

CNRNOMHOS150001782014



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IN THE COURT OF 2nd Jt. CIVIL JUDGE JUNIOR DIVISION,
PARANDA

(Presided over by Smt. A.N. Niwadange)

R.C.S.NO. 38/2014

Exh.No. 81

Sunita Arvind Palke
Age:- 46 Yrs; occu:- Household
R/o Narsinh nagar, Paranda,
Tq. Paranda, Dist. Osmanabad

----- Plaintiff

Vs.

01. Tukaram Babu Ovhal
Age:- 65 Years; Occupation:- Agri
R/o, Awarpimpri, Tq. Paranda, Dist: Dharashiv
02. Kesharbai Tukaram Ovhal (**Deceased**)
Age:- 60 Years; Occupation:- Household R/o,
Awarpimpri, Tq. Paranda, Dist: Dharashiv
03. Vandana Ashok Paul
Age:- 47 Years; Occupation:- Agri
R/o, Sanvi Punarvasan, Tq. Shrigonda,
Dist: Ahamadnagar
04. Anita Yashwant Bansode
Age:- 36 Years; Occupation:- Household

R/o, Manjari Farm, Sitai Nagar,
Pune- Solapur road Near Gramsevak,
Training Center, Manjari (Bu),
Shewalwadi Manjari Farm, Tq. Haveli, Dist: Pune

----- Defendants.

Claim:- Suit for Partition and separate possession

Appearances:-

For the Plaintiff :- Ld. Adv. Shri. A.S. Rashinkar

For the Defendant No.1to 3,6 &7:- Ld. Adv. Shri. S.B.Devkate

For Defendant No. 4 and 5 :- Suit proceeded Ex-party

Judgment

(Delivered On 09/04/2026)

The plaintiff's case in nutshell is as under;

The property situated at Mauje Awarpimpri, Tq. Paranda, Dist. Osmanabad, Gut No. 92 total area 3 Hect. 50 R Aakar 4 Rupaye, 69 Paise out of which 0 Hec. 12 R Aakar 0 rupaye 16 paise and Gut No. 123 area 2 Hec. 00 R Aakar 3 Rupaye 26 paise.

(Herein after referred as 'the suit properties').

02. The plaintiff averred that, the family of plaintiff and defendants is a joint family property. After death of father of defendant no.1 and grand father of plaintiff and defendant no. 3 to 7 the suit properties inherited by defendant no.1. After that entry of name of defendant no.1 is taken as karta of joint Hindu Family. The entry is as prohibited owner. The plaintiff and defendants have common or joint

possession over the suit property. In the suit properties plaintiff and defendants have undivided share. The suit properties are undivided.

03. The plaintiff further averred that, defendant no. 2 to 7 along with defendant no.1 trying to alienate the suit properties without prior permission of the plaintiff. After getting the knowledge of this, the plaintiff demanded the partition of the suit properties to the defendants, to which they refused. Therefore, the plaintiff has constrained to file the suit. The plaintiff contended that the suit properties are undivided and she has 1/7 share in the suit properties. Therefore, she prayed to allow the suit.

04. The defendant no. 1 to 3 and 6 to 7 appeared and filed their written statement at Exh. No. 30. Defendant no. 4 and 5 duly served through the summons. However, they failed to appear before the court. Hence, suit proceeded ex-party against them.

05. The defendant no. 1 to 3 and 6 to 7 in their written statement contended that the suit properties are granted by government to the grand father of defendant no. 1 namely Daji Ovhal as a Mahar Hadule land and it is prohibited in nature. After death of Daji i.e. grand-father of defendant No.1, father of defendant no.1 inherited the suit properties and then defendant No.1 received the suit properties and entry of same is taken. Defendant no. 1 had 3 sisters namely Radhabai Chabukswar, Zingabai Mane and Nagarbai Paul. The plaintiff has not made party to them in present suit. The suit

properties are prohibited in nature, hence, defendant no. 1 is not the owner of the suit properties. Defendant No. 1 has sold out some property from the suit properties to Soma Narute and Vasant Ovhal. The plaintiff has not made party to them. Therefore the suit is not tenable. Hence, defendant prayed to dismiss the suit and for compensatory costs of Rs. 10,000/-.

06. Heard both sides. Perused the rival pleadings of the parties and the documents. My Ld. Predecessor has framed the issues at Exh.No. 31. I have recorded my findings to the issues along with reasoning thereon is as follow:

Sr.No.	Issues	Findings
01.	Whether the suit properties are ancestral or Joint family properties of plaintiff and defendants?	In the Negative.
02.	Whether the suit bad for non joinder of necessary parties?	In the Negative.
03.	Whether the plaintiff that she is having share in the suit properties? If yes, what are the shares of the parties the suit properties?	In the Negative.
04.	Whether the plaintiff is entitled for partition and separate possession of the suit properties?	In the Negative.
05.	Whether defendant No. 1 to 3, 6 and 7 are entitled to get compensatory costs from the plaintiff as prayed? If yes, what order about compensatory costs?	In the Negative.
06.	What order and decree?	As per final order.

