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	Decided on	:	02.05.2026		
	Duration	:	Y.	M.	D.
		:	04	00	25
	Exhibit No.	:	17.		

**IN THE COURT OF DISTRICT JUDGE-1, PARBHANI
DIST. PARBHANI.**

**(Presided over by Niranjan R. Naikwade)
REGULAR CIVIL APPEAL NO. 35/2022**

- Appellants
(Ori.Defts.)** : 1] **Abdul Sattar @ Budhan S/o
Shaikh Nasu (Died) through his L.R.'s**
1/1] **Rahim S/o Abdul Sattar,**
Age 61 years, Occu.: Agril.,

1/2] **Nashim S/o Abdul Sattar,**
(Shaikh Nasim S/o Abdul Sattar Kureshi)
Age 59 years, Occu.: Agril.,

1/3] **Masud S/o Abdul Sattar,**
Age 56 years, Occu.: Agril.,

1/4] **Ayub S/o Abdul Sattar,**
(Died) through his L.R.'s

1/4/1] **Smt.Shaminabee W/o Ayub,**
Age 46 years, Occu.: Household,

1/4/2] **Aahat S/o Ayub,**
Age 08 years, Minor U/g. Of his real
mother Smt.Shaminabee W/o Ayub.

1/4/3] **Saahad S/o Ayub,**
Age 07 years, Minor U/g. Of his real
mother Smt.Shaminabee W/o Ayub.

1/4/4] **Sayeed S/o Ayub,**
Age 06 years, Minor U/g. Of his real
mother Smt.Shaminabee W/o Ayub.

1/5] Shaikh Jainoddin S/o Abdul Sattar,
(Died) through his L.R.'s

1/5/1] Arefbee W/o Shaikh Jainoddin,
Age 52 years, Occu. : Household.

1/5/2] Shaikh Aajad @ Wajid S/o Shaikh
Jainoddin, Age 52 years, Occu.: Agril.

1/5/3] Kausar W/o Shaikh Jakir,
Age 35 years, Occu.: Household.

2] Masud S/o Shaikh Abdul Sattar,
(Died) through his L.R.'s

2/1] Mirunbee W/o Masud,
Age 40 years, Occu.: Household.

2/2] Shima W/o Shaikh Madar,
Age 30 years, Occu.: Household.

2/3] Mujma @ Ujma W/o Masud,
Age 18 years, Occu.: Household.

2/4] Hayama @ Yahiya S/o Masud,
Age 15 years, Minor U/g. Of his real
mother Mirunbee W/o Masud,

2/5] Mahek S/o Masud,
Age 14 years, Minor U/g. Of his real
mother Mirunbee W/o Masud,

All resident of village Waloor,
Tq. Sailu, District Parbhani.

3] Abdul Majeed S/o Shaikh Ahemad Qureshi
Age 65 years, Occu.: Agril.,
R/o. Qureshi Mohalla, Ranjani,
Tq. Ghansawangi, District Jalna.

- 4] **Moin S/o Babamiya Kadar Qureshi**
Age 45 years, Occu.: Agril.,
R/o. Qureshi Mohalla, Jintur, Tq. Jintur,
District Parbhani.
- 5] **Abdul Karim S/o Shaikh Nasu Qureshi**
Age 60 years, Occu.: Agril.,
R/o. Waloor, Tq. Sailu, District Parbhani.
- 6] **Shaikh Abdul Kadar Shaikh Subhan Qureshi**
Age 55 years, Occu.: Agril.,
R/o. Waloor, Tq. Sailu, District Parbhani.

VERSUS

Respondents : 1) **Shaikh Fatan S/o Shaikh Usman,**
(Ori.Plaintiffs) Age 60 years, Occu. : Agril.,

2) **Shaikh Ibrahim S/o Shaikh Usman,**
Age 50 years, Occu. : Agril.,

Both R/o Waloor, Tq. Sailu, Dist. Parbhani.

Claim : Appeal for declaration, recovery of possession and
recovery of mesne profit....

Appearances:

Shri. S.A.Deshpande, Learned Advocate for Appellants.
Shri. R.P.Saraf, Learned Advocate for Respondents.

