to value the suit as per consideration paid in the sale-deed and require to pay court fees. However, the Hon'ble High Court rejected that contention and held that the person who is not party to the instrument is not bound to value the suit as per consideration amount. In this case the plaintiffs not being party to the sale deed they are not required to value the suit and pay court fees as per consideration paid in the sale deed. Therefore, in view of above case law, I am of the considered opinion that the suit is well within pecuniary jurisdiction of this court.

55. In view of forgoing reasons and findings, I hold that the plaintiff and defendants are not entitled for reliefs claimed. Accordingly, I record findings against issue nos. 2, 2D, 2E and 3 in negative. In answer to issue No. 5, I proceed to pass following order.

ORDER

1. The suit and counter-claim of defendant No. 07 are dismissed in proportionate costs.
2. Decree be drawn accordingly.

(Pronounced in open court)

Place: Yeola.

Date: 20/04/2026.

(J. R. Pathan)

2nd Jt. Civil Judge Junior Division,
Yeola, Dist. Nashik.

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

Judgment uploaded on :- 20/04/2026