

MHRT010004182018



Received on : 19.04.2018  
Registered on : 20.04.2018  
Decided on : 28.04.2026  
Duration : Ys. Ms. Ds.  
08 00 09

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

**REGULAR CIVIL APPEAL NO.36 OF 2018**

**Exhibit No.43**

**1. Hidayat Mahammad Husain  
Patankar**

Age - 58 years, Occu.: Service,

**2. Farzana Hidayat Patankar,**

Age - 53 years, Occu.: Housewife,

Both R/o. Nayari, Tal. Sangmeshwar,

Dist. Ratnagiri.

**-- Appellants**

**(Original**

**Defendants)**

**Versus**

**1 Abdul Hamid Ibrahim Modak**

Age -65 yrs., Occu.: Retired,

**2 Jasim Hamid Modak**

Age - 36 years, Occu.: Service,

**-- Respondents**

(Lrs of  
Original  
Plaintiff)

**3 Asim Hamid Modak**

Age 33 years, Occu.: Business,  
Res.No.1 to 3 R/o.Room no.403,  
Building No. A-4, Vighneshwar  
Co-operative Housing Society,  
Sector-21, Nerul, Navi Mumbai  
400706

**4 Ajara Aslam Patankar**

Age - 40 years, Occu.: Housewife,  
R/o.601,Flat No.113, Sector A-50,  
Patankar Residency, New Sea Wood,  
Nerul West, Navi Mumbai.

**-- Respondents**

( Lrs of  
Original  
Plaintiff)

**5 Almas Shoeb Wagale**

Age - 38 years, Occu.: Housewife,  
R/o. Room No.603, Building No.A-4,  
Vighneshwar Co-operative Housing  
Society, Sector 21, Nerul,  
Navi Mumbai- 400706

Shri. G.N. Gawankar, Advocate for Appellants.

Shri. C.M.Mangale, Advocate for Respondents No.1 to 5.

**J U D G M E N T**

(Delivered on 28<sup>th</sup> day of April, 2026)

1. The appellants have preferred the appeal against Judgment and Decree passed by the court of Ld. Joint Civil Judge, Junior Division, Devrukh in suit bearing RCS No. 13/2004. The appellants are original defendants no.2 and 3 and respondents are legal representative of deceased plaintiff. Both appellants and respondents are hereinafter referred as per their nomenclature in the suit.

2. It is the case of plaintiff in her suit that the properties bearing Survey no.64A, Hissa No.2, Survey no.66, Hissa No.4, Survey no.67, Hissa No.19, Survey no.72, Hissa No.24, Survey no.73, Hissa No.8 and Survey no.104, Hissa No.7 situated at village Nayari, Tal.Sangmeshwar, Dist. Ratnagiri more particularly described in paragraph No. 1 of the plaint are subject

matter of suit which are hereinafter referred as suit properties. Suit properties were originally owned by Mr. Kaka Vajuddin Patankar. Kaka had two sons namely Yusuf who is husband of Ayesha Patankar and Mohamad Hussain who is husband of deceased defendant no.1 namely Aashu Mohammad Hussain Patankar. Both sons of Mr. Kaka Patankar were living in foreign country. Mr. Kaka Patankar executed registered Gift Deed on 27/07/1960 and gifted his share out the suit properties to his daughter-in-law namely Ayesha Yusuf Patankar and defendant no.1 in  $\frac{1}{2}$  share each. Accordingly, Ayesha Yusuf Patankar and defendant no.1 became owner of said properties and were in possession of their share in suit property. Ayesha Yusuf Patankar executed registered Gift Deed on 13/01/1997 and gifted her share in suit property to the plaintiff. Also, Ayesha Patankar executed Will Deed of her share in suit property on 21/12/2000 in favour of plaintiff. So, plaintiff has become owner of  $\frac{1}{2}$  share in suit properties by virtue of registered gift deed and will deed executed by Ayesha in her favour.

