

MHRT010002222025



Received on : 24.03.2025
Registered on : 25.03.2025
Decided on : 11.03.2026
Duration : Ys. Ms. Ds.
00 11 15

IN THE COURT OF ADHOC DISTRICT JUDGE-1, RATNAGIRI
(Presided over by S.G.Baokar,Adhoc District Judge-1, Ratnagiri)

REGULAR CIVIL APPEAL NO.12 OF 2025

Exhibit No.16

Shri.Chandrakant Tanu Mavlankar

Age 63 years, Occu.: Nil,
R/o. At post Khanu, Tal.Lanja,
Dist. Ratnagiri.

Now R/o. House No.7, Arya Niwas Chawl,
Khanapur Road, Tilakwadi,
Belgaon 590006.

Appellant

(Original
defendant)

Versus

**Smt. Priyanka Manohar Melage
(Before Marriage Priyanka Prabhakar
Mavlankar)**

Age -33 yrs., Occu.: Housewife,
R/o.House No.2/3, Vithalai Galli,
Avacharhatti, Sulage, Yelloor,
Belgaon 590005.

Respondent

(Original
plaintiff)

Shri. M.S. Ambre, Advocate for Appellant.

Shri. M.V. Mandavkar, Advocate for Respondent.

J U D G M E N T
(Delivered on 11th day of March, 2026)

1. Being aggrieved by the Judgment and decree passed by the Ld. Joint Civil Judge Senior Division, Ratnagiri in Special Civil Suit No.111/2021 dated 18/10/2023, appellant has preferred the appeal against it. The appellant is original defendant and respondent is original plaintiff in Special Civil Suit No.111/2021 before the Ld. Trial Court and parties are referred in the Judgment as per their original nomenclature in the suit.

2. Brief facts of suit in Special Civil Suit no.111/2021 are as follows :-

The defendant is uncle of plaintiff. The lands situated at village Khanu, Tal. Dist. Ratnagiri more particular mentioned at Sr. No.1 to 12 in schedule A in plaint para no.2 (hereinafter referred in brief as 'suit property') are joint family properties of plaintiff and defendant. But the name of defendant is recorded to the 7/12 extract of the suit property as Manager of Joint Family and taking undue advantage of it, defendant has got deleted the name of father of plaintiff from the revenue record of suit property. Tanu Dhaku Mavlankar is common ancestor of the family of plaintiff and defendant. Tanu had two sons namely Prabhakar and Chandrakant. Prabhakar is father of plaintiff and he is dead. Prabhakar has three heirs including plaintiff, her brother Mayur and his wife Manjusha. The mother of plaintiff namely

Manjusha and brother Mayur are dead and plaintiff is now sole heir of deceased Prabhakar. So, plaintiff and defendant have $\frac{1}{2}$ share each in the suit property. Tanu owned one ancestral house at village Piranwadi, Dist. Belgaon. After the death of Tanu, the defendant tried to sale the said house of village Piranwadi to third party without consent of plaintiff by taking undue advantage of name of defendant recorded to the revenue record in respect of said house. So, the plaintiff instituted the Civil suit in respect of it bearing O.S. No.700/2018 at Civil Court, Belgaon. The defendant has admitted right of plaintiff in the said house to $\frac{1}{2}$ share and amicably settled said suit.

3. It is further case of plaintiff that the suit property bearing Gat no.752 is acquired for Mirya-Kolhapur Highway. The plaintiff has received information about it. But plaintiff has not received notice of acquisition and so plaintiff inquired with defendant about said acquisition. The defendant gave evasive answers to plaintiff. So, on 25/08/2021, plaintiff came at Ratnagiri and inquired at the office of Land Acquisition about the said land. At that time, plaintiff came to know that the defendant got recorded his name to 7/12 extract of suit property excluding plaintiff and got deposited compensation amount of land acquired to the tune of Rs. 32,52,454/- (Rs. Thirty Two Lakh Fifty Two Thousand Four Hundred Fifty Four only) in his bank account to

the exclusion of plaintiff. When plaintiff demanded partition of suit property and amount of her share out of compensation from defendant in respect of acquisition of land on 30/08/2021, defendant denied her right. So plaintiff constrained to file suit for recovery of share of her amount of compensation in respect of acquisition of part of suit property and partition of her $\frac{1}{2}$ share in the remaining suit property.