REASONING

07. In order to prove her claim, plaintiff examined herself at Exh. No. 34 (P.W. 1) and Shri. Uttam Somnath Narute (P.W.2) (Exh. 47). In support of oral evidence, plaintiff has filed on record certified copy of 7/12 extract of Surve No. 123 at Exh.No. 05 and certified copy of 7/12 extract of Surve No. 92 at Exh. No. 06. Plaintiff closed her evidence by filing evidence close pursis at Exh.50. The defendant examined himself Tukaram Babu Ovhal at Exh.No. 55 (D.W.1) and Shri. Abhiman Anna Jadhav (D.W.2) (Exh.No. 69). The defendants filed their evidence close pursis at Exh. No. 73. The defendants have not filed document in support of their contentions.

PLAINTIFF'S EVIDENCE:-

08. To support his claim the plaintiff examined herself at Exh. No. 34 (P.W.1). She reiterated the contention of her plaint. In cross-examination she admitted that the suit properties were given to her grand father by government as Mahar Watan. 7/12 extract having the entry as Mahar Hadoli. The suit properties are prohibited properties. She denied that her father has three sister. Further she admitted that she is not able to tell the gut number and area of the suit properties.

09. The plaintiff examined Shri. Uttam Somnath Narute (P.W.2) (Exh. 47). This witness supported to the case of the plaintiff. In cross-

examination he admitted that the suit properties are Mahar Hadoli Lands and same are prohibited in nature.

DEFENDANTS EVIDENCE:

10. Defendant examined himself at (D.W.1) (Exh.No.55). He reiterated the contentions of his affidavit. He admitted that the suit properties are undivided. He admitted that the plaintiff has a share in the suit properties. He denied that the suit properties are ancestral properties.

11. Abhiman Anna Jadhav (D.W.2) (Exh. No. 69) supported to the case of defendants. In cross examination he deposed that he is unable to state whether the suit properties are ancestral or not.

Arguments:-

12. Ld. Adv. for the plaintiff Mr. A.S. Rashinkar argued that the suit properties are ancestral in nature. The suit properties are undivided till today. the said fact is admitted by defendant No.1 in his cross examination. the relation of plaintiff and defendant is not denied. it is admitted by defendant in cross the plaintiff has a right in the suit properties. The suit properties are received from the great-grand father of the plaintiff. so, the plaintiff has a right to claim the partition. Therefore, he prayed to allow the suit.

13. Ld. Adv. Mr. S.B. Devkate submitted that, the suit properties

are not ancestral properties as they are not inherited from the forefather of plaintiff. The suit properties are granted by the government to the great-grand father of defendant. no.1. The suit properties are prohibited in nature. The partition of such land can not be allowed except the permission of proper authority. Hence, he prayed to dismiss the suit.

As to Issue no.1 (Nature of properties)

14. It is case of the plaintiff that the suit properties are ancestral and she has a share in the suit properties. The suit properties are undivided. The defendants are trying to alienate the suit property without giving share to her. The plaintiff and defendants are in joint possession of the suit properties. The defendant refused to give share to plaintiff. However, the defendants by filing their written statement denied that the suit properties are ancestral properties and the plaintiff has a share in it.

15. The issue is relating to the nature of the suit properties i. e. whether the suit properties are ancestral or joint property. In the present case plaintiff contended that the suit properties are ancestral and joint family property. Therefore, as per Section 101 of the Evidence Act it is the plaintiff on whom burden of proof lies and the duty is cast to prove that the suit properties are ancestral property or Joint Hindu Family Property. Under Hindu Law ancestral property means the property inherited from the forefather. Therefore, in present case, the plaintiff has to show that the suit properties are inherited from forefather.

16. For this purpose, I have gone through the oral as well as documentary evidence of the parties. The plaintiff in cross- examination admitted that the suit properties were given to her grand father by Government as Mahar Watan. 7/12 extract having the entry as Mahar Hadoli. The suit properties are prohibited properties. She denied that her father had three sisters. Further, she admitted that she is not able to tell the gut number and area of the suit properties. Uttam Somnath Narute (PW.2) (Exh.No.47) also admitted that the suit properties are Mahar Hdaul Prohibited properties.

17. Defendant admitted that the suit properties are undivided. He admitted that the plaintiff has a share in the suit properties. He denied that the suit properties are ancestral properties.

18. In present case nature of the suit property is in dispute. Therefore, it is necessary to know the origin of the suit properties. The plaintiff in cross examination admitted that the suit properties are given to her grandfather by government as Mahar Hadloi. After death of her grand father his father received the suit properties. The suit properties are restricted properties. Further, the P.W. 2 admitted that the suit properties are Government land and same are prohibited. This admission of the plaintiff and witness is important in case at hand, because possession of the plaintiff over the suit property is not disputed only its legality is disputed by the defendants.