3. It is further case of plaintiff in her suit that Kaka Vajuddin Patankar died on 20/04/1961 and thereafter names of Ayesha and defendant no.1 were recorded as heirs of Kaka to the suit property by virtue of Mutation Entry no.759. Due to said execution of gift deed by Kaka Vajuddin Patankar in favour of his 2 daughter in law, no share remained to sons of Kaka Vajuddin Patankar in the suit properties. Still, illegally, name of husband of

defendant no.1 Mohammad Hussain recorded to the revenue record of the suit properties on 08/12/1976 by virtue of Mutation Entry no.1222. Still, Ayesha and defendant no.1 remained owner of their share in suit properties. Ayesha has preferred RTS Revision No.17/1997 and 18/1997 against order of recording of Mutation Entry no.748 and 759 to S.D.O, Chiplun. Both revision applications were allowed on 04/12/1998 and name of Aayesha and defendant no.1 was recorded as owner to the 7/12 extract of suit properties. The defendant no.1 has challenged the order passed in RTS Revision No.17/1997 and 18/1997 before District Collector, Ratnagiri in RTS Appeal No.7/1999. After filing of said appeal, Ayesha Patankar died on 22/02/2002. Plaintiff was residing at Navi Mumbai for education of her children. The notices of RTS Revision Appeal No.7/1999 issued after death of Ayesha to her heirs were served by affixing it upon suit properties. But notices of it was not given to plaintiff. In that appeal before District Collector, Ratnagiri, defendant no.2 was shown as heir of deceased Ayesha. The defendant no.1 to 3 in collusion with each other filed compromise pursis on 28/7/2003 in the said appeal and get the appeal allowed. By taking undue advantage of that order, defendants got deleted name of plaintiff from the revenue record of suit properties. The plaintiff has challenged order of Collector in appeal bearing RTS No.7/1999 before Commissioner, Kokan Division, Mumbai. Plaintiff is in possession of her share in suit properties. But the defendants, by

taking undue advantage of plaintiff residing at Mumbai, trying to grab the suit properties from plaintiff and thereby obstruct possession of plaintiff over the suit properties. So, plaintiff has prayed to decree the suit and made declaration that plaintiff has  $\frac{1}{2}$  share in suit properties and partition of that share be done through Collector and for temporary injunction to restrain the defendants from creating third party interest in the suit property till final decision of suit.

4. The defendants have filed in their written statement at Exh. No.49 and contended that the alleged Gift Deed executed by Kaka Patankar in favour of Ayesha Patankar is illegal and hit by the provisions of Consolidation and Fragmentation Act. So, the predecessor of plaintiff has not become owner of suit property by virtue of said Gift Deed. The Gift Deed executed by Ayesha in favour of plaintiff is also illegal. Ayesha has never executed any will deed on 21/2/2000 and the said will deed is false and bogus. After death of Kaka Patankar, his sons Yusuf and Mohamad Hussain became owner of suit properties. The husband of Ayesha namely Yusuf died prior to Mohamad Hussain. So, Ayesha can receive limited interest in the suit properties and she cannot make any transaction in addition to such interest. After death of Ayesha Patankar, defendants no.1 and 2 are her heirs and plaintiff has not got any right of succession after death of Ayesha Patankar. As Ayesha has not got any right in suit properties, plaintiff has

also no right in suit properties. The suit claim is illegal and not tenable. So, defendants have prayed to dismiss the suit of plaintiff.

5. In order to prove the suit claim, plaintiff has examined three witnesses which include her power of attorney holder namely Mr. Abbas Khanche (PW1) at Exh. No.122, Mr. Anand Krushna Panagale (PW 2) at Exh No.155 and Mr. Amirruddin Fakir Wagale (PW3) at Exh No.162.

**DOCUMENTARY EVIDENCE OF PLAINTIFF :-**

6. The plaintiff has produced following documentary evidence in the suit before Ld. Trial Court :-

<b>Sr. No.</b>	<b>Nature of Documents</b>	<b>Exh. Nos.</b>
1	7/12 Extracts of Suit properties	10 to 20
2	Power of Attorney executed by plaintiff in favour of Mr. Abbas Khanche	127
3	Certified copy of Registered Gift deed executed by Mr. Kaka Patankar dated 27/07/1960	128
4	Certified copy of Registered Will deed executed by Ayesha dated 21/12/2000	132
5	Certified copy of Registered Gift deed executed by Ayesha dated 13/01/1997	160

Plaintiff has closed her evidence vide pursis at Exh. No.163.

7. The defendants have examined only one witness on their behalf namely Farzana Hidayat Patankar (D.W.1) at Exh. No.170. The defendants have not adduced any documentary

evidence in the suit. The defendants have closed their evidence vide pursis at Exh. No. 177.

