

CNR NO.MHRG090000732015



Received On :- 04/02/2015.

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Decided On :- 29/11/2023

Duration :- 08Y.09M.25D.

IN THE COURT OF JT.CIVIL JUDGE, JUNIOR DIVISION, AT ROHA,
DISTRICT- RAIGAD

(Presided over by Megha C. Hasge)

Regular Civil Suit No.05/2015.
Exhibit No.123/A

- 1) Sau. Pushpa Vijay Watve,
Age-48 yrs; Occu.-Housewife,
- 2) Shri.Yogesh Vijay Watve,
Age-32 yrs; Occu.-Service,
Plaintiff Nos.01 and 02 R/o Kolad,
Tal.Roha, Dist.Raigad.
- 3) Sau. Yogita @ Madhura Mahendra More,
Age-27 yrs; Occu.-Housewife ,
R/o Nanore, Tal.Mangaon, Dist. Raigad.

....Plaintiffs

V E R S U S

- 1) Shri. Vijay @ Pramod Narayan Watve,
Age-52 yrs; Occu.Service,
R/o M.I.D.C, Birwadi,
Tal.Mahad, Dist. Raigad.
- 2) Sou.Sunita Pandharinath Watve,
Age-55 yrs; Occu.-Agriculture,
- 3) Shri. Sunil Pandharinath Watve,
Age-40 yrs; Occu.-Agriculture,
- 4) Prafulla Pandharinath Watve,
Age-35; Occu.-Agriculture,
- 5) Trupti Pandharinath Watve,
Age-30; Occu.-Agriculture,

....Defendants.

- 6) Shri. Govind Narayan Watve ,
Age-35; Occu.-Retired,
- 7) Smt. Tejswini Uday Jadhav,
Age-40 yrs.,Occu. Agriculture,
Defendants No.02 to 07 R/o Nadavali,
Tal.Roha,Dist.Raigad.
- 8) Shri.Kiran Maruti Gajre,
Age-37; Occu.-Agriculture,
R/o Room No.05, 1st Floor, Garibi Hatao Nagar,
Nari Seva Sadan Road, Narayannagar,
Ghatkopar(W), Mumbai.
-Defendants.**

APPEARANCE :-

Shri.Musale	--	Advocate for plaintiffs.
Shri.R.B.Sawant	--	Advocate for defendant Nos.1.
Shri.M.D.Patil	--	Advocate for defendant Nos.8.
Exparte	--	Defendant Nos. 5 and 7.
In Person	--	Defendant Nos, 2,3,4,6.

J U D G M E N T

(Delivered on 29th November, 2023)

NATURE OF THE SUIT

This is a suit seeking partition and separate possession of 3/12th share of the suit properties mentioned in para 2 of the plaint. The plaintiffs also claimed relief of declaration that, the sale deed executed by the defendants no.1 to 7 in favour of the defendant no.8 in respect of the agricultural land block no.192 situated at Nadavali, Tal.Roha is not binding on their respective share. The plaintiffs also claimed relief of mesne profits.

DESCRIPTION OF THE SUIT PROPERTIES

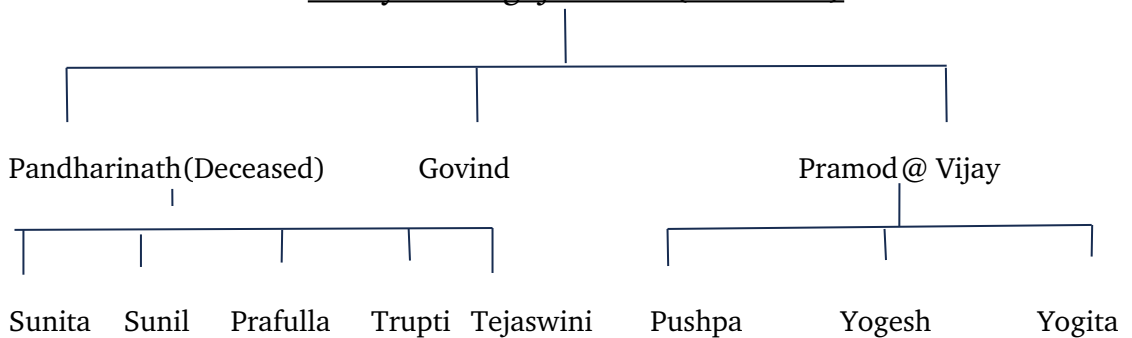
02. The following agricultural lands situate at Village Nadavali, Taluka Roha viz

