

MHNS230003172018



Received on: 12/02/2018

Registered on: 12/02/2018

Decided on: 17/03/2026

Duration: 08 Y 01 M 05 D

IN THE COURT OF CIVIL JUDGE (J.D.), IGATPURI, DIST. \_\_\_\_\_

NASHIK.

(Presided over by A.C. Rokade)

REGULAR CIVIL SUIT No. 15/2018

Exh. No. 85

1. Tarabai Dagdu Ghane (Dead)

2. Mohan Dagdu Ghane

Age: 35 years, Occ.:

R/at: Koliwada, Nashik, Dist. Nashik

...Plaintiffs

V/s.

1. Dagdu Kalu Ghane

Age: 65 years, Occ.: Labour,

2. Avdabai Dagdu Ghane

Age: 50 years, Occ.: Labour,

3. Rama @ Ramu Dagdu Ghane

Age: 30 years, Occ.: Labour,

4. Leelabai Ramu Ghane

Age: 25 years, Occ.: Labour,

5. Damu Dagdu Ghane

Age: 28 years, Occ.: Labour,

6. Anjana Damu Ghane

Age: 25 years, Occ.: Labour,

7. Janabai Goga Borhade

Age: 45 years, Occ.: Labour,

All R/at: Barashingve, Tal. Igatpuri, Dist. Nashik

8. Venubai Santu Ghare (Dead)

8A. Santu Mahadu Ghare

Age: Adult, Occ.: Nil,

**8B. Hira Santu Ghare**

Age: Adult, Occ.: Nil,

**8C. Meera Santu Ghare**

Age: Adult, Occ.: Nil,

**8D. Tara Santu Ghare**

Age: Adult, Occ.: Nil,

**8E. Kamal Santu Ghare**

Age: Adult, Occ.: Nil,

**8F. Ganpat Santu Ghare**

Age: Adult, Occ.: Nil,

**8G. Manohar Santu Ghare**

Age: Adult, Occ.: Nil,

All. R/at: Bharvaj, Tal. Igatpuri, Dist. Nashik.

**9. Shevantabai Chindhu Borhade**

Age: 40 years, Occ.: Labour,

R/at: Barashingve, Tal. Igatpuri

Dist. Nashik

...Defendants

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**Appearances:** Mr. S. S. Waje: Ld. Advocate for plaintiffs  
Mr. B.K. Kevare : Ld. Adv for defendant Nos.1 to 6  
Ex-parte against : Defendant nos. 7 to 9

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### **JUDGMENT**

**(Delivered on this 17<sup>th</sup> March, 2026)**

The plaintiffs have claimed partition and separate possession of in the land Gat No.117 area 0H.25R, Gat No.65 admeasuring 00H.21R, Gat No.82 admeasuring 00H.04R, Gat No.97 admeasuring 00H.10R, Gat No.1 admeasuring 00H.33R and Gat No.680 admeasuring 00H.07.80R, House nos.146, 147 and 148 situated at Mauje Barshingave, Tal. Igatpuri, Dist. Nashik. (Hereinafter referred to as 'suit properties').

**2) Factual matrix of the case are as under:**

Plaintiffs and defendants belong to the same tribal community. Plaintiff No. 1 was the legally wedded first wife of defendant No.1 married in the year 1974 at Nashik in the presence of community members. Plaintiff No. 2 is their son, born on 06/09/1975. After marriage, defendant No. 1 neglected and ill-treated plaintiff No.1. When the plaintiff no.1 was pregnant, she was sent to her parental home where plaintiff No.2 was born. Despite being informed, Defendant No. 1 never visited or maintained the plaintiffs. Since then, he has failed to provide financial support, care or any share in the family properties. It is submitted that without divorcing plaintiff No.1, the defendant No. 1 illegally performed a second marriage with defendant No. 2. Defendant Nos.3 and 5 are their sons and defendant nos. 4 and 6 are their daughter-in-laws. Defendant nos. 7 to 9 are sisters of defendant no.1.

