

MHRG17004  
3452019



Presented on : 19.01.2013  
Registered on : 19.01.2013  
Decided on : 27.03.2026  
Duration : Y M D  
13 02 08

**IN THE COURT OF DISTRICT JUDGE - 2, PANVEL,**  
**DIST. RAIGAD**

(Presided over by Dinesh E. Kothalikar)  
(B.Com, L.L.M.)

**Regular Civil Appeal No.139/2019**  
**(Old Regular Civil Appeal No.19/2013)**

**CNR NO. MHRG170043452019**

**Exhibit No.43/A**

**Smt. Janabai Vitthal Mhaskar**  
Age-57 years, Occu.-Household,  
R/at-Tebode, Panvel,  
Tal-Panvel, Dist-Raigad.

**....Appellant.**

**Versus**

- 1. Mr. Ganpat Undrya Kadav**  
Age-40 years, Occu.-Business,  
R/o. Tebode, Panvel,  
Tal-Panvel, Dist-Raigad.
- 2. Smt. Surekha Jaywant Patil**

Dinesh E. Kothalikar,  
District Judge-2 and ASJ,  
Panvel-Raigad.

Age-52 years, Occu.-Household,  
R/o. Tebode, Panvel,  
Tal-Panvel, Dist-Raigad.

3. **M/s. City & Industrial Development Corporation of Maharashtra Ltd. (Through 12½% Department)**  
Having its Administrative Office  
At-CIDCO Bhavan, C.B.D. Belapur,  
Navi Mumbai.

....Respondents

**Appeal against the Judgment and Order dated 21/09/2012 passed by learned 2<sup>nd</sup> Jt. Civil Judge Junior Division, Panvel in Regular Civil Suit No.142/2005.**

Appearance:-

Learned Advocate Mr. S. Y. Bartake for the appellant.  
Learned Advocate Mr. S. P. Lele for the respondent No.1.  
**Respondent Nos.2 and 3: Ex-parte.**

### **JUDGMENT**

(Decided on : 27<sup>th</sup> day of March, 2026)

1. By this appeal, unsuccessful plaintiff has invoked appellate jurisdiction of this court, challenging the decree and judgment passed by the learned Civil Judge (Junior Division), Panvel, in Regular Civil Suit No.142 of 2005 dated 21.09.2012.

2. The parties are referred hereinafter as per their nomenclature before the learned Civil Judge, i.e. the appellant as plaintiff and respondents as defendants.

3. Plaintiff filed a suit with the relief of declaration and

perpetual injunction. According to the plaintiff, she is the sister of defendants No.1 and 2. Deceased Undir Aba Kadav was the father of the plaintiff and defendants No.1 and 2. He owned ancestral properties bearing Nos. Survey No.44/4 admeasuring 0.03.3 R, Survey No.15/2 admeasuring 0.15.0 R, Survey No.12/8 admeasuring 0.11.6 R, Survey No.37/7+6A admeasuring 0.54.0 R, Survey No.49/1 admeasuring 0.33.1 R, Survey No.52/1 admeasuring 0.00.8 R, Survey No.10/2B admeasuring 0.29.0 R and Survey No.18/6 admeasuring 0.13.4 R situated at village Tembode. The properties are referred hereinafter as suit properties.

4. It is claimed that Undir, the father of plaintiff, died on 04.02.2000. Out of the suit properties, property bearing Survey No.15/2 has been acquired by the Government of Maharashtra and the amount of compensation is payable to the plaintiff and defendants No.1 and 2.

5. The plaintiff claimed that, after the death of Undir, she had asked for her share from defendant No.1, but he had avoided to partition the suit properties. On the contrary, defendant No.1 was intending to create third party interest in the suit properties. Therefore, the plaintiff had issued notice to defendant No.3 and raised objection for creating third party interest in the suit property.

6. Therefore, the plaintiff has filed the suit claiming declaration in respect of her share and perpetual injunction.

7. Defendant No.1 has contested the claim, by filing written statement contending that, defendant No.3 had acquired

the suit land and that as per the market rate of the land, the plaintiff is required to value the suit and pay the Court Fee Stamp. It is his contention that deceased Undir had executed Will deed and that on the basis of the Will deed, the learned Civil Judge had granted heirship certificate. Since, at the time of marriage of the plaintiff and defendant No.2, deceased Undir had given ornaments and other household articles and at the time of constructing houses financial assistance was given to them, at the time of executing Will deed, nothing was given to them. Thus, it is claimed that the suit deserves to be dismissed.

8. After framing the issues, the learned Civil Judge found that the suit land is not the ancestral property of the plaintiff and defendant and resultantly, the suit was dismissed.

9. The decree and judgment dismissing the suit has been impugned in this appeal.

10. I have heard the submissions advanced by learned advocate Mr. Bartake for the plaintiff and Mr. Lele for defendant No.1.