Sr.No.	Block No.	Area (H.R.P)	Assessed (Rs.Paise)
1.	192	0-52-6	4.31
2.	202	0-1-5	0.12
3.	244	0-07-8	0.55
4.	213	0-40-1	1.51
5.	203	0-34-4	6.31
6.	214	0-04-8	0.39
7.	230	0-12-3	0.48
8.	220/1	0-96-1	18.51
9.	301	0-54-9	12.06
10.	232	0-04-8	0.50
11.	248	0-01-1	--

And House No.104 area admeasuring 18X27=486sq.ft situated at Khamb Taluka-Roha. are the suit properties.

Geneology Chart

Narayan Bhagoji Watve (Deceased)



AVERMENTS IN THE PLAINT

03. The suit properties are ancestral properties of plaintiff no.2 and 3 and defendant Nos. 1 to 7. The defendant no.1 is the husband of plaintiff no.1 and father of plaintiff no.2 and 3. The defendant no.2 Sunita

Watve the wife of late Shri.Pandharinath. The defendant no.3,4,5 and 7 are son and daughter of late Shri.Pandharinath(elder brother of defendant no.1).The defendant no.6 Govind is the brother of defendant no.1.The plaintiff no.2 and 3 have the right and interest in the suit properties since there birth. The defendant no.1 is working in police department, he did not take care of his wife and children. Hence, the plaintiff no.1 has filed the suit for maintenance. The defendant no.1 is avoiding his responsibility towards his family and attempted to sell the ancestral property in which the plaintiffs have equal right and share.

04. The plaintiffs are demanding partition in respect of the suit properties since long but the defendant No. 1 is not willing to provide and handover the respective share of the plaintiffs and denying partition in the ancestral properties. The plaintiffs contended that, they have 3/12th share each in one of the ancestral suit property which has been sold by the defendants to one Shri. Kiran Gajre. The defendants without the consents of the plaintiffs sold the suit property bearing block No.192. Accordingly, the plaintiffs have prayed for partition of the suit property and declaration that, the registered sale deed dated 26.05.2014 is not binding on them. Therefore, the plaintiffs are constrained to file present suit seeking partition in all the suit properties. Hence the plaintiffs have prayed for decree of the suit.

DEFENCE RAISED BY THE DEFENDANTS NO 1 AND 8 ONLY

05. The defendant Nos. 2, 3,4 and 6 though appeared, failed to file their written statement. Hence, suit proceeded without the written statement against them.

06. The defendant No.5 served vide Exh.62 and defendant No.7 served vide Exh.63, they failed to appear. Hence, suit proceeded ex-parte against them.

The Content of Written Statement of the defendant no.1 in short:

07. The defendant no.1 filed his written statement at Exh.30 and additional written statement at Exh.69 on consequential amendment in the plaint. It is the contention of the defendant no.1 that, the plaintiffs are not entitled to file this suit and seek partition during the lifetime of defendant no.1. Further it is the contention of the defendant no.1 that, his brother late Shri.Pandharinath during his lifetime in January 2015, had orally partitioned the property and as per that oral partition out of block No.220, 38 guntha and one part approximate 9 guntha land and for house out of block No.214, 8 guntha land has been given to defendant no.1.

The contents of written statement of defendant no.8 in short:

08. The defendant no.8 filed his written statement at Exh.60. It is contended by him that, he has verified the title of the suit property and then only purchased the suit property. Therefore, he is the bona fide purchaser of the suit property bearing Gat no.192 for value. The property was orally partitioned and the defendant no.1 has got his share of the suit property. If the plaintiffs have right in the suit property, their share may be given from the other suit properties.

THE ARGUMENTS OF RESPECTIVE PARTIES :

09. The learned advocate for the plaintiffs argued that plaintiff no -1 being the wife of defendant no -1 and plaintiff no's 2 and 3 being the son and daughter of defendant No.1 are coparceners of the ancestral properties and the plaintiffs have right of partition. The plaintiff no.2 and 3 have the interest in suit property by birth. The defendant Nos. 1 to 7 have no right to deny their share. They are entitled for 3/12 share each as per relevant provisions under the Hindu Law.