4. The defendant, though appeared in the suit on 04/02/2022, he has not filed his written statement and so the suit proceeded without W.S against defendant as per order below Exh. No.1 dated 11/7/2022.

5. The plaintiff has filed her examination-in-chief at Exh.No.27. The plaintiff has produced documentary evidence like copy of plaint in Civil Suit No.700/2018 instituted at Civil Court, Belgaon at Exh.No.26, Copy of Mutation Entry No.202 and 1523 at Exh.No.28 and 29 respectively, Copy of consolidation extract of village Khanu at Exh.No.30, Copy of award of acquisition of properties at vllage Khanu for National Highway No.166 at Exh.No.31, 8A extract of A/c. No.89 at Exh.No.32, Partition extract about land and fruit bearing trees at Exh.No.33 and 34 respectively, Office copy of notice sent by advocate of plaintiff to defendant on 17/09/2021 at Exh.No.35. The plaintiff has closed her evidence by filing pursis at Exh.No.41.

6. The Ld. Adv. Mr. Palkar of defendant has cancelled his

vakalatnama by filing application at Exh.No.38 on 16/8/2022.

7. After considering the evidence on record, the Hon'ble Trial Court has pleased to decree the suit of plaintiff and granted partition in suit property by declaring $\frac{1}{2}$ share of the plaintiff in it as well as half amount out of compensation awarded towards acquisition of one of the land out of suit property.

8. The appellant has preferred the appeal against Judgment and decree of Ld. Trial Court in Special Civil Suit No.111/2021 on grounds that Ld. Trial Court has not considered the documents on record in proper manner. The inferences drawn by Ld. Trial Court while allowing the suit are wrong. After receiving summons of suit, defendant appeared on 4/2/2022 in the Court and talks of settlement were held between plaintiff and defendant. On the same day, the dispute between rival parties is amicably settled and accordingly settlement agreement is prepared between plaintiff and defendant before Notary Mr. Avinash Shetye at Ratnagiri bearing agreement no.93/2022. The relative of defendant Mr. Dicholkar brought defendant on that day in Court. Mr. Dicholkar and husband of plaintiff signed as witnesses on settlement agreement. As per said settlement agreement, defendant gave a cheque bearing cheque no.466642 and amount of Rs. 8,13,000/- (Rs. Eight Lakh Thirteen Thousand only) of his saving account in Indus Ind Bank, Branch Pali, Tal. & Dist. Ratnagiri as the

amount of her share out of compensation awarded to the family of plaintiff and defendant for acquisition of land at village Khanu. It is resolved between plaintiff and defendant at that time that suit shall be get decided as per said settlement agreement. Plaintiff and her Ld. Adv. Mr. Ghadshi told defendant that they will produce said settlement agreement before the Court and it is not necessary for him to remain present before the Court. When defendant demanded copy of notarize agreement of settlement from plaintiff, she assured him to give it afterwards. By keeping faith upon the words of plaintiff and her advocate, the defendant had not remained present before the Ld. Trial Court. But plaintiff has not produced said settlement agreement before the Ld. Trial Court during trial of suit.

9. The appellant has further contended in his appeal memo that after 5 to 6 months since appearance of defendant before Ld. Trial Court in suit, defendant received notice of Advocate Mr. Palkar about cancellation of his vakalatnama for the defendant in said suit. As dispute between the rival parties is amicably settled in terms of settlement agreement, the defendant has not considered notice of Adv. Mr. Palkar seriously at that time. The plaintiff without giving information of said settlement agreement to the Ld. Trial Court and without showing correct genealogy of her family in her plaint as well as evidence in trial of suit, plaintiff got decided the suit in her favour by