8. Considering said evidence on record and after hearing of argument of both sides, the Ld. Trial Court has pleased to decree the suit. Being aggrieved by the Judgment and Decree passed by Ld. Trial Court in RCS No.13/2004, defendants have preferred this appeal on various grounds.

9. The defendants have preferred the appeal on following grounds:-

The Ld. Trial Court has not properly appreciated the evidence of witnesses. The plaintiff has not examined herself and her power of attorney holder is not competent to lead evidence on her behalf. The evidence of Power-of-attorney holder of plaintiff has not proved the case of plaintiff. The Ld. Trial Court came to wrong conclusion that Abbas has proved the Gift Deed. The plaintiff has not proved the Gift Deed as per provision of Mahommedan Law. The provision of Transfer of property Act are not applicable to the Hiba executed by Mahommeadan person. The Ld. Trial Court has wrongly relied on the evidence of Mr. Anand Panagale (P.W.2). The plaintiff has not produced evidence about death of Yusuf. So, Ayesha do not acquire any title by virtue of Gift Deed executed by Kaka in her favour of suit properties. The undivided share in joint property cannot be gifted by

Mahommedan person and said fact is not considered by Ld. Trial Court. The Ld. Trial Court has wrongly held that Ayesha gifted 1 ana share out of first suit property and 1 ana share out of remaining properties in favour of plaintiff. The observations recorded by Ld. Trial Court in respect of testimony of defendant are wrong. The Gift Deed and Will Deed executed by Ayesha in favour of plaintiff cannot be relied upon at same time. Mahommedan person can execute will deed in respect of her 1/3 share only in the suit property. Ld. Trial Court has wrongly held that plaintiff acquired ½ share of Ayesha in suit property and she is entitled to partition it. So, appellants have prayed to allow the appeal and dismiss the suit.

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:-

<b>Sr. No</b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Whether the plaintiff proves that deceased Kaka Patankar gifted ½ share out of suit properties in favour of his daughter-in-law Ayesha Patankar by virtue of registered Gift Deed on 27/07/1960 ?	Yes.
2	Whether the plaintiff proves that Ayesha Patankar executed Will Deed in respect of property of her share out of suit properties	Yes.

	in favour of plaintiff on 21/12/2000?		
3	Whether the plaintiff proves that Ayesha Patankar gifted some property out of her share in suit properties in favour of plaintiff by registered Gift Deed Dtd. 13-01-1997?		Yes
4	Is the Gift Deed executed by Ayesha in favour of plaintiff is hit by the provisions of Maharashtra prevention of Fragmentation and Consolidation of Holdings Act, 1947?		No considering the consolidated effect of execution of Gift Deed and Will Deed executed by Ayesha in respect of her share in suit properties in favour of plaintiff.
5	Is plaintiff entitled for declaration as prayed ?		Yes.
6	Is plaintiff entitled to partition of suit properties? If Yes, What's her share?		Yes. Plaintiff shall have ½ share in suit properties.
7	Whether the Judgment and Decree passed by the Learned Trial Court in RCS No. 13/2004 is Just, Legal and Proper?		Yes
8	What order and decree?		As per final order

**AS TO POINT NO. 1**

11. It is the case of plaintiff that suit properties were originally owned by Kaka Patankar and 2 daughter-in-law namely Ayesha Patankar and defendant No. 1 Ashu Patankar were looking after him at

his native village at Nayari, Kaka Patankar gifted his whole share out of suit properties to his both daughter-in-law by registered Gift Deed Dtd. 27-07-1960 and both daughter-in-law of Kaka received possession of it on same day.