10. The learned advocate submitted that, he is relying on the citation of the Hon' ble Supreme Court in "*Revanasiddappa and Anr vs*

Mallikarjun and Ors" decided on 31st March, 2011 and dated 01.09.2023
In *Civil Appeal No.2844 of 2011*.

11. Per contra, learned advocate for defendant No. 1 argued that, the plaintiff no's 2 and 3 father is surviving and the property is yet to partitioned, therefore, the plaintiffs are not entitled to get 3/12th share as prayed by them. The suit is not maintainable.

ISSUES AND FINDINGS

12. Following issues arose for my consideration and the same were duly framed. I record my findings thereon as under for the reasons to follow.

ISSUES

FINDINGS

- | | |
|--|---|
| 01. Whether the suit is maintainable as per law? |Yes. |
| 02. Whether the plaintiffs are entitled to get share from the suit property of defendant no.1 ? |Yes. |
| 03. Whether defendant no.1 proves that, in the month of January 2015 there was oral partition made by the deceased brother of defendant no.1? |No. |
| 04. Whether the plaintiffs are entitled to get 3/12 share from the ancestral properties of defendant no.1 to 7 ? | Plaintiffs are entitled for 1/12 share each in suit properties. |
| 05. Whether the plaintiffs proves that, the sale deed dated 26.05.2014 bearing Registration no.1424 of 2014 executed in favour of defendant no.8 is not binding on them? |Yes. |
| 06. Whether the defendant no.8 proves that, he is the bona fide purchaser? |No. |

07. Whether the plaintiffs are entitled for mesne profit?

....Yes.

08. What order and decree?

Suit is decreed.

ADMITTED FACTS :

13. The above mentioned suit properties are ancestral properties of the plaintiffs. The relation between the parties is not disputed.

REASONS AND FINDINGS :

14. The plaintiffs have examined following witnesses to support of their contentions. Plaintiff no.1 examined herself at Exh.72

PW2 Sandeep Tulshiram Watve at Exh.108. (Chart)

15. Plaintiffs have filed following documentary evidence:

Sr.No.	Suit Property	Exh.No.
01.	7/12 extract of Block No.192	77
02.	7/12 extract Block No.202	78
03.	7/12 extract Block No.244	79
04.	7/12 extract Block No.213	80
05.	7/12 extract Block No.203	81
06.	7/12 extract Block No.214	82
07.	7/12 extract Block No.230	83
08.	7/12 extract Block No.220/1	84
09.	7/12 extract Block No.301	85
10.	7/12 extract Block No.232	86
11.	7/12 extract Block No.248	87
12.	7/12 extract mutation entry no.201	88
13.	Mutation entry no.258	89

14.	Mutation entry no.308	90
15.	Assessment extract of House no.104	91
16.	Mutation entry no.503 of Gat no.192	92
17.	Mutation entry no.490 of Gat no.192	93
18.	Block No.202 7/12 extract from the month of January 2022	94
19.	Block No.203 7/12 extract from the month of January 2022	95
20.	Block No.213 7/12 extract from the month of January 2022	96
21.	Block No.214 7/12 extract from the month of January 2022	97
22.	Block No.220/1 7/12 extract	98
23.	Block No.230 7/12 extract	99
24.	Block NO.232 7/12 extract	100
25.	Block NO.244 7/12 extract	101
26.	Block NO.248 7/12 extract	102
27.	Gat NO.301 7/12 extract	103
28.	Certified copy of the Sale deed dated 26.05.2014	104
29.	8A extract	105
30.	Certified copy of Exh.1 Cri.M.A No.252/2022 of recovery of maintenance amount.	106

The plaintiffs have closed their evidence under Exh - 120.

16. Defendants have not furnished any oral or documentary evidence on record. Defendant no.1 close his evidence at Exh.121. Defendant no.8 closed his evidence at Exh.122.

AS TO ISSUE NOS.01 AND 02 :

17. Before starting to discuss the issues, it is necessary to go through some important legal articles of Hindu law (From the book of Sir Dinshah

Mulla):

a) Article 221 Ancestral Property: *Property Inherited from peternal ancestor*: All property inherited by a male Hindu From his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great grandsons of the person who inherits it, acquire an interest, and rights attached to such property at the moment of their birth. Thus ancestral property is the same thing as apratibandha daya(unobstructed heritage).

