

MHNS190014602013 	Presented on	:	11/12/2013		
	Registered on	:	11/12/2013		
	Decided on	:	29/04/2026		
	Duration	:	Y	M	D
			12	04	18

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,

YEOLA, AT YEOLA, DIST. NASHIK

(Before Shri.S.M.Bohara)

Regular Civil Suit No. 286/2013

Exh. No.108

1. **Ekmath Gajiram Deore,**
Age- 50 years, Occu.
R/o. Panjarvadi,
Ta. Yeola, Dist.Nashik.

....Plaintiff

V/s.

1. **Baburao Gajiram Deore,**
Age-65 years, Occu-
2. **Sitaram Gajiram Deore,**
Age-55 years, Occu-
3. **Arjun Gajiram Deore,**
Age-45 years, Occu-
4. **Digambar Gajiram Deore,**
Age-65 years, Occu-
R/o. Panjargaon,
Tal. Yeola, Dist. Nashik.
5. **Jaibai Pandurang Aher,**
Age-70 years, Occu-
R/o. Rendale Tal. Yeola.
6. **Gayabai Shivaji Shelke,**
Age-68 years, Occu-
R/o. Manori, Tal. Yeola.

7. **Draupdabai Lukdaji Mengane,**
Age-62 years, Occu. Wages,
R/o. Patoda, Tal. Yeola.
8. **Bhagubai Eknath Nipte,**
Age-58 years, Occu. Wages,
R/o. Vadjji, Tal. Vaijapur.Defendants

Appearance :-

Learned Counsel for the plaintiff :- Shri. Londhe
Learned Counsel for Defendants :- Shri. Gaikawad

Claim : **Suit for partition, declaration and perpetual injunction.**

J U D G M E N T

(Delivered on 29/04/2026)

The plaintiff has filed this suit for partition, declaration and perpetual injunction against defendants.

Facts of plaintiff's case in nutshell as follows :

2. **Description of the suit properties-**

1. Agricultural properties situated at village Panjarwadi:-	
a.	Gat no.209 admeasuring 53R. out of total area 77R.
b.	Gat no.208 admeasuring area 67R. out of total area 2H. 5R.
c.	Gat no.211 admeasuring area 59R.
d.	Gat no.212 admeasuring area 22R.

e.	Gat no.85 admeasuring area 3H. 83R.Pot kharab 00H. 11R.
f.	Gat no.209 admeasuring area 24R. out of total area 79R.

2. House property situated at village Panjarwadi:-

a.	Grampanchayat property extract no. 104,
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(The above properties are subject matter of this suit. Therefore, hereinafter, referred as “**suit properties**” for brevity.)

3. The plaintiff contended that defendant no.1 to 4 are his real brothers and defendant no.5 to 8 are his real sisters. Their father Gajiram Govinda Deore expired on 08/09/2013. After Gajiram, he himself and defendants are only legal heirs to Gajiram. The suit properties are joint family properties. Their father Gajiram, in his lifetime some properties out of suit properties transferred in the name of defendant no.1 to 4. But his father has not transferred any land to him. Therefore he requested his father for share in the suit properties. Accordingly his father executed partitioned deed on bond paper on 24/12/2012. At the time of said partition defendant no. 5 to 8 have relinquished their share. But defendant no.1 to 4 objected said partition and requested for fresh partition. At that time it was decided in his family members that out of suit properties

Gat no.210, 58, 59, 85 and 186/1 are already given to defendant no.1 to 4, therefore 53R area out of Gat no.209 and 67R area out of Gat no.208 are given to him. This new partition was agreed by defendants.

4. The plaintiff further contended that, as per fresh partition it was decided that defendants will remain present before Tahsildar to transfer Gat no.208 and 209 in his favour. All defendants gave their statement before Tahsildar that they have no objection for his share in Gat no. 208 and 209. Now he filed this suit for declaration of his ownership and for perpetual injunction. Out of suit properties except Gat no.208, 209, rest of properties were kept in the name of their father. His father executed affidavit that except Gat no.208, 209 rest of properties be partitioned between defendants and he himself. The plaintiff requested for partition but defendants did not pay heed to his request. Therefore he constrained to file this suit.