12. To prove the Gift Deed executed by Kaka in favour of her both daughter-in-law, plaintiff has examined her power of attorney holder namely Abbas Mohammad Khanche (P.W.1). P. W. No. 1 Mr. Khanche has deposed that his grand-father were residing at Village Nayari and his in-laws also reside at Village Nayari, he was visiting village Nayari since his childhood. He has further deposed that Kaka Patankar owned suit properties and he executed registered Gift Deed of his share out of suit properties on 27-07-1960 in favour of his daughter in law namely Ayesha Patankar and defendant No. 1 Ashu Patankar and gifted half share each out of suit properties to his 2 daughter-in-law. He has further deposed that Kaka Patankar executed said Gift Deed in his presence and he is one of the attesting witness of it and at same time, possession of properties of their share out of suit properties was delivered to both daughter-in-law which was accepted by them. He has also deposed that the contents of said Gift Deed were written as per instructions of Kaka Patankar and contents of Gift Deed Dtd. 27-07-1960 are true and correct. He has further deposed that the original Gift Deed was handed over to defendant No. 1 at that time and as

defendant No. 1 has not produced original Gift Deed in the suit even after issuing notice to her seeking production of it, plaintiff has produced certified copy of Gift deed in the suit and proved it by leading secondary evidence with permission of Trial Court which bears his signature as attesting witness and signature of Kaka Patankar and another attesting witness namely Hussain Ali Khalape. The plaintiff has produced the certified copy of registered Gift Deed executed by Kaka at Exh. No. 128. He has further deposed that plaintiff has executed Power of Attorney in his favour which bears his signature as well as signature of plaintiff and contents of it are true and correct. Plaintiff has produced said Power of Attorney Dtd. 23-08-2012 at Exh. No. 127.

13. In cross-examination of Mr. Khanche (P.W.1), he has admitted that Yusuf Kaka Patankar was serving at Africa, Ayesha died prior to 15 years and after death of Kaka Patankar, names of Ayesha, Ashu, Nishu and Mohammadin were recorded to the revenue record of suit properties. He has denied in his cross-examination that Ayesha was residing at her paternal home at Village Partawane. He has stated in his cross-examination that he cannot tell Survey Number, Hissa Number and boundaries of each suit property, he knows Hidayat and after death of Ayesha, names of Hidayat and Ashu recorded to the revenue record of suit properties. He has further stated in his cross-examination that Appeal was filed against recording of names of Ashu and Hidayat to

the revenue record of suit properties after death of Ayesha before the Collector and it was dismissed and thereafter appeal was preferred against that decision to Commissioner, Kokan Division and he do not know fate of it. He has also stated in his cross-examination that plaintiff was coming at the court in this suit for conducting it and he has not produced any document in the suit to show that plaintiff suffers from diabetics or she is ill.

14. Ld. Adv. Mr. Gawankar has argued for defendants/ appellants that Mr. Khanche (PW.1) is Power-of-Attorney holder of plaintiff who do not know anything about the suit properties. So his oral evidence do not prove any transaction as regards suit properties mentioned by the plaintiff in her suit claim. He has further argued that Mr. Khanche has admitted in his cross examination that plaintiff was attending the court for hearing of suit. Plaintiff has not produced any documentary evidence on record that she could not remain present in court during hearing of suit due to her illness and so she could not examine herself as witness in the suit. If plaintiff was ill, she could have examined by appointing court commission for that purpose. So plaintiff has failed to prove the transactions carried out by her in respect of suit properties which were within her personal knowledge and oral evidence of Mr. Khanche (PW.1) is not sufficient to prove the suit claim. So plaintiff has failed to prove that Mr. Kaka Patankar has

executed registered Gift Deed of his share out of suit properties in favour of his two daughter-in-law and gifted his share in equal proportion to them.

15. Ld. Adv. Mr. Mangale has argued for the plaintiff that Mr. Khanche (PW.1) is attesting witness of registered Gift Deed executed by Kaka Patankar of suit properties in favour of his two daughter-in-law and so he knows said transaction personally. The house of in-laws of Mr. Khanche (PW.1) is situated at Village- Nayari, Tal- Sangameshwar and his grand-father reside in that village and so he would have knowledge about the suit properties situated in that village very well. So he has proved the registered Gift Deed executed by Kaka Patankar in Year 1960 in respect of suit properties.

16. The defendants have raised objection that Mr. Khanche (PW.1) is Power of Attorney holder of plaintiff and so he has no personal knowledge about the transactions happened in respect of suit properties in favour of plaintiff and so his evidence do not prove the registered Gift Deed executed by Kaka Patankar of suit properties in favour of predecessor of plaintiff namely Ayesha Patankar.