Article 219: Incidents of Joint family or co-parcenary property: Joint Family or Co-parcenary property is that in which every co-parcener has a joint interest and a joint possession. The following are the main incidents of the joint family or co-parcenary property. (a) It devolves by survivorship, not by succession (b) It is the property in which the male issue of the co-parceners acquire an interest by birth.

18. In the present suit the defendants have not denied the properties as ancestral property, being more specific, the disputed fact is that, whether the plaintiff no.1 is entitled for share during lifetime of her husband and plaintiff no.2 and 3 entitled for share during lifetime of their father i.e. defendant no -1.

19. In order to substantiate the same the plaintiff no.1 examined herself (PW1)Pushpa in her affidavit of examination-in chief re-iterated the same facts of the plaint. During the cross-examination she admitted that, the suit properties are not yet partitioned and the defendant no.1 in writing not given consent to claim for partition. The (PW1) admitted that, her children asked her to claim for partition. After considering the cross-examination it is seen that, the learned advocate for defendant no.1 tried to bring on record that, the property is yet to be partitioned, the defendant no.1 is alive and therefore, she has no right to claim for partition. Obviously the suit properties are not yet partitioned despite requests of the

plaintiffs and also one such property is sold to defendant no -8, therefore, the plaintiffs approached the court.

20. The plaintiffs have also examined (PW2) Sandeep Tulshiram Watve, who is the step uncle of plaintiff no.2 and 3. During his cross-examination the learned advocate for defendant no.1 tried to bring on record that, plaintiff no.1 is not used to mingle with the family members of the defendants 1 to 7. Further, plaintiffs have not mentioned the suit properties which belong to Mr. Sandeep Watve. On this point this court holds that, the relations of the parties are admitted. The suit is for seeking aforesaid reliefs and therefore, there is no substance on the point of behaviour of the plaintiff their extended and immediate family members. Further, there is no substance in the property of uncle of plaintiff no.2 and 3 being involved in the present proceedings. If the plaintiff have failed to bring on record any other ancestral property apart from the details mentioned in the plaint then, the defendants could have brought the same on record. Merely taking different kind of defences without any oral and documentary evidence is not enough to prove that, the plaintiffs have any other property. The documentary evidence discussed above are all about Narayan Bhagoji Watve. The documentary evidence especially records maintained under Govt. regulations, prevails over oral evidence. The properties of the Sandeep Tulshiram Watve if any, have no concern in the present suit.

21. The plaintiffs have produced on record mutation entry at Exh.90 which shows that, after the death of Narayan Bhagoji Watve by way of succession (Varsa Hakkane in Marathi) the name of the defendants i.e late Shri.Pandharinath, Govind and Vijay@Pramod were recorded in the record of rights of suit properties. Thereafter, Exh.91 assessment extract shows the name of late Shri.Narayan Bhagoji Watve. The 7/12 extracts of the suit properties at Exh.94 to 103 shows that, the names of defendant No.1 to 7 have been entered in the record of suit properties. Further, after

the death of Pandharinath his legal heirs respective names were duly recorded in the 7/12 extracts of suit property. Considering the documents the inference needs to be drawn that, the suit properties are ancestral property as they came to the father of plaintiff no-2 and 3 from his father and grandfather respectively. There is no material before court to show that these mutations have been challenged before revenue authorities. The defendants have not produced any document to show that, the properties are purchased from their own or joint income of the defendants no 1 to 7. Further Exh.92 the mutation entry no.503 shows that block no.192 is transferred by sale deed to Kiran Maruti Gajre i.e defendant no.8.

22. As the plaintiff has relied on *Revansiddappa vs Mallikarjun*(Supra) ruling of Hon'ble Supreme court. After going through the said citation, it is seen that, it deals with law relating to the rights on the suit properties of illegitimate and legitimate children on self-acquired and ancestral property of their father. On the contrary in the present suit the issue is not about legitimacy and illegitimacy of any plaintiff or defendant. Therefore, with all due respect to the Apex Court, the said citation is not relevant for determining the findings in the present suit.

23. The learned advocate for defendant no.1 has relied on following ruling:

a) *Ratnamala Vilas More and Another vs Tanaji Machindra Pawar & others reported in [2019(2) All MR 393]* in the said ruling the Hon'ble Bombay High court observed that, Coparcener cannot sue for partition if his father is in a joint family with his own father, brother, or other co-parceners.