JUDGMENT

(Delivered on 2nd day of May, 2026)

- 1) This appeal is arising out of the judgment and decree dated
03/03/2022 in Regular Civil Suit No.95/2010, passed by the Civil

Judge Junior Division, Sailu against the defendants.

2) The parties are referred to by their original nomenclature before the learned trial Court for the sake of convenience.

3) The plaintiffs instituted a suit claiming that, Joharabee W/o Abdul Kadri was owner and possessor of the suit property described as survey No.302/3 (new-232/3), admeasuring 4H 55 R, situated at village Waloor, Tq. Sailu, District Parbhani. The suit property is 79 R out of the same being legally determined share of the plaintiffs.

4) After death of Joharabee, plaintiff No.1 and defendant had altered 7/12 extract. Defendant No.1 had filed RCS No.70/1994 for declaration of ownership and injunction against plaintiffs and others. On 29/01/2000 that suit was partly decreed, but the share of plaintiffs and defendant No.1 was not determined.

5) Plaintiffs, therefore, filed appeal RCA No.19/2000 and defendant No.1 filed an appeal RCA No.41/2004 arising out the same judgment. Both appeals were decided on 17/05/2005. In that judgment, share of defendant No.1 was determined as 5/6th and share of plaintiffs as 1/6th in the suit property. It was held that, plaintiffs are legally entitled to possession, but the injunction was granted in favour of defendant that, he will not be dispossessed except by following due process of law.

6) Against this judgment, Second Appeal No.1703/2005 and 1704/2005 were preferred by plaintiffs and defendant respectively before the Hon'ble High Court. The said Second Appeal was determined by common judgment on 30/12/2006 and the

judgment of District Court was confirmed. Accordingly, plaintiffs were declared as owner and entitled to possession of 1/6th share i.e. 79R land out of total landed property.

7) Joharabee, being original owner of 04 H 55 R land in survey No.232/3. Out of that 03 H 76 R land was mutated in the name of defendant No.1 by mutation entry No.5629. The plaintiff's 1/6th share comes to 79 R, which was the property of Joharabee, but as defendant No.1 has mutated the whole land in the name of defendant No.2, his son, and being in legal possession of 79 R land, they had to institute this suit for possession of that 1/6th share which makes plaintiff entitled to 1/12th share each with mesne profit @ Rs.10,000/- per annum from the date of filing of suit till its realization.

8) On 12/09/2010 plaintiffs demanded the share to defendant, but they declined, hence, the cause of action arose to file suit.

9) Defendant No.1 is dead, but his power of attorney Shaikh Masud (Exh.13) has contested the litigation. He did not dispute the long line of litigation, but alleged that, there was no pleading about plaintiffs 1/6th share. The sister of plaintiffs were not made parties, therefore, suit is bad for non-joinder of necessary party.

10) Defendant No.1 contended that, it is T.I.L.R. who has to determine the share, therefore the suit needs to be dismissed.

11) Defendant No.3 to 6 submitted written statement (Exh.69) admitting the previous litigation and defendant No.1 getting the share, as well as mutating the field in his name and injunction granted against defendant No.1, 2, 4, 6 and 7, but the suit was

decreed saying that, Abdul Sattar cannot be dispossessed without following due process of law.

12) The defendant admitted that, plaintiffs are entitled to 1/12th share each by filing separate suit can claim the share and possession. But Shaikh Ahmed Shaikh Ratan, Abdul Karim Shaikh Nasu were not made parties. They were parties in previous suit as defendant No.7 and Shaikh Jafar only was there, who was also not made party. Previously these persons were party in the litigation, but as they were not party in the instant suit, the suit is bad for non-joinder of necessary party.

13) After death of Abdul Sattar, he got share due to previous decree. The defendants are the heirs, who got 1/5th share, which was transferred in their name by the mutation entry, but the previous parties of the suit were not made parties to this suit, therefore, suit is bad for non-joinder of necessary party.

14) It is further alleged that, all heirs of original defendant No.5 in RCS No.70/1994 were not added as heirs in this suit.