17. The defendants have not denied that grand-father of Mr. Khanche (PW.1) resides at Village Nayari and so he visits that village since his childhood. Also fact deposed by Mr. Khanche that his in-laws

reside at village Nayari and so he visits said village and knows about it remained unchallenged on record. So the oral evidence of Mr. Khanche (P.W.1) in respect of these facts shows that as he is having visiting terms at Village- Nayari, Tal- Sangameshwar and both parties to suit as well as said witness are of same religion, it is possible and probable that Mr. Khanche (P.W.1) know the family of Kaka Patankar and suit properties very well.

18. Mr. Khanche (P.W.1) has deposed that plaintiff has executed power of attorney in his favour to look after proceeding of suit on her behalf as she could not attend the court because of suffering from disease of Cancer and Diabetics. He has produced Power of Attorney executed by the plaintiff in his favour at Exh. No. 127. Perusal of said Power of Attorney shows that plaintiff has authorized Mr. Abbas Khanche to look after the proceeding of suit on her behalf and to lead evidence in the suit for herself as she could not attend the court regularly as she resides at Nerul, Navi Mumbai with her husband. So considering age of plaintiff and her residence at Nawi Mumbai, it is probable that she could not attend the court for hearing of suit regularly and so she has given authority to Mr. Abbas to do all acts on her behalf in the suit. So it is proved by the plaintiff in the evidence of Mr. Abbas Khanche that she has properly authorized him to act on her behalf and lead evidence for her in the suit.

19. Mr. Abbas Khanche (P.W.1) has deposed that he was present at the time of execution of registered Gift Deed of suit properties by Mr. Kaka Patankar in favour of his 2 daughter-in-law in half share each. The signature of this witness appears as attesting witness on the Gift Deed executed by Kaka Patankar of which certified copy is at Exh. No. 128. The plaintiff had obtained permission to lead secondary Evidence in the suit in respect of registered Gift Deed executed by Kaka Patankar. As Mr. Khanche (P.W.1) is attesting witness of said Gift Deed, he has personal knowledge of execution of said deed as well as connected facts with that transaction. Mr. Khanche has further deposed that the daughter-in-law of Kaka namely Ayesha and Ashu has accepted delivery of possession of their share in suit properties at the time of execution of said Gift Deed. As Mr. Khanche (P.W.1) was present at the time of execution of Gift Deed by Kaka in respect of suit properties, his evidence about those transactions is primary evidence. Nothing has come on record in his cross-examination which may discredit his testimony. So even though Mr. Khanche is examined as Power of Attorney holder of plaintiff, as he is eye witness of Gift Deed executed by Kaka in respect of suit properties and having personal knowledge of it, his evidence about execution of Gift Deed by Kaka Patankar in favour of his 2 daughter-in-law and delivery of possession of suit properties to both daughter-in-law of

Kaka as well as acceptance of it by them cannot be brushed aside merely because he is Power-of-Attorney holder of plaintiff. On the other hand, he being eye witness of said transaction, he has proved in his evidence the execution of registered Gift Deed of suit properties by Kaka in favour of Ayesha and Ashu as well as delivery of possession of suit properties to Ayesha and Ashu.

20. The defendant No. 1 Farzana (D.W.1) has stated in her cross- examination that registered Gift Deed was executed on 27-7-1960 and mutation entry was taken on the basis of said Gift Deed. She has further stated in her cross-examination that defendants have not instituted suit in any court for cancellation of registered Gift Deed Dtd. 27-07-1960 and she has not filed any counter claim in the suit for relief of cancellation of Gift Deed. She has also stated in her cross-examination that Kaka died in Year 1961 and during his lifetime, he has not challenged Mutation Entry No. 748 recorded in respect of his Gift Deed. She has also admitted in her cross- examination that on 27-07-1960, she was of 3 Years age and she do not have personal knowledge about the transactions done on that day. These admissions given by Farzana (D.W.1) in her cross-examination clearly show that Kaka Patankar had not taken any objection either to the Gift Deed registered in his name gifting suit properties to his two daughter in law in equal share or to Mutation Entry No. 748 effected on the basis of

said Gift deed. So these admissions given by Farzana (D.W.2) in her cross- examination impliedly proves that said Gift Deed was executed by Kaka Patankar knowing very well the effect of it upon rights of his sons and daughter in law in suit properties and Farzana has no personal knowledge of those transactions.