3) It is further submitted that the suit property bearing Gat No.1 is purchased by defendant no.1 in the name of defendant no.2 and Gat no.380 is purchased in the name of defendant no.3 out of the income of defendant no.1. It is submitted that suit properties bearing Gat No. 65, 82, 97, 117 are ancestral properties. After the death of father of defendant no.1 Kalu Ghane, name of defendant no.1, defendant nos. 7 to 9 and their brothers were mutated to these properties vide ME No.382. It is further submitted that these properties were partitioned among defendant nos.1, 7 to 9 and their five brothers. Accordingly, their names are mutated vide ME No.386. It is also submitted that the house properties Nos.146, 147 and 148 are purchased out of the income of defendant no.1. Hence, plaintiffs have their share in the suit properties and they

are entitled to an equal share therein. However, the defendants have wrongfully excluded the plaintiffs from possession and enjoyment of the same. The suit properties are not partitioned. When the plaintiff demanded partition, defendants refused for the same. Hence, plaintiffs are constrained to file instant suit.

4) During the pendency of the suit, plaintiff no.1 i.e. mother of the plaintiff no.2 died. Since the right to sue survived, necessary amendments were carried out in the plaint and the name of deceased plaintiff No. 1 came to be deleted.

5) Defendant no.1 appeared and filed his WS at Exh.33 and denied the entire claim of plaintiffs. He contended that he had never married with the plaintiff no.1 and plaintiff no.2 is not their son. Defendant no.2 is the only wife of defendant no.1. Plaintiffs have filed the instant suit just to grab the properties defendants. It is contended that plaintiffs have obtained information regarding the properties of defendant No.1 through third parties and have misused such information to file the present false claim with malafide intention to grab the properties. It is further contended that the properties standing in the names of Defendant Nos.2 to 6 are their self-acquired properties, purchased from their own independent earnings. It is specifically denied that the said properties are joint family properties and that the plaintiffs have no right, title or interest in the same. Defendant no.1 has further contended that he is old age and has no independent source of income. He is unable to meet his own medical and daily expenses. It is contended that there is no relationship between plaintiffs and defendant No.1. Hence, the present suit is without any cause of action and is not maintainable in law. Hence, he prayed to dismiss the suit.

6) Defendant nos. 2 to 6 appeared and filed their WS at Exh.34 and denied the entire contentions in the plaint. They contended that plaintiff has no *locus standi* to file the present suit. Defendant no.1 has never married to plaintiff no.1 and the plaintiff no.2 is not the son of defendant no.1. It is contended that defendant no.2 is the legally wedded wife and defendant nos. 3 and 5 are the only sons of defendant no.1. Plaintiffs have sent false notice and claimed partition in the suit properties. They have no right to claim share in the suit properties. They contended that due to false and baseless claim filed by plaintiffs, they have suffered mental harassment and financial loss. It is contended that plaintiffs have filed the present suit by suppressing true and material facts and on the basis of false and fabricated information. The suit is an abuse of the process of law. Hence, they claimed Rs. 25,000/- from plaintiffs towards compensatory cost and prayed for dismissal of the suit.

7) Defendant nos. 7 to 9 did not appear in spite of service of summons. Thus, the suit is proceeded *ex-parte* against them.

8) My learned predecessor framed issues below Exh.51. At this stage, it is necessary to consider the Issue No.5 as framed at Exh.51 which reads as under:

“Whether plaintiff No.1 is entitled for interim maintenance amount of Rs.10,000/- from defendants?”

It is pertinent to note that during pendency of the suit, the plaintiff no.1 died. Consequently, the claim for interim maintenance, which was specifically sought by plaintiff No.1 does not survive. As per Order XIV, Rule 5 of the Code of Civil Procedure, the Court is empowered to amend the issues at any

stage before passing of the judgment, so as to ensure that only the real questions in controversy between the parties are adjudicated. Applying this provision, it is clear that Issue No.5, being no longer relevant, is liable to be deleted. I have reproduced remaining issues along with my findings thereon for the reasons given below:

Sr. No	ISSUES	FINDINGS
1)	Whether plaintiffs prove that suit properties are ancestral and joint family properties in which they have equal interest as same as defendants?	...Yes.
2)	Whether plaintiffs prove that they have undivided interest in the suit properties?	...Partly Yes.
3)	Whether plaintiffs are entitled to partition and separate possession of suit properties? If yes, at what share?	...Partly Yes, the plaintiff has 1/4 <sup>th</sup> share.
4)	Whether defendants prove that plaintiffs have neither concern with family of defendants nor have any interest in suit properties?	...No.
5)	Whether plaintiff is entitled for perpetual injunction as prayed?	...No.
6)	What order and decree?	...As per Final Order.

### REASONS

9) To substantiate the claim put forth, the plaintiff Mohan Dagadu Ghane has examined himself at Exh.52. Per contra, defendants have not led any evidence. Besides oral

evidence, the plaintiff has filed documentary evidence which will be referred to at the relevant places hereinafter. Heard Ld. Adv. for the plaintiff. Defendants and their Ld. advocate did not appear for argument.