19. According to Section 17 of the Indian Evidence Act, “*An admission is a statement, [oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.*”

20. **Section 18. Admission by party to proceeding or his agent.-** *Statements made by a party to the proceeding, or by an agent to any such party, whom the court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. By suitor in representative character.- Statements made by parties to suits, suing or used in a representative character, are not admissions, unless they were made while the party making them held that character. Statements made by-*

1. **Party interested in subject-matter.-** *persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or*
2. **Person from whom interest derived.-** *persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.*

21. After plain reading of section 17 of the Indian Evidence Act, it is clear that an admission is a statement made by a person which suggest any inference as to any fact in issue or relevant fact. In the present case the admission is made by the plaintiff who is party to the suit and it is in relation with the fact in issue as well as relevant fact i.e. Nature of the suit property. Furthermore, it is important thing in relation with the admission that it should be clear, certain and definite and not ambiguous or confused. In case at hand, it is clear, certain and definite. It is not ambiguous or confused. So, it can be considered against the plaintiff.

22. The plaintiff claims the suit properties are ancestral. However, it is admitted by the plaintiff that the suit properties were granted by the Government as Mahar Watan land. The land is prohibited. As per Hindu law, the property is ancestral property only when it is inherited from forefathers. In present case, the suit properties originated from a Government grant, therefore they can not be treated as ancestral. Further, it is contended that the suit properties are joint family properties, but there is no evidence on the record to show that the suit properties are hold in the nature of the joint family properties. Therefore, after considering the facts and evidence on record, it is held that the suit properties are neither ancestral nor joint family properties of the plaintiff and defendants. The suit properties

are given by the government as Mahar Watan Property. The duty casted upon the plaintiff to prove the nature of the suit properties. However, the plaintiff is failed to prove the same. Therefore, after considering the evidence on record and reasons mentioned above I answer issue no. 1 in the negative.

As to Issue No.2 (Non-Joinder Of necessary Party)

23. The issue is related with the non-joinder of necessary parties. It is contended by defendant no. 1 to 3 and 6 to 7 that the plaintiff has not made a party to the sister of defendant No.1. The sisters of defendant No.1 are necessary party to the suit. Therefore, the suit is bad for non-joinder of necessary parties. The plaintiff in cross examination denied that the defendant no.1 had three sisters. Therefore, the suit is not bad for non joinder of necessary parties.

24. The plaintiff has filed a suit for partition and separate possession of the suit properties. Therefore, as per settled law it is necessary to join the necessary parties to the suit. However, in the present case this principle is not applicable, as the nature of the suit properties is not ancestral. As discussed earlier the suit properties are not inherited from forefather.

25. The principle of the non-joinder of necessary party is applicable only when there is a right in the property is in exist. No

matter the sister has right in the ancestral property. But in case at hand, the suit properties are not ancestral. So, the question of their right does not arise. Though, the plaintiff contended that the suit properties ancestral, the plaintiff has failed to prove the same. Consequently, the sisters of defendant no.1 have no legal interest in the suit properties. Hence, the suit is not bad for non-joinder of necessary parties. Therefore, I answer issue no.2 in the negative .

As To Issue No.3 (Share of the plaintiff)

26. The issue is in relation with whether the plaintiff has a share in the suit properties. As it is admitted by the plaintiff that the suit properties are not ancestral properties and the same were granted by the Government. The lands are prohibited lands. In absence of any proof of any legal claim or entitlement, the plaintiff is not entitled to any share in the suit properties. Therefore the question of determining share among parties does not arise. The plaintiff has no right and share in the suit properties. The plaintiff has failed to prove that she has a share in the suit properties. Hence, I answered issue in No. 3 in the negative.

As to Issue No.4 (Entitlement of Partition)

27. The person is entitle for the partition when the person has a right in the suit property. In the present case, the suit properties are not ancestral property. The properties were granted by the Government. The nature of the suit properties is not ancestral as well as joint. The plaintiff

has no proven share in the suit properties. Further, the suit properties are prohibited in nature. Before partition of such properties the permission of the appropriate authority is necessary. In such circumstances and reasons mentioned above the plaintiff is not entitled to the partition of the suit properties. Hence, I answer this issue No. 4 in the negative.

As to Issue No.05 (Compensatory Costs)

28. The duty is cast upon the defendants to prove that the suit is fake and frivolous to the knowledge of the plaintiff. However, the defendants have not given evidence of the said fact. Mere argument is not sufficient to prove the fact. In such facts and circumstances of the case and in absence of the evidence it cannot be said that the defendants have proved that the present suit is fake and frivolous to the knowledge of the plaintiff. Hence, I answer issue no. 05 in the negative.

AS TO ISSUE No.06 :-

29. Considering all above discussion, I come to conclusion that the plaintiff failed to prove that she has right to claim partition. Therefore, she is not entitled for the relief claimed in the suit. Thus, suit is liable to be dismissed. Therefore, in answer to issue no.06, I pass the following order;

ORDER

01.	The suit is dismissed with costs.
02.	Parties to bear their own costs.
03.	Decree be drawn up accordingly.
	(Judgment dictated and pronounced in open court)

Date:- 09.04.2026

(Smt. A.N.Niwadange)
2nd Jt.Civil Judge, Jr. Div. Paranda.