21. Farzana (D.W.2) has further admitted in her cross-examination that some of the properties mentioned in the registered Gift Deed Dtd. 27-07-1960 are subject matter of the suit and defendant No. 1 Ashu has not taken objection that she do not admit the execution of Gift Deed and Mutation Entry No. 748 shall be rejected. Farzana (D.W.2) has also admitted in her cross-examination that she has no information that her father-in-law namely Mohammad Hussain has executed any document contending that he do not admit the execution of registered Gift Deed dtd. 27-07-1960. So the evidence came on record during cross-examination of Farzana (D.W.2) proves that the registered Gift Deed executed by Kaka Patankar in favour of his 2 daughter-in-law namely Ayesha and Ashu is never challenged either by Kaka or by his both daughter-in-law during their life time and also by husband of Ashu who would have been natural heir of Kaka after his death and has received major share in suit properties after death of Kaka in case of absence of Gift Deed executed by Kaka Dtd. 27-07-1960.

22. So the evidence of witnesses of plaintiff and defendants discussed above has proved that Kaka Patankar has executed registered Gift Deed of suit properties in favour of his daughter-in-law to the exclusion of his both sons and gifted said properties in half share each to his daughter-in-law. It is further proved by the plaintiff that Ayesha and Ashu accepted delivery of possession of their share in suit properties gifted to them on the day of execution of Gift Deed itself and said transaction is never challenged by husband of Ashu namely Mohammad Hussain who is natural heir of Kaka being his son. The defendant No. 2 Hidayat is son of deceased defendant No. 1 Ashu and defendant No. 3 Farzana is wife of defendant No. 2. The conduct of defendants show that they have also acquiesced in the transactions carried out due to execution of Gift Deed by Kaka in favour of Ayesha and Defendant No. 1 Ashu. So plaintiff has proved that Kaka Patankar executed registered Gift Deed of suit properties in favour of defendant No. 1 and predecessor of plaintiff namely Ayesha and gifted suit properties in half share each to both of them. Hence, I answer Point No. 1 in the affirmative.

**AS TO POINT No. 2**

23. Ld. Adv. Mr. Gawankar has argued for the defendants that Ayesha has no authority to execute Will Deed of her property out of suit properties in favour of plaintiff and so said Will Deed executed by

Ayesha is not lawful. He has further argued that the plaintiff has not proved the will deed executed by Ayesha in favour of plaintiff in her evidence. So plaintiff has failed to prove the Will Deed executed by Ayesha in favour of plaintiff.

24. Ld. Adv. Mr. Mangale has argued for plaintiff that plaintiff has examined attesting witness of Will Deed executed by Ayesha in favour of plaintiff in Year 2000 and so plaintiff has proved said Will Deed in the suit. He has further argued that there is no bar for a Mahommedan lady to execute will deed of property owned by her subject to restriction that she can bequeath only her 1/3 share out of property by Will Deed. Plaintiff has proved that she is entitled to receive benefits under Will Deed of Ayesha executed in her favour.

25. It is settled principle of law that a Mahommedan person can bequeath only 1/3 share out of property owned by him to any person by Will Deed and such Will Deed is valid. There is no bar to a Mahommedan lady to execute Will Deed of property owned by her in favour of another person. So I do not find substance in the contention raised by Ld. Adv. Mr. Gawankar of appellants that Ayesha had no authority to execute Will Deed in respect of her share in suit property in favour of plaintiff and so said Will Deed is invalid.

26. Plaintiff examined Mr. Abbas Khanche (P.W.1) and Mr. Amiruddin Wagale (P.W.3) who are attesting witnesses upon the Will

Deed executed by Ayesha in favour of plaintiff on 21-12-2000. Both these witnesses have deposed that Ayesha executed her Will Deed Dtd. 21-12-2000 before them voluntarily bequeathing her share in suit properties in favour of plaintiff and they signed upon it as witnesses to it. Said Will Deed is produced by the plaintiff at Exh. No. 132. Perusal of said Will Deed shows that it is executed by Ayesha in presence of attesting witnesses by name Mr. Abbas Khanche and Mr. Amiruddin Wagale bequeathing her share out of suit properties in favour of plaintiff. Both attesting witnesses of Will Deed are examined by the plaintiff and they have proved execution of Will Deed by Ayesha on 21-12-2000 in favour of plaintiff bequeathing her share out of suit property. Nothing came on record in cross examination of both these witnesses except denial of suggestions put up by defendants to them that Ayesha never executed any Will Deed in favour of plaintiff and Will Deed do not bear signature of Ayesha. The evidence of both attesting witnesses of Will Deed of Ayesha examined by the plaintiff remained in-tact on record. So plaintiff has proved the Will Deed Dtd. 21-12-2000 executed by Ayesha bequeathing her share out of suit properties in favour of the plaintiff. Hence, I answer Point No. 2 in the affirmative.