concealing material facts and misleading the Ld. Trial Court. The common ancestor of family of plaintiff and defendant namely Tanu Mavlankar has four heirs which include daughter Durga and three sons namely Chandrakant i.e. defendant, Prabhakar ie. father of plaintiff and Nandu. So plaintiff has $\frac{1}{4}$ share in the suit property as well as amount of compensation awarded for acquisition of their ancestral property. So, plaintiff has entitled to amount of Rs.8,13,000/- (Rs. Eight Lakh Thirteen Thousand only) out of compensation which is received by plaintiff from defendant by cheque in February 2022. Plaintiff has concealed these facts and misled the Court in passing Judgment in her favour. The property situated at Piranwadi, Dist. Belgaon in Karnataka State is not ancestral property. The dispute in respect of it is pending in the Court at Belgaon. As plaintiff has got decreed the suit in her favour by concealing material facts and by keeping defendant in dark, the decree and Judgment passed by the Ld. Trial Court in Special Civil Suit No.111/2021 may be set aside and suit may be remanded to the Ld. Trial Court for fresh hearing. So, appellant/ defendant has prayed to allow the appeal.

10. Considering the rival contentions of the parties, following points arise for my determination and my findings on it and reasons therefore are as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether appeal needs to be allowed and matter needs to be remanded in view of concealment of material facts by the plaintiff before the Ld.Trial Court in Special Civil Suit No.111/2021?	Yes.
2	What order?	As per final order.

AS TO POINT NO. 1

11. The learned advocate Mr. Ambre has argued for appellant that although Tanu Mavlankar is common ancestor of family of plaintiff and defendant, Tanu has four heirs which include father of respondent, appellant, Nandu and Durga. The plaintiff has not given full genealogy of the family of Tanu and misled the Trial Court to believe that there are only two heirs of deceased Tanu and plaintiff is entitled to $\frac{1}{2}$ share in the suit property. Moreover, after receiving summons of suit, defendant has appeared before the Ld. Trial Court on 04/02/2022 and on the same day, settlement agreement was notarized between plaintiff and defendant in respect of said suit claim whereby plaintiff accepted cheque of amount of Rs.8,13,000/- (Rs. Eight Lakh Thirteen Thousand only) i.e. $\frac{1}{4}$ share out of compensation awarded in respect of acquisition of suit property no.10 and plaintiff impliedly admitted that she has $\frac{1}{4}$ share in the suit properties. Plaintiff has encashed said cheque and received amount of it which fact is not disclosed by

plaintiff before the Ld. Trial Court while deciding the suit. So the plaintiff has concealed material facts and got decreed the suit in her favour by misleading the Court and keeping the defendant under impression that suit shall be disposed off in terms of settlement agreement effected between plaintiff and him. So, defendant is entitled to have opportunity of hearing. Considering the said facts, the Judgment and decree passed by the Ld. Trial Court may be set aside and suit may be remanded to the Ld. Trial Court by giving opportunity to defendant to file his written statement and contest the suit.

12. The respondent has filed her written notes of arguments at Exh. No. 15. Ld. Adv. Mr. Mandavkar has argued for respondent that the suit property is ancestral property of plaintiff and defendant and defendant illegally got deleted the name of father of plaintiff from record of right of suit property and tried to grab the suit property as well as the compensation amount awarded in respect of acquisition of one of the suit property. Plaintiff has $\frac{1}{2}$ share in the suit property. The plaintiff sent notice through her advocate to defendant prior to filing of Special Civil Suit No.111/2021 and tried to settle the dispute between them. But as defendant tried to grab the amount of compensation awarded in acquisition as well as deny right of plaintiff in suit property, plaintiff was compelled to file the suit for partition and separate possession of her share in suit property as well as recovery of her share

of compensation. Plaintiff has proved genealogy mentioned in her suit and the defendant has compromised the suit in respect of property at Piranwadi, Civil Court Belgaon by relying upon said genealogy. The defendant has created false theory of settlement done between rival parties in this suit before the Trial Court. The appellant is bound to prove the genealogy alleged by him in the appeal memo as well as payment of amount of compensation of share of plaintiff to her by him. The defendant has preferred the appeal only to prolong the trial of suit and to deny the right of plaintiff in suit property. So the plaintiff has prayed to dismiss the appeal of appellant.