24. In the present suit in hand the property is an ancestral property and the partition is opened as soon as grand father of plaintiff no.2 and 3 died. Moreover, the partition is again open when the Pandharinath died. Furthermore, there is a minute difference between Ancestral Property and Joint Family Property. The Ancestral property is also a joint family

property when the same is not yet partitioned among the other coparceners. In this suit the plaintiffs have come before the court to partition the same as the defendant no.1 attempted to forfeit the rights of the plaintiff no.2 and 3 by selling the block no – 192 without the consent and without any legal necessity to a third person i.e. defendant no.8. Moreover, none of the defendants came before court to contend that, the suit properties or any portion thereto were purchased from their own income or joint family income. Therefore, with all due respect this ruling is not applicable in the present suit.

b) *Ms. Vaishali Satish Ganorkar & Anr vs Mr.Satish Kesharao Ganorkar & ors. reported in [2012(2) ALL MR 737]* the Hon'ble Bombay High Court observed that, no interest can devolve in a coparcenary property except on the death of the coparcener. Therefore, no devolution of interest and hence no daughter of such coparcener to whom an interest in the coparcenary property would devolve, would be entitled to be a coparcener or to have the rights or the liabilities in the coparcenary property. Again the facts of the citation are not same as the present suit. Therefore, with all due respect the above said ruling is not applicable with the present suit in hand.

c) *"Revanasiddappa and Anr vs Mallikarjun and Ors" decided on 31st March,2011 and dated 01.09.2023 from Civil Appeal No.2844 of 2011.* As discussed earlier the ruling is basically about rights of illegitimate child in the ancestral and self acquired property.

25. It is settled position of law that, the wife is not a coparcener and she has no right in an ancestral property of her husband. In the present suit in hand the cause of action arose for partition. Once the partition is opened and the share of the defendant no.1 i.e father of the plaintiff no.2 and 3 are drawn, at that moment, it is also necessary to draw one share from the defendant no.1's share for his legally wedded wife. To support this content, I have reproduced Article 314 of Hindu Law (By Sir Dinshah

Mulla):-

26. **Article 314-** *A wife cannot herself demand a partition, but if a partition does take place between her husband and his sons ,she is entitled (Except in southern India) to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. Where at a partition between a father and his three sons, the wife was not allotted a share, it was held that she was entitled to reopen the partition, there being no waiver merely by her not asking for a share but that in the partition, the value of the ornaments taken by her must be taken into account, a testator having given some property to his wife by way of limited interest and absolutely to his minor son, the wife was incompetent to execute a partition*

Where a son institutes a suit for partition of a joint family property impleading his mother and other members of the family as defendants and a preliminary decree is passed, the mother does not become owner of the share allotted to her until the preliminary decree is carried out and there is a division by metes and bounds. Therefore, a mortgagee suing on a mortgage before the property is actually divided can obtain a valid mortgage decree without imploding the mothers. This does not mean that, the sons can defeat the right of the mother merely by omission to apportion her a share and place her in its possession. So where the sons, while partitioning the property, did not allot any share to the mother and the mother did not give her consent to the same, it was held that, the share of the mother in the property could not be attached in execution of a decree against the sons.

27. Therefore, after going through the above Article of Hindu Law regarding the wife's right on the husband's property at the time of partition, it is clear that, the wife alone cannot file a suit for partition. However, if she came before court with her children then, the suit is

maintainable. Further, once the partition is opened then, the wife i.e the plaintiff no.1 is entitled to get her equal share from the share of her husband i.e defendant no.1 from the suit property.

28. Further the learned advocate for defendant no.1 argued that, plaintiff no,2 and 3 have not entered into witness box to lead evidence. Therefore, the only evidence of the plaintiff no1 cannot be taken into consideration. For this reason at the cost of repetition it is admitted fact that, plaintiff no. 2 and 3 are the coparceners of an ancestral property and the defendants also admitted the same. Hence, to prove the admitted facts again the plaintiff no.2 and 3, deposition by way of entering into witness box is not required . Further, it is the choice of the plaintiffs as to whom they want to examine. As per section 134 of Indian Evidence Act : No particular number of witnesses shall in any case be required for the proof of any fact. The quality of evidence is matters than quantity of evidence. Considering all these materials, I conclude that, plaintiff no.1,2 and 3 are entitled for share in the suit properties of defendant no.1 and the suit is maintainable. Hence, I answer issue no.1 and 2 in affirmative.