**AS TO POINT NO. 3 and 4**

27. Both these points are interlinked with each other and so

I am deciding them collectively together.

28. Ld. Adv. Mr. Gawankar has argued for the defendants/appellants that as per contents of Gift Deed of Ayesha executed in favour of plaintiff, Ayesha has not gifted her whole share in suit properties to plaintiff. On the contrary, Ayesha gifted some property out of her share in suit properties to Plaintiff by Gift Deed which is not permissible as per provisions of Consolidation and Fragmentation Act and so said Gift Deed, being hit by provisions of said Act, is illegal. He has further argued that so plaintiff is not entitled for the enjoyment of property gifted to her by Ayesha by Gift Deed Dtd. 13-01-1997. So he has prayed to dismiss the suit filed on the basis of such ineffective Gift Deed executed by Ayesha in favour of plaintiff.

29. Ld. Adv. Mr. Mangale has argued for plaintiff that contents of Gift deed shows that Ayesha gifted her whole share in suit properties to the plaintiff. So said Gift Deed is not hit by the provisions of Consolidation and Fragmentation Act. He has further argued that name of plaintiff was recorded to the revenue record of suit properties after allowing the proceedings of RTS Revision Application No. 17/97 and RTS Revision Application No. 18/97 and at that time, revenue authorities have not taken objection that Gift Deed executed in favour of plaintiff is hit by the provisions of Consolidation and Fragmentation Act. Plaintiff has proved execution of Gift Deed by Ayesha in her favour

of her share in suit properties in the evidence of Mr. Anand Panagale (P.W.3) and Mr. Abbas Khanche (P.W.1). The objections raised by the defendants to validity of said Gift Deed are not maintainable in the eye of law.

30. To prove the Gift Deed executed by Ayesha in favour of plaintiff of some property out of her share in each suit property, plaintiff has examined Mr. Anand Panagale (P.W.2) who is attesting witness of said Gift Deed and Mr. Abbas hanche (P.W.1) who identified Ayesha and plaintiff at the time of execution of said Gift Deed. Both these witnesses have categorically deposed that on 13-01-1997, Ayesha executed Gift Deed of her property out of suit properties in favour of plaintiff IN THEIR PRESENCE and Ayesha and plaintiff has signed upon it in their presence and it is registered accordingly. Mr. Panagale (P.W.2) has admitted in his cross-examination that it is mentioned on page No. 7 of Gift Deed Ayesha has 4 Ana share each in properties at Sr. No. 1 to 5 mentioned in it and share of 1 Ana in property at Sr. No. 6 in it and area of share of Ayesha in each property. He has further stated in his cross-examination that he works as clerk of advocate since Year 1996 and he know the dispute between Ayesha and Ashu since last 20 years. These facts came on record during the evidence of Mr. Anand Panagale (P.W.2) proves that this witness is very well aware about the transactions of suit property happened between Ayesha i.e.

predecessor of plaintiff and Ashu i.e. defendant No. 1 and he identify Ayesha and plaintiff very well. Nothing material came on record during cross-examination of Mr. Khanche (P.W.1) which may discredit his testimony as far as execution of Gift Deed by Ayesha in favour of plaintiff on 13-01-1997.

31. The defendant No. 3 has admitted in her cross examination that after execution of Gift Deed in respect of suit properties in Year 1960, suit properties were never transferred by any other document except Gift Deed of Year 1997 and will Deed. She has further admitted in her cross- examination that Ayesha has not transferred suit property to anybody after execution of Gift Deed in Year 1960 till Year 1997. These admissions given by defendant No. 3 in her cross-examination and the evidence of witnesses of plaintiff namely Mr. Khanche (P.W.1) and Mr. Panagale (P.W.2) have proved that Ayesha executed registered Gift Deed of some part