13. The suit instituted by the plaintiff against defendant before Ld. Civil Judge, Senior Division at Ratnagiri bearing Special Civil Suit No.111/2021 for relief of partition of suit property and recovery of amount of her share in compensation awarded in respect of acquisition of one of the suit property for National Highway of Mirya to Kolhapur. In such suit, the genealogy of the family of rival parties in the suit is very material to decide the share of property of each party to the suit in the suit property. It is contention of appellant that there are four heirs to deceased Tanu Mavlankar and so plaintiff has $\frac{1}{4}$ share in suit property. On the contrary, plaintiff has claimed in the suit that there are only two heirs of deceased Tanu and so plaintiff has $\frac{1}{2}$ share in the suit property. It is admitted fact that the defendant has not filed his

written statement in the suit before the Trial Court and in absence of written statement as well as evidence of defendant, the Trial Court has decreed the suit by relying upon the suit claim.

14. It is interesting to take note of the events happened during pendency of suit and Advocates who appeared for rival parties before Ld. Trial Court. Plaintiff instituted the suit for partition and recovery of her share of compensation against defendant through Ld. Adv. Mr. A.P. Parulekar on 09/12/2021. After service of summons of suit over defendant, defendant appeared in suit before Ld. Trial Court on 04/02/2022 through Ld. Adv. Mr. Ghadshi by filing his vakalatnama at Exh. No.19. There is no note of appearance of Ld. Adv. Mr. Palkar for defendant is taken in roznama of suit. But notice was given by Ld. Adv. Mr. Palkar to the defendant of cancellation of his vakalatnama for defendant in the suit on 26/07/2022. Ld. Adv. Mr. Parulekar has cancelled his vakalatnama for plaintiff on 16/8/2022 vide Exh No.36. On 16/8/2022 itself, vakalatnama of Ld. Adv. Mr. Ghadshi is filed at Exh No.40 on behalf of plaintiff in the suit and suit proceeded further. All these facts are recorded in roznama of suit. So it is clear that initially Ld. Adv. Mr. Ghadshi has appeared for defendant in the suit on 4/2/2022 as mentioned in roznama of suit and thereafter same advocate appeared for plaintiff in same suit on 16/8/2022 without giving information of it to the defendant. It shows that Ld. Adv. Mr.

Ghadshi has appeared in the suit at different times for plaintiff as well as defendant. It could happen only if plaintiff as well as defendant agreed on consent terms in the suit and come on one footing. This fact support to the claim of defendant prima facie that on 04/02/2022, plaintiff as well as defendant agreed to settle the dispute between them and relying upon it, defendant has thereafter not appeared in suit.

15. It is case of appellant /defendant in the appeal that there are four heirs of Tanu which include plaintiff, defendant and two other persons. On the contrary, plaintiff claimed that there are only two heirs of Tanu in the suit. The suit of plaintiff is for partition in which the number of heirs of common ancestor is important to decide the share of each heir in the suit property. The plaintiff further claimed that defendant settled a suit with her in respect of property at Piranwadi before Ld. Civil Court at Belgaon and he admitted in that suit that there are two heirs of Tanu. But the said suit is disposed off as per consent decree in terms of settlement arrived between plaintiff and defendant in it and so the suit is hit by principle of Res Judicata. As said suit in the civil court at Belgaon was disposed off in terms of consent decree, finding of said suit does not operate as res judicata for claim of defendant/appellant that there are four heirs of Tanu. As there is dispute in respect of number of heirs of Tanu which is crucial fact to decide the share of plaintiff and defendant in the suit property, it is

necessary to decide the same afresh by Ld.Trial Court by giving opportunity to appellant as well as respondent to lead evidence about it.

16. It is alleged by defendant that he received the summons of suit bearing Special Civil Suit No.111/2021 and he came before the Ld. Trial Court along with one Mr. Dicholkar on 04/02/2022 for giving his appearance in suit. It is further contended by appellant that on that day, the dispute between plaintiff and defendant is amicably settled and notarize settlement agreement was prepared on same day between both of them and defendant has handed over a cheque of Rs.8,13,000/- (Rs. Eight Lakh Thirteen Thousand only) as share of plaintiff in the amount of compensation awarded for acquisition of one of the suit property to the family of plaintiff and defendant and plaintiff encashed it and received said amount. Although, the defendant has contended said facts in the appeal memo, plaintiff has not specifically denied fact of receipt of amount of Rs.8,13,000/-(Rs. Eight Lakh Thirteen Thousand only) from defendant during pendency of suit during the argument advanced on her behalf as well as written notes of argument produced by plaintiff at Exh.No.15.