15) In addition to that, Jani Shaikh Chand Pasha, Khairunissa Gafur, Khajabee Shaikh Issa and Babu Janimiya were legal heirs of Shaikh Mohammad Abdul Kadar and legal heirs. But they are not made parties. It is alleged that, Shaikh Mohammad (defendant No.3) died having five sons and four daughters, but they were not made party to the suit, therefore, suit is bad for non-joinder of necessary party.

16) In that case plaintiffs submitted written argument (Exh.85) and it was submitted that, as the concept of joint family is not in

Muslim law, as well as possession of defendant No.1 is admitted, therefore, suit needs to be decreed.

17) According to defendants, as the plaintiff are not the only legal heirs, unless all the heirs are joined, the suit is bad for non-joinder of necessary parties. Therefore the suit must be dismissed.

18) Learned trial court had framed issues (Exh.71). Plaintiffs examined PW1 Shaikh Ibrahim (Exh.74), PW2 Balasaheb Borade (Exh.74-A) and closed its case for oral evidence.

19) The plaintiffs submitted judgment and decree in RCA No.19/2000 (Exh.75 & 76) and Second Appeal No.1703 and 1704 of 2005 (Exh.77 & 78) in support of their contention.

20) Defendant No.1 and 2 examined DW1 Balasaheb Gaikwad (Exh.76) and defendant No.3 to 6 examined DW2 Moin Babamiya Kadar Kureshi (Exh.81). Defendants filed Namuna No.8-A (Exh.79) and 7/12 extract (Exh.80). After hearing both parties the suit was decreed, hence, the instant appeal.

21) I have heard both parties. I had taken up the issues, as framed by learned trial court. I have reproduced them below, with my findings against them, for following reasons :-

SR.NO.	POINTS	FINDINGS
1.	Do the plaintiffs proved that, considering previous litigation they are owners of 79 R land in old survey No.302/3 (new-232/3) ?	Proved
2.	Do the plaintiffs proved that, they are entitled for partition and separate possession of 79 R in survey No.302/3 (new-232/3) ?	Proved

3.	Do the plaintiffs proved that, they are having 1/6th share in survey No.302/3 (new-232/3) ?	Proved
4.	Whether suit is liable to be dismissed for non-joinder of necessary parties ?	No
5.	Do the plaintiffs proved that they are entitled for mesne profit as prayed ?	No
6.	Whether plaintiff is entitled for declaration as prayed ?	Yes
7.	Whether plaintiff is entitled for partition and separate possession as prayed ?	Yes
8.	Whether interference is required in the impugned judgment ?	No
9.	What order?	As per final order.

REASONS

22) Learned advocate for appellants submitted that, previous judgments and decrees are not disputed. The plaintiffs were not entitled to claim share. There was interruption in previous litigation. The issues were wrongly framed, which were not going to root of the matter. The issues were not as per pleadings. The issue of non-joinder of parties was not considered. If property was in possession of Abdul Raheman. There was no question of any succession in favour of his brothers. The fact of previous litigation was wrongly considered. There was no issue of declaration of

ownership of Shaikh Fatan, Shaikh Usman and Shaikh Ibrahim, therefore, judgment deserves to be reversed or may be remanded back to trial court for proper issues and fresh trial.

23) Learned advocate for respondents submitted written arguments (Exh.12) to submit that, the judgment of learned trial court is good and proper and therefore appeal deserves to be dismissed.

24) I have gone through the oral and documentary evidence.

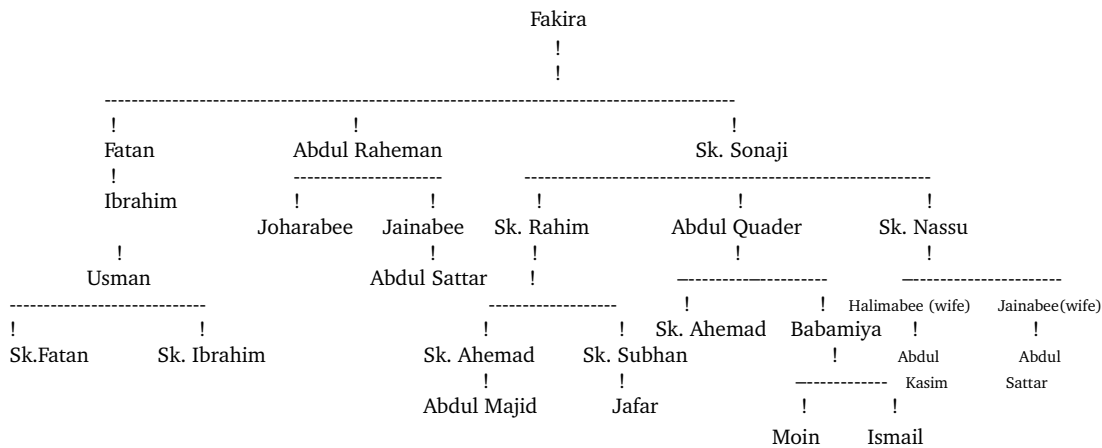
Point no.1:

25) PW1 Shaikh Ibrahim testified in support of his claim, alleging that, as per the previous judgments, he is entitled to 1/12th share, but the property is in the name of son of defendant No.2. He admitted that, there is still land in the name of Joharabee and all other living heirs are having equal shares.

26) PW2 Balasaheb testified that, he is deposing on the say of plaintiff, about heirs of Shaikh Sonaji, who was brother of Abdul Raheman. He deposed that, Shaikh Ahemad, Shaikh Karim and Shaikh Jafar are the legal heirs in previous suit. Shaikh Mohammad Abdul Kadar was a legal heir and the legal heir of Shaikh Mohammad Abdul Kadar was Jani Shaikh chand Pasha, Khairunisa, Khajabee Shaikh Isa and Babu Janimiya.

27) PW2 further deposed that, Shaikh Ratan have five sons and four daughters. He has a right and interest in suit property. The defendant No.1 stated that, he is cultivating suit land. Defendant Abdul Sattar is cultivating that land, which he got in the share.

28) Learned trial court gave a family tree (pedigree) as follows:



29) Originally Abdul Raheman was said to be owner of 04 H 55 R land in survey No.302/3 (new- 232/3), which is not disputed. It is also admitted that, Abdul Sattar got 5/6th share out of 04 H 55 R land. The suit was filed for declaration and permanent injunction, but the party did not mention pedigree and reason for not bringing legal representatives on record. The learned trial court culled out the family tree from the evidence of parties, which is more or less admitted by the parties to this appeal.

30) In Muslim Personal Law when the shares are fixed the joining of all the parties is not necessary. The suit property is in possession of Abdul Sattar and his son. Plaintiff also deposed about obstruction by Abdul Sattar and decree in his favour that his possession could not be disturbed, except by following due process of law.

31) It is an admitted fact that, originally Abdul Raheman was the owner of 04H.55R. land in Survey No.302/2 (old) having new number 232/3. Defendant Abdul Sattar got 5/6th share out of 04H.55 R. land and share of both the plaintiffs were determined in

first appeal, which were confirmed by the Hon'ble High Court. Therefore, the learned trial court rightly concluded that, plaintiffs proved their ownership to the extent of 79R land as their shares in the said property. Hence, Point no.1 is determined in the affirmative.

Point no.2 and 3:

32) As the previous litigation and shares carved out in the same are not disputed, the only question is whether the plaintiffs are entitled to partition of the suit property to the extent of their shares.

33) If the judgment of District Court and Hon'ble High Court are perused, it shows that, originally Defendant no.1 Abdul Sattar had instituted a suit for declaration of ownership and perpetual injunction against both the plaintiffs and others. One Abdul Raheman had two daughters named Joharabee and Jainabee and two brothers named Sheikh Sonaji and Sheikh Fatan @ Sheikh Ukirdya.

34) Jainabee was the wife of Sheikh Nassu, who was the son of Sheikh Sonaji. Joharabee had no heirs. Abdul Raheman was having 04H.55R. land in Survey No. 302/3, situated at village Walur.

35) After his death his daughters Joharabee and Jainabee inherited $2/3^{\text{rd}}$ share. After death of Jainabee, defendant no.1 Abdul Sattar inherited her $1/3^{\text{rd}}$ share.