**AS TO ISSUE No.4:**

10) It is the case of the plaintiff that he is the son of defendant no.1. His deceased mother Tarabai was the first wife of defendant no.1 and without giving divorce to Tarabai, defendant no.1 has illegally performed 2<sup>nd</sup> marriage with defendant no.2. Per contra, defendants have denied the relationship with the plaintiff and his deceased mother Tarabai. The defence of defendant nos.1 to 6 that the plaintiff is nowhere related to them and he has filed this false suit to grab the suit properties.

11) The burden to prove this issue squarely lies upon the defendants. In order to substantiate their contention that the Plaintiffs have no relationship with the family of Defendant No. 1 and no right, title, or interest in the suit properties, it was incumbent upon defendants to lead cogent and reliable evidence. However, on perusal of the record, it appears that the defendants have not led any oral or documentary evidence in support of their case. They have failed to enter the witness box and have not examined any witnesses to prove their contentions. No documentary evidence has been produced to establish that plaintiffs are strangers to the family or that the suit properties are exclusively owned by defendants without any right of the plaintiffs.

12) It is a settled principle of law that mere denial in the written statement is not sufficient unless the same is supported

by evidence. In absence of any evidence, an adverse inference is liable to be drawn against the defendants. Therefore, defendants have failed to discharge the burden cast upon them. Consequently, defendants have not proved that the plaintiffs have no concern with their family or interest in the suit properties. Per contra, the plaintiff has filed on record his caste certificate and death certificate showing that the defendant no.1 is his father. Accordingly, I answer this issue in **Negative**.

**AS TO POINT Nos.1 AND 2:**

13) To fortify his case, the plaintiff has examined himself at Exh.52. The evidence of the plaintiff is verbatim reproduction of plaintiff contentions. He deposed that the suit properties are ancestral properties of plaintiff and defendant nos.1 to 6. He further deposed that house properties are purchased out of the income of the defendant no.1. Being son of defendant no.1, he has legal right in suit properties. The plaintiff specifically asserted that he is entitled to a 1/2 share in the suit properties. It is pertinent to note that despite opportunity, defendants did not cross-examine the plaintiff. Consequently, his testimony has remained unchallenged and therefore carries significant evidentiary value.

14) The plaintiffs have filed 7/12 extracts (Exh.68 to 72), certified copy of mutation entries (Exh.79 to 82) and extract 8A (Exh.74 to 77) of suit properties. A perusal of ME No.382 shows that after the death of Kalu Ramji Ghane, name of defendant no.1, defendant nos.7 to 9 and their brothers are mutated to suit properties Nos. 65, 82, 97 and 117. Record shows that the defendant nos.1 and his brothers have effected partition of these ancestral properties and in said partition the suit properties has fallen to the share of defendant No.1. Thus, it is

established that the suit properties bearing Gat Nos. 65, 82, 97 and 117 are ancestral properties of plaintiff and defendants.

15) Further, 7/12 extract of Gat no.1 at Exh.72 shows that the said property is mutated in the name of defendant no.2 and the 7/12 extract of Gat no.680 at Exh.7 shows that the said property is mutated in the name of defendant no.3. 8A extracts of House properties nos. 146, 147 and 148 shows that name of defendant nos. 1 to 6 are recorded to these properties. But the plaintiff has not brought on record any evidence to show these properties are ancestral joint family properties or purchased out of the income of defendant no.1. Hence, the plaintiff is having his undivided share in suit properties bearing Gat Nos. 65,82,97 and 117. Hence, I answer these issues accordingly.

**AS TO ISSUE No.3:**

16) It is an admitted that the plaintiffs and defendants belong to a tribal community. In this context, it is necessary to consider the applicability of the Hindu Succession Act, 1956. As per Sec.2 (2) of the "Hindu Succession Act": Notwithstanding anything contained in sub-section(i), nothing contained in this Act shall apply to the members of any Scheduled Tribes within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

17) It is a well-settled principle of law that the provisions of the Hindu Succession Act do not automatically apply to Scheduled Tribes. Their applicability is conditional upon issuance of a specific notification by the Central Government under Section 2(2) of the Act. In the present case, no such notification has been produced on record to show that the provisions of the Act have been extended to the members of the

Mahadev Koli Scheduled Tribe. Consequently, the succession and partition in the present case cannot be governed by the provisions of the said Act.