11. On the basis of the submissions advanced before me following points arise before me for consideration and I have recorded my findings against them for the reasons stated hereinafter;

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
<b>01</b>	Whether the procedure followed by the learned Civil Judge while proceeding with the suit was legal proper and correct?	Negative

<b>02</b>	Whether the suit deserves to be remanded for trail?	Affirmative
<b>03</b>	What order?	As per final order

**AS TO POINT No.1:**

12. When the matter was posted for judgment, it was found that the summons was not served upon defendant No.2 and that defendant No.3 although served with summons, failed to appear before the court. Despite the above factual aspect, the learned Civil Judge had proceeded with the suit without securing presence of defendant No.2 and without passing an order to proceed ex-parte against defendant No.3.

13. Therefore, this court had called upon the learned advocates for the plaintiff and defendant No.1 to make the submissions. In this regard, learned advocate for the plaintiff has submitted that the suit needs to be remanded to the learned Civil Judge for securing presence of defendant Nos.2 and 3.

14. In this regard, learned advocate for defendant No.1 Mr. Lele has submitted that it was the duty of the plaintiff to see that the summons are served upon the defendants properly and that the order to proceed ex-parte against the defendant who did not appear despite service of the notice. However, the plaintiff did not take proper steps. Thus, he has submitted that the plaintiff cannot be allowed to take disadvantage of her own lapses. Lastly, he has prayed to pass appropriate order.

15. In the light of the submissions advanced by both the

sides, I have gone through the record and proceeding of the original suit. It is found that vide order dated 22.11.2005 suit summons was issued for settlement of issues was passed and that accordingly suit summons Exh.8 to 10 were issued. On 31.01.2006 defendant No.1 had appeared through his advocate. The record revealed that the suit summons Exh.9 which was issued to defendant No.2 has been returned with the remark that defendant No.2 did not reside at the address mentioned in the summons, whereas summons Exh.10 was served upon defendant No.3.

16. In fact, upon return of the summons, it was necessary for the plaintiff to take appropriate steps for securing service upon defendant No.2, but she did not. When the plaintiff had failed to take steps for securing presence of defendant No.2, it was mandatory on the part of the learned Civil Judge under Order IX Rule 5 of the Civil Procedure Code to pass an order of dismissal of a suit against defendant No.2.

17. Further, it was necessary for the learned Civil Judge to pass an order to proceed ex-parte against defendant No.3. However, surprisingly, without exercising said recourse, the learned Civil Judge had proceeded to proceed with the suit. In this background, even by stretch of imagination it cannot be said that the procedure followed by the learned Civil Judge while proceeding with the suit was legal proper and correct. As a sequitur to the above discussion, I answered point No.1 in the negative.

**AS TO POINT No.2:**

18. In view of my findings recorded against point No.1, the decree passed by the learned Civil Judge cannot sustain and the suit deserves to be remanded to the learned Civil Judge for proceeding with it, in accordance with law, for securing presence of defendant No.2 and passing appropriate order against defendant No.3. As a consequence, I answered point No.2 in the affirmative.

**AS TO POINT No.3:**

19. In the wake of the determination made herein above, I am of the unhesitant opinion that the appeal deserves to be allowed and the suit needs to be remanded to the learned Civil Judge.

20. Be that as it may, at this juncture, it is apt to observe that the plaintiff was also at fault as she did not take timely steps. Had she taken timely steps, the suit would have proceeded properly. Considering this aspect of the matter, it is necessary to impose costs upon the plaintiff. The result, inevitable, is that this appeal deserves to be allowed, by imposing costs upon the plaintiff. Consequently, I proceed to pass following order;

**:ORDER:**

1. Appeal is hereby allowed on costs of Rs.10,000/-, which shall be payable to defendant No.1. The plaintiff shall deposit the costs on or before 02.04.2026.
2. If the plaintiff fails to deposit the amount of costs on or before 02.04.2026, the appeal shall be treated as dismissed.
3. Upon depositing the costs, the judgment and decree passed

by the learned Civil Judge in R.C.S. No.142 of 2005 dated 21.09.2012, is quashed and set aside and the suit is ordered to be remanded to the learned Civil Judge for deciding it afresh by issuing suit summons to defendant No.2 and for passing appropriate order against defendant No.3.

4. Costs of the suit shall be the cause.
5. The plaintiff and defendant No.1 shall appear before the learned Civil Judge on 24.04.2026 and take effective steps for securing presence of defendant No.2.
6. If the plaintiff fails to take effective steps for securing presence of defendant No.2, in that case the learned Civil Judge shall dismiss the suit against defendant No.2 and proceed with the matter in accordance with law.
7. Decree be drawn up accordingly.
8. Copy of the judgment along with Record and Proceeding of R.C.S. No.142 of 2005 be sent to the learned Civil Judge, immediately.

(Dictated and pronounced in open court.)

**Date: 27-03-2026.**

**(Dinesh E. Kothalikar)**  
District Judge-2, Panvel  
Dist. Raigad.

**CERTIFICATE**

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

Name of the Stenographer : Priyanka Sapkal,  
Stenographer Grade-1,

Court Name : Court of DJ-2, Panvel.

Date of judgment : 27-03-2026

Judgment signed by the  
Presiding Officer on : 27-03-2026

Judgment uploaded on : 01-04-2026