AS TO ISSUE NO.03 :

29. The learned advocate for defendant no.1 argued that, during the lifetime of defendant no.1 the plaintiff no.1 to 3 are not entitled for share and further stated that the suit property is yet to be partitioned, hence the suit is not maintainable. On the contrary in his written statement the defendant no-1 submitted that, oral partition took place during the lifetime of late Shri.Pandharinath. However, he has neither examined any witness nor filed any documentary evidence to assert the correct defence. The burden is on the defendant to prove their contentions. None of the defendants have entered into witness box to disprove the contentions and documentary evidence tendered by the plaintiffs. Therefore, mere oral statement does not come in the way of partition suit for ancestral

properties.

30. The defendants did not step into the witness box and thereby avoided to face the cross-examination. In this regard one may conveniently take recourse to the landmark judgment delivered by Hon'ble Apex Court in the case of "*Vidhyadhar Vs.Manikrao*, AIR 1999 Supreme Court 1441 wherein their Lordship were pleased to lay down that if a party to the suit does not appear into the witness box and face cross-examination. It leads to the presumption that, the case set up by him is not correct. Since, in the case in hand the defendants did not enter into witness box, therefore an adverse inference is required to be drawn against them under section 114 illustration(g) of the Indian Evidence Act. Also other than, filling writing statement, the defendants have not challenged any of evidence brought on record by the plaintiff. Therefore, I answer issue no.3 in negative.

AS TO ISSUE NO.04:

31. As from the above said discussion it is clear that, the plaintiff no.1, 2 and 3 are entitled for the share in the suit properties. The plaintiffs in their prayers claim 3/12 share of suit properties. Therefore, now it is necessary to draw the share of each member to know the exact share of the plaintiff no1,2 and 3 from the suit property. The genealogy of the plaintiff and defendant is as under: (W-denotes wife. D-denotes daughter and S-denotes son)

Narayan Watve grandfather (deceased)

Pandharinath (Deceased) $1/3 \times 5$ $1/15$ each	Govind $1/3$	Vijay(Pramod)= $1/12$ $1/3 \times 4 = 1/12$
1 2 3 4 5		1 2 3
w s s d d		W S D
$1/15$ (each)		$1/12$ $1/12$ $1/12$

32. It is admitted by both the parties that late Shri.Narayan Bhagoji

Watve i.e grand father of the plaintiff no.2 and 3 died on 20.07.2003 survived by 3 sons i.e late Shri.Pandharinath, defendant no.1 Pramod (Vijay) and Govind defendant no.6. Thus, the partition opened on the death of Shri.Narayan Watve. The suit property is equally divided between the three sons i.e 1/3rd each. Again the partition opened when one son Pandharinath died leaving behind wife and 2 sons and 2 daughters. Therefore, his share devolves among five person $1/3 \times 5 = 1/15$ therefore defendant no.2,3,4,5 and 7 will get 1/15th share each. Defendant no.6 Govind has 1/3 share. Now, defendant no.1 has one wife and two children hence, his share i.e 1/3rd devolves into four parts $1/3 \times 4 = 1/12$ th share each. Defendant no.1 having 1/12, plaintiff no.1 plaintiff no.2 and 3 1/12th each. Therefore, plaintiff no.1,2 and 3 are entitled for 1/12 share each in the suit properties.

AS TO ISSUE NO.6 :

33. From the evidence on record, it is clear that, the defendant no.8 failed to prove that he is a bona fide purchaser of suit property bearing block no.192. The

burden is on the person who asserts that, he is a bona fide purchaser.

Therefore, certain grounds has to be fulfilled by the bona fide purchaser

- a. The transferor must be the ostensible owner of the property
- b. The transferee must not make reasonable enquiry but also act in good faith.
- c. The transfer so made shall be for consideration
- d. The transferee must take reasonable care as a prudent and ordinary man is expected to take during any transition.

The Exceptions to this Rule:

- a. If there is no due consideration received for the transfer or that the transfer is gratuitous transfer.
- b. If no reasonable care was taken for the transaction or enquiry as to real title was not made as a reasonable and prudent man while making the

transaction.

c. This right is an exception to the legal rule laid down under Section 27 of Sale of Goods Act and the maxim "nama dat quo non habet" which means "no one gives that he does not have".