36) As Joharabee died without any heirs, her $1/3^{\text{rd}}$ share was also devolved upon him. Further, he was found to be entitled to

half share of $1/3^{\text{rd}}$ residue left by Abdul Raheman. Thus, defendant no.1 Abdul Sattar was entitled to $5/6^{\text{th}}$ share to the exclusion of defendants namely Sk. Ahemad Sk. Ratan, Sk. Jafar Sk. Subhan, Babamiya Abdul Quader.

37) Moreover, as defendant Sk. Mohammad Abdul Quader and Abdul Kasim Sk. Nassu had admitted the claim of deceased defendant no.1 Abdul Sattar, they also excluded those who were in remote degree to Joharabee.

38) Thus, share of defendant no.1 Abdul Sattar was quantified to be total $5/6^{\text{th}}$ and both the plaintiffs were found to be entitled to $1/12^{\text{th}}$ each. It was held that, the plaintiffs may get their share separated from the suit land by filing a suit for partition.

39) It was further held that, Abdul Raheman's brother Fatan or his son Ibrahim or his son Osman, would get $1/6^{\text{th}}$ share, which was ultimately made plaintiffs entitled to the same.

40) Likewise, Abdul Raheman's another brother Sk. Sonaji or his sons would inherit $1/3^{\text{rd}}$ residue equally along with Fatan's branch.

41) Though it was held that, Abdul Raheman's two brothers or their sons would inherit equally in the half share of $1/3^{\text{rd}}$ of the residue, but Sk Jafar s/o Sk. Subhan was excluded from share, on the ground that he is in remote degree, as compared to Abdul Sattar, Sk. Mohammad s/o Abdul Quader and Abdul Kasim s/o Sk. Nassu.

42) However, in previous suit Sk. Mohammad s/o Abdul Quader and Abdul Kasim s/o Sk. Nassu had admitted the claim of deceased defendant Abdul Sattar therefore, their sons would get

nothing.

43) Moreover, Sheikh Ratan s/o Sheikh Sonaji and Babamiya Abdul Quader were already dead. Their heirs were not mentioned in the pedigree. Therefore, their heirs could not be considered for any share.

44) Defendant no.5 in the present suit named Abdul Karim is the son of Sheikh Nassu born from Halimabee, had admitted the claim of deceased defendant Abdul Sattar, in previous suit. Therefore, he was estopped from claiming any share.

45) Defendant no.2 Masud s/o Abdul Sattar could not inherit any share in the residue left by Abdul Raheman, as his father deceased defendant no.1 Abdul Sattar had already got 5/6th share, whereas other defendants were remote in degree as compared to the plaintiffs. Therefore, the plaintiff being already held to be entitled to file a suit for partition to claim their shares, which was confirmed upto Hon'ble High court, there was no option but to determine this point in the affirmative. Hence, these points are determined as such.

Point no.4:

46) The main opposition is on the ground that, heirs of Sheikh Mohammad Abdul Quader were necessary parties and the plaintiffs have excluded Sheikh Ahemad Sheikh Ratan, Abdul Karim Sheikh Nassu and Sheikh Jafar, though they were party in the previous suit.

47) The admission of claim of deceased defendant Abdul Sattar by Sk. Mohammad Abdul Quader and Abdul Kasim s/o Sk. Nassu

was nothing but waiver of their share. As they were not entitled to any share, their exclusion was just and proper in this suit.

48) The defendants did not submit the family tree to show that, who were entitled to share and who were not. It further appears that Babamiya Abdul Quader was the father of defendant no.4 and Sk. Ahemad Sk. Ratan was also dead. But none of the plaintiff or defendant had not brought their heirs on record in the previous litigation.

49) In Muslim personal law, the share of the parties are already determined. The one who is found in possession of the said share only is the necessary party. If the other heirs or sharers do not wish to claim their shares, they need not be made parties.

50) Further unlike Hindu law of partition, if all the parties and properties are not joined in the suit , the suit becomes bad, but the same concept cannot be invoked in Muslim partition, as the partition cannot be opened unless the person having ownership of property is dead. There is no concept of partition during the life time of the owner.

51) Considering all these circumstances, the plaintiffs who were already declared as being entitled to inherit $1/6^{\text{th}}$ share would get 0.79 R land in Survey No.302/3 (new Survey No.232/3) by way partition by metes and bounds.