18) The legal position in this regard has been authoritatively settled by the Hon'ble Supreme Court in *Madhu Kishwar v. State of Bihar* [(1996) 5 SCC 125] and *Labishwar Manjhi v. Pran Manjhi* [(2000) 8 SCC 587], wherein it has been held that in matters relating to Scheduled Tribes, their customary laws prevail and in absence of proof of such customs, disputes are to be decided on the principles of justice, equity and good conscience. At this stage, reliance is also placed on *Ram Charan & Ors. v. Sukhram & Ors.* [2025 INSC 865], wherein it has been observed by the hon'ble apex court that in absence of a specific governing law or proved custom, the courts are justified in deciding property disputes by applying the principles of justice, equity and good conscience and in such circumstances, equitable distribution among rightful claimants is warranted. In the present case, neither party has proved any specific custom governing succession or partition. Hence, it is necessary to apply the principles of justice, equity, and good conscience for adjudication of the dispute.

19) Coming to the facts of the present case, plaintiffs have asserted their entitlement in all suit properties; however, on careful appreciation of the evidence on record, it emerges that only Gat Nos.97, 117, 65 and 82 constitute ancestral properties. The remaining properties standing in the names of Defendant Nos. 2 to 6 have not been proved to be ancestral or acquired from joint family nucleus and therefore cannot be

treated as joint family properties. Thus, the claim of the plaintiffs cannot extend to all suit properties, but is restricted only to the ancestral properties, i.e., Gat Nos. 97, 117, 65 and 82. In absence of proof of exclusive ownership of these ancestral properties and considering the failure of defendants to lead evidence rebutting the plaintiffs' claim, an adverse inference is required to be drawn against defendants. As regards the determination of shares, in the absence of any established custom to the contrary, equal distribution among the co-sharers constitutes the most equitable solution. In the present case, the evidence on record shows that the ancestral properties are jointly held by plaintiff and Defendant Nos. 1, 3, and 5, who are the only co-parceners entitled to claim a share therein. Therefore, the plaintiff is entitled to 1/4<sup>th</sup> share with defendant Nos. 1, 3, and 5 each being entitled to 1/4<sup>th</sup> share in the said ancestral properties i.e. Gat Nos. 97, 117, 65 and 82. Hence, I answer this issue in affirmative.

**AS TO ISSUE Nos. 5 AND 6:**

20) So far as the relief of perpetual injunction is concerned, the plaintiff has alleged that there exists a threat of alienation or transfer of the suit agricultural properties by the defendants. However, upon careful scrutiny of the pleadings and evidence on record, it is evident that the plaintiff has failed to furnish any specific particulars or material evidence substantiating such alleged threat. There is no instance of attempted transfer nor any documentary or oral evidence indicating alienation of the suit properties. In the absence of cogent and convincing evidence, a mere apprehension or bald assertion is insufficient to grant the equitable relief of

perpetual injunction. It is a settled principle that such relief can only be granted when there is a clear and substantiated threat to the plaintiff's rights. Therefore, the relief of perpetual injunction as sought by the plaintiff is not tenable. Accordingly, I answer issue No 5 as negative. In the result, suit deserves to be partly decreed. I, therefore, proceed to pass following order:

**ORDER**

- 1) The suit is partly decreed.
- 2) It is hereby declared that the plaintiff and defendant no.1, 3 and 5 have 1/4<sup>th</sup> share each in the suit properties bearing Gat Nos. 65, 82, 97 and 117 (more particularly described in para no.1 of plaint) situated at Barshingawe, Tal- Igatpuri, Dist. Nashik.
- 3) It is hereby directed that the partition of the said suit properties shall be effected equitably by the Collector, Nashik or any of his subordinate deputed in this behalf in accordance with the above declaration and in accordance with the provisions of law, if any, for the time being in force relating to the partition or separate possession of the shares of the said lands and the plaintiffs and defendant shall be placed in possession of the lands of their respective share. A precept be issued to the Collector to this effect.
- 4) Parties to bear their own costs.
- 5) Decree be drawn up accordingly.

**Date:** 17/03/2026

(A.C. Rokade)  
**Jt. Civil Judge Jr. Division,  
Igatpuri**

**CERTIFICATE**

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

Name of Stenographer : S. G. Sonawane  
Court : J. M. F. C. & C.J.J.D.at Igatpuri.  
Date : 17-03-2026  
Order signed by the  
Presiding Officer on : 17-03-2026  
Order uploaded on : 23-03-2026