5. Defendant no.2 to 4 have filed their written statement at Exh.19. They submitted that the plaintiff has his separate house property at Nashik, for which he took money from their father Gajiram and plaintiff relinquished his share in suit properties for the same. Out of suit properties Gat no.210 is given to defendant no.1, Gat no.85 is given to defendant no.2,3. Gat no.208, 209, 211 and 22 are given to defendant no.4. Gat no.58 are 59 are purchased by Ravsaheb, Somnath, Sagar and Hari and those are not

ancestral properties. Gat no.186 is self acquired property of defendant no.4. Gat no.193 is *subjudice* but purchased by defendant no.2. For all these reasons they prayed to dismiss the suit.

6. Defendant no.1, 5 to 8 were served with the summons, but they failed to appear. Hence suit proceeded ex-party against them.

7. Considering rival pleadings of parties my learned predecessor has framed issues at Exh.25. I have recorded my findings with reasons as follows, :-

SR. NO.	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether plaintiff proves that all suit lands are ancestral lands of plaintiff and defendants ?	Partly Affirmative
2.	Whether plaintiff proves that he has share in the suit lands? If yes what is the share of parties?	Partly Affirmative
3.	Whether plaintiff proves that Gat no.208 & 209 have been allotted in his exclusive possession?	In Negative
4.	Whether defendant no.2 to 4 prove that land Gat no.58, 59 and 186 are their self acquired lands?	In Affirmative
5.	Whether defendant no.2 to 4 prove that plaintiff relinquished his right over the suit lands?	In Negative
6.	Whether suit is bad for non joinder of necessary properties?	In Negative

7.	Whether plaintiff is entitled for the relief of injunction and declaration as prayed?	In Negative
8.	Whether plaintiff is entitled for the relief of partition and possession as prayed?	Partly Affirmative
9	What order and decree?	As per final order

-::REASONS:-

8. The plaintiff has led oral evidence of himself (P.W.1) at Exh.54. He has relied upon following documentary evidence,

a.	7/12 extract of the suit properties Exh.55 to 58.
b.	Property extract of Grampanchayat property no.104 at Exh.59.
c.	Partition executed before Tahsildar Exh.62.

The evidence of the plaintiff is closed by an order below Exh.1 on 12/08/2025.

9. Defendants have examined defendant no.2 (D.W.1) at Exh.78, their witness Badrinath Shivaji Shelke (D.W.2) Exh.99, Yogesh Lukdaji Mengane (D.W.3) at Exh.100. They relied upon following documentary evidence,

a.	Will deed dtd. 26/07/2013 at Exh.102.
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They closed their evidence by filing pursis at Exh.103.

ADMITTED FACTS :

10. Relation of parties is not in dispute.

DISPUTED FACTS :

11. The main dispute is about status of suit properties.

AS TO ISSUE NO. 1:

12. The plaintiff has filed this suit for declaration, partition and perpetual injunction. According to the plaintiff all suit properties i.e. Gat No. 209, 208, 210, 211, 212, 85, 58, 59, and House property bearing No. 104 are ancestral properties of defendants and he himself. Defendant No. 2 to 4 have also admitted in their written statement at para 12 that, out of suit properties Gat No. 208, 209, 211, 212, 85, are ancestral properties. According to defendant No. 2 to 4 Gat No. 210 was purchased by their father in the name of defendant No. 2 and given to him. Gat No. 58 and 59 are purchased by Raosaheb, Somnath, Sagar and Hari. Gat No. 186 is purchased by defendant No. 4. Defendant No. 2 to 4 submitted that out of suit properties Gat No. 210, 58, 59 are their self-acquired properties. Therefore, from the admission of defendants, it is clear that out of suit properties Gat No. 208, 209, 211, 212 and 85 are ancestral properties of plaintiff and defendants. Now the only question remains that what is status of rest of properties ie. Gat no.210,58,59, whether ancestral or self acquired. For that purpose first

needs to discuss concept of ancestral property.

13. Concept of Ancestral Property:-

- a) Property inherited by a Hindu from his father, father's father or father's fathers' father, is ancestral property.
- b) Any property acquired by the Hindu great grand father, which then passes undivided down the next three generations up to the present generation of great grand son/daughter.
- c) This property should be four generation old.
- d) It should not have been divided by the users in the joint Hindu family as once a division of the property takes place, the share or portion which each Coparcener gets after the division becomes his or her self acquired property.
- e) The right to a share in ancestral or coparcenary property accrues by birth itself, unlike other forms of inheritance, where inheritance opens only on the death of the owner.
- f) The rights in ancestral property are determined per stripes and not per capita. Share of each generation is first determined and the successive generations in turn sub divide what has been inherited by their respective predecessor.
- g) Properties inherited from mother, grandmother, uncle

and even brother is not ancestral property. Property inherited by will and gift are not ancestral properties.

h) Self acquired property can become ancestral property if it is thrown into the pool of ancestral properties and enjoyed in common.

13.1) In Mulla's Principles of Hindu Law (15th Edition), it is stated at page 289:-

“If A inherits property, whether movable or immovable, from his father or father's father, or father's father's father, it is ancestral property as regards his male issue. If A has no son, son's son, or son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases. A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, sons' sons and sons' sons' sons' but as regards other relations he holds it and is entitled to hold it, as his absolute property.”

14. here in case at hand the plaintiff came with the case that Gat No. 210, 58 and 59 are also ancestral properties. As per supra provision the plaintiff in order to prove that Gat No. 210, 58 and 59 are ancestral needs to show that these properties are four generation old. But the plaintiff has not filed documentary evidence on record to show that rest of suit properties i.e. Gat No. 210, 58 and 59

are also their ancestral properties or these are four generation old. The plaintiff has filed only 7/12 extracts of the suit properties on record. From which it is difficult to ascertain that Gat No. 210, 58 and 59 are their ancestral properties. The status of these properties being ancestral is denied by defendants. Therefore, it was plaintiff's duty to prove his claim. But he failed to lead reliable evidence in his favour to support his claim. Accordingly, Gat No. 210, 58 and 59 can not be termed as ancestral properties. Therefore, issue No. 1 is answered partly in affirmative.

AS TO ISSUE NO. 3:

15. According to the plaintiff his father deceased Gajiram Govinda Deore in his lifetime and on his request gave Gat No. 209 and 208 to him as per agreed partition. For that purpose they also filed an application before Tahsildar Yeola. In that proceeding defendant No. 1 to 8 have filed their no objection. On the contrary, according to defendant No. 2 to 4 Gat No. 209 and 208 were never given to the plaintiff.

16. In spite of sufficient opportunity the plaintiff has not filed any document on record to show that out of suit properties Gat No. 208 and 209 were exclusively given to him under partition. Rather, the plaintiff failed to prove fact of prior partition. The plaintiff himself came with the suit of partition in which he has included Gat No. 208 and

209 also. It itself shows that Gat no. 208 and 209 were never given to the plaintiff in lifetime of deceased Gajiram Deore. Therefore, issue No. 3 is answered in Negative.

AS TO ISSUE NOS. 4 & 5

17. Here defendant No. 2 to 4 have come with defence that out of suit properties Gat No. 58, 59 and 186 are their self-acquired properties. In this regard it is necessary to ascertain evidence led by defendant No. 2 to 4. In this case defendant No. 2 to 4 have examined defendant No. 2 Sitaram (DW-01) and their witnesses Badrinath(DW-02), Yogesh(DW-03). Sitaram(DW-01) reiterated all the contents of his written statement. Badrinath (DW-02) and Yogesh (DW-03) are altogether deposed differently and about will-deed of deceased Gajiram Govind Deore which is not the issue before this Court.

18. As discussed in issue no.1 out of suit properties Gat No. 210, 58 and 59 are not ancestral properties of plaintiff and defendants. A legal presumption of self-acquisition exists unless there is proof that joint family funds were used for the acquisition, shifting the burden of proof onto the person claiming it is joint property. Further it is settled principle of law that if the initial burden of proof resting on the plaintiff is thus discharged, then the burden would shift to the defendant to prove that the property in question was acquired by himself with his own self-acquired

property and without the, aid of the joint family property or joint family funds or income. Here in case at hand the plaintiff failed to prove that out of suit properties Gat No. 210, 58 and 59 are ancestral properties and hence burden does not shift on defendants to prove that these properties are self acquired properties. Hence issue no.4 answered in affirmative and issue no.5 answered in negative.

AS TO ISSUE NO. 6:

19. Defendant No. 2 to 4 submitted that the plaintiff has his house property at Nashik. The plaintiff purchased this house property on the financial support by deceased Gajiram Deore. Therefore, the house property of the plaintiff situated at Nashik needs to be added in this suit. The plaintiff failed to add said property in this suit. Therefore, this suit is bad for non-joinder of necessary property. On the contrary, the plaintiff has flatly denied the existence of any house property at Nashik. Therefore, the burden was on defendants to prove that the plaintiff has his separate property at Nashik. In spite of sufficient opportunity defendant No. 2 to 4 have not filed documentary evidence on record which will show that the plaintiff has house property at Nashik. Rather revenue number or CTS number of alleged property is mentioned by defendants. In absence of cogent evidence of house property found no substance that suit is bad for want of necessary property. Hence, issue no.6 is answered in negative.

AS TO ISSUE NOS 2, 7 & 8:

20. As discussed in supra issue no.1 it is clear that out of suit properties Gat No. 208, 209, 211, 212 and 85 are ancestral properties of defendants and the plaintiffs. After demise of Gajiram Deore, the plaintiff and defendants being legal heirs have equal share in their ancestral properties. Therefore, the plaintiff and defendants have 1/9th share each in Gat No. 208, 209, 211, 212 and 85.

21. The claim of plaintiff that Gat No. 208 and 209 are his separate properties is not proved on record. Therefore, he is not entitled for declaration in that regard. The plaintiff also prayed for perpetual injunction against defendants. According to the plaintiff he has undivided share in suit properties. Till these properties get partitioned he prayed for perpetual injunction as not to obstruct his possession. In this case, as discussed above it is clear that out of suit properties Gat No. 208, 209, 211, 212 and 85 are not partitioned. These properties are in joint possession of plaintiffs and defendants. Therefore, an injunction order can not be passed. Therefore, issue No. 2 and 8 are answered in partly affirmative and issue No. 7 is answered in negative.

AS TO ISSUE NO. 9:

22. To sum up the plaintiff has failed to show that out of suit properties Gat No. 208, 209 are his separate

properties. He also failed to prove that out of suit properties Gat No. 58, 59 and 186 are also ancestral properties. Therefore, this suit needs to be decreed partly. Considering the relation of the parties it is better that they will bear own costs. Hence, I proceed to pass the following order:-

:- ORDER :-

1. The suit is partly decreed.
2. The plaintiff and defendant No. 1 to 8 have 1/9th share each in Gat No. 208, 209, 211, 212 and 85 situated at Village Panzarwadi, Tal. Yeola, Dist. Nashik.
3. Decree be sent to District Collector Nashik for partition as per rule.
4. Preliminary decree be drawn up accordingly.
(Pronounced and dictated in the open Court.)

Place: Yeola.
Date :- 29.04.2026

(S. M. Bohara)
Civil Judge, J.D., Yeola.

CERTIFICATE

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

Name of Stenographer : V.A. Chavan (Jr. Clerk)
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Court : Shri. S.M. Bohara, CJJD &
- JMFC, Yeola.

Date : 29/04/2026
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Judgment signed by the : 29/04/2026
Presiding Officer on -

Judgment uploaded on : 29/04/2026