52) The defendants could not show that, plaintiff ought to have filed suit against those defendants, without which, they cannot be put in possession. But it is never the case of defendants that, those who are left out were possessors of the suit property. Thus, the

filing of suit against those defendants, who are in possession of suit property is good in law. Those, persons who are left out as heirs, may claim their share separately by filing a separate suit. But as the inheritance is already decided in the previous litigation, the question of joining those, who did not get any share or were found to be not entitled to it, merely because they were related to the deceased owner, is out of context.

53) The plaintiff rightly joined only those persons, who were entitled to be in the suit, being possessors and being entitled to shares in the suit property. Therefore, if the parties who are left out, though remotely related to the original owners, being not entitled to any share, cannot be made parties unnecessarily. Hence the suit is not at all bad for non-joinder of any party. As such this point is determined in the negative.

Point no.5:

54) According to PW1 as the land of their share is in the possession of defendant no.1, which he mutated in the name of his son (defendant no.2) they are wrongfully earning the profit of Rs.20,000/- per annum.

55) PW2-Balasaheb Punjaji Borade also supported this fact. But while deciding the RCA No.19/2000 and 41/2004, the possession of deceased defendant Abdul Sattar and his sons was held to be legal.

56) The plaintiffs were given an option of claiming their share by filing a suit for partition and separate possession. The perpetual injunction was granted restraining the present plaintiffs from

obstructing possession of Abdul Sattar.

57) Thus, the possession of the defendants cannot be said to be illegal. The learned trial court rightly rejected the claim of mesne profits in such situation. Further the plaintiffs did not bring on record any evidence to show that, defendants had gained unconscionably by being in possession of such share to the extent of 79R. The plaintiff could not show any quantum disproportionate to the earnings of the defendant, by holding such share in their possession. In such circumstances, the findings of the learned trial court need not be disturbed. Hence, this point is determined accordingly.

Point no.6 to 8 :-

58) Shares of plaintiffs were determined as 1/6th which means 1/12th each. Therefore the plaintiffs are entitled to declaration in that respect.

59) There is an application under Order-XLI, Rule-27 of the Code of Civil Procedure on behalf of appellants for filing additional evidence in the present matter.

60) I had gone through the said documents, which indicate that, the document show reference to R.D.No.1/2009 dated 20/06/2012. There was an endorsement on 24/11/2011 about Writ petition No.7025/2010 in which execution was restored on 16/08/2012. In Writ Petition No.4561/2022 the execution was stayed on 16/08/2022.

61) Thereafter, there were order dated 08/06/2010 in R.D.No.1/2009, that property of J.D.No.1 Shaikh Fatan and

J.D.No.2 Shaikh Ibrahim were attached and therefore compliance of Order-XXI, Rule-32 of the Code of Civil Procedure could not be made.

62) All these documents have no bearing upon the dispute under consideration. The said documents are in relation to the execution proceedings going on between the parties. But here in this suit we are concerned only with regard to the shares of plaintiffs, which has to be carved out of the property in the hands of defendants.

63) Therefore, filing of these documents is merely an eye wash. The appellants do not want to proceed with the carving out of that share, for unjustified reasons. Such documents which have no bearing upon the subject matter cannot be allowed to be filed. They are the matters of record.

64) The additional evidence could be filed only in certain circumstances. As per Order XLI Rule 27 of the Code of Civil Procedure, 1908 the parties to an appeal shall be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, if the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other

substantial cause. None of the conditions of this order had been fulfilled by the appellant, hence such application and documents, having less bearing upon the subject matter deserves to be rejected.

65) Consequently point No.6 to 8 are determined accordingly and for the last point the following order is passed.

ORDER

1.	Regular Civil Appeal No. 35/2022 is dismissed with costs.
2.	Application Exh.13 is rejected.
3.	Record and Proceedings be sent forthwith to the trial court.
4.	Decree be drawn up accordingly.

Place : Parbhani.
Date : 02.05.2026.

(Niranjan R. Naikwade)
District Judge-1,
Parbhani, JO Code-MH-1063.