34. During the cross-examination, (PW1) has admitted that, the suit property bearing block no.192 was sold by the defendants for value. There is no admission in this regard that, she and plaintiff no.2 and 3 had received the money from the defendant no.8. In this regard it is necessary to throw the light on the written statement of defendant no.8 wherein he admitted that, the suit properties were already partitioned and therefore, the plaintiffs have no right in the suit properties and on the contrary the learned advocate tried to bring on record that, the plaintiffs had received the amount. However, no proof payment of consideration to the Plaintiff no -1 to 3 is tendered on record by the defendant no.8.

35. After going through the Sale Deed at Exh.104. it is seen that, plaintiff no. 1 to 3 were not parties of the Sale deed. Further it is pertinent to note that, all other defendants are the parties to the Sale deed. From these circumstances it is very clear that, without the consent of the plaintiff no.1 to 3 the said suit property was sold by all the defendant no. 1 to 7 to the defendant no 8. They tried to forfeit the rights and share of plaintiff no.2 and 3 in the suit properties. The contents of the Sale deed also does not shows that, the present plaintiffs had received consideration in form of money. The defendant no.8 i.e Kiran Gajare has not given any public notice before purchasing the property of Gat no.192. Where and how he made a legitimate and fair inquiry is not mentioned by him in his written statement nor he has given any evidence before court. Therefore, defendant no.8 has not taken the reasonable care like that of a prudent man while purchasing the ancestral property and it is proved that the said sale deed is not binding on the plaintiffs. The defendants have not shown that, they had any legal necessity like, any payment of taxes and debt with

respect to the same property, expenses incurred for the maintenance of co-parceners, marriage and funeral expenses of the family members etc. for sale of block No.192 which had the part of the ancestral property. Without the legal necessity the defendants have no right to sell the suit property. Therefore, I hold that, the plaintiff no.8 has not proved that he is a bona fide purchaser of block no.192.Hence, I answer issue no.5 in affirmative.

AS TO ISSUE NO.05:

36. From the above discussion of issue no.6 it is clear that, the defendant no.8 failed to prove that, he is the bona fide purchaser of suit property bearing block no.192. Hence, the Sale deed at Exh.104 dated 26.05.2014 is not binding on plaintiff no.1,2 and 3 to their respective share of the suit properties.Hence, I answer issue no.5 in affirmative.

AS TO ISSUE NO.07:

37. Section 2 clause (12) of the Code of Civil Procedure defines Mesne profit as those profits which the person in wrongful possession of such property actually receives or might with ordinary diligence have received there from, together with the interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. As discussed earlier, the plaintiffs have share in the suit properties. However, it is seen that, the plaintiff no.1, 2 and 3 have been deprived of their rights since 2012 intentionally by defendant no.1. Therefore, they are entitled to get mesne profit of the suit properties. Hence, I answer to issue no.1 in affirmative.

THE COSTS.

38. Considering the relation of parties and the nature of the suit, I am not inclined to grant costs of this suit. Interest of justice would require, cost of suit would be borne by the parties on their own. In the result, as to

Issue no.8 I pass following order:

ORDER

01. The suit is decreed.
02. It is declared that, plaintiff no.1, 2 and 3 have 1/12 share each. Defendant no.1 1/12 share. Defendant no.6 Govind, 1/3rd share. Defendant no.2, 3, 4, 5 and 7 1/15 each in the suit properties.
03. The suit properties be partition accordingly.
04. It is hereby declared that, the Sale deed dated 26.05.2014 is not binding on plaintiffs to the extent of their respective share in the suit properties.
05. The decree be sent to the Collector for partition and separate possession in respect of the suit property of agricultural lands in accordance with Section 54 of the Code of Civil Procedure.
06. The house property of the suit be partitioned equitably in accordance with the above declaration of shares by appointing a Court commissioner and plaintiffs be put in separate possession of his share therein.
07. The plaintiffs are entitled for mesne profit from the date of filling the suit till the realization of the suit property. Inquiry under Order XX Rule 12 shall be conducted.
08. The parties are left to bear their own costs.
09. The preliminary decree to that effect be drawn up accordingly.

(Pronounced in Open Court)

Dated:29/11/2023.
Place: Roha.

(Megha C. Hasge)
Jt. Civil Judge J.D.,Roha.