17. It is further contended by the defendant that plaintiff assured him after execution of notarized agreement of settlement on

04/02/2022 that defendant need not appeared again before the Court and she will get the suit disposed off in terms of settlement agreement. But no such alleged settlement agreement is produced by the plaintiff before the Ld. Trial Court and in absence of defendant, plaintiff proceeded with the suit and the Ld. Trial Court has decreed the suit.

18. Considering the said facts which are not specifically denied by the plaintiff, it seems that plaintiff proceeded with the suit before the Ld. Trial Court by keeping defendant in dark about the same. In such circumstances, if opportunity is given to defendant to contest the suit by filing his written statement and producing material on record to prove his contentions raised in appeal memo, then the plaintiff may not suffer any irreparable loss. On the contrary, if such opportunity is given to the defendant then multiplicity of proceeding between rival parties may be avoided and it may be helpful for suit being decided on merit. Hence, Judgment and decree passed by the Ld. Trial Court need to be set aside and suit need to be remanded before Ld. Trial Court by giving opportunity to the appellant / defendant to file his written statement and lead evidence.

19. But at the same time, it need to be noted that defendant had appeared in suit and he had opportunity to contest the suit. At least after receipt of notice of Ld. Adv. Mr. Palkar by defendant informing cancellation of his vakalatnama for defendant in the suit bearing

Special Civil Suit No.111/2021 before the Ld. Trial Court, defendant has opportunity to appear before Ld. Trial Court and verify the proceeding of suit. But the defendant / appellant has not done so. So the negligence of appellant also contributed to the present scenario in this appeal. Considering these facts, in my opinion, it is necessary to remand the suit to the Ld. Trial Court by giving opportunity to the defendant of hearing. But at the same time, costs need to be imposed upon defendant for the delay which happened on his part in taking proper steps in the suit before the Ld. Trial Court so as to compensate the plaintiff. Hence, appeal deserves to be allowed subject to cost of Rs. 5,000/- and suit deserves to be remanded to Ld. Trial Court for fresh hearing. Hence I answer Point No. 1 in the affirmative.

AS TO POINT NO. 2 -

20. Hence the appeal deserves to be allowed accordingly and suit need to be remanded for fresh hearing by granting opportunity to defendant to file his written statement in the suit as observed above. So in answer to Point No. 2, I pass following order :

ORDER

1. The appeal is allowed.
2. Judgment and decree passed by the Ld. Trial Court in Special Civil Suit No.111/2021 is set aside subject to cost of Rs.5000/- (Rs. Five Thousand only).

3. The suit is remanded to the Ld. Trial Court for fresh hearing with direction that appellant/defendant is permitted to submit his written statement within 45 days since date of remand of suit.
4. The appellant is directed to deposit the costs of Rs.5000/- (Rs. Ten Thousand only) in the Court within 10 days.
5. If the defendant submits his written statement in suit before Ld. Trial Court as directed above, Ld. Trial Court shall take it on record in the suit and give opportunity to rival parties in suit to adduce further evidence, if any, and defendant shall be entitled to take cross examination of witnesses already examined by the plaintiff in the suit and decide the suit afresh.
6. If the defendant fails to submit his written statement before Ld. Trial Court in suit within 45 days from date of remand of suit, the Ld. Trial Court shall not entertain written statement of defendant thereafter on any ground.
7. The appellant as well as respondent is directed to appear before the Ld. Trial Court in Special Civil Suit No.111/2021 on 21/04/2026.
8. The costs, if deposited by the appellant in Court, then it shall be paid to the respondent after appeal period is over.
9. Decree be drawn up accordingly.

(Dictated and pronounced in open Court.)

(S. G. Baokar)

Date : 11/03/2026

Ad hoc District Judge-1, Ratnagiri.

I affirm that the contents of this Pdf file order are same words as per original order.

Reg. Civ. Appeal No.	:-	12/2025
Name of Stenographer	:-	A.A.Shivalkar
Court Name	:-	Ad hoc District Judge-1, Ratnagiri.
Date of Decision	:-	11.03.2026
Order signed by P.O. on	:-	11.03.2026
Order uploaded on	:-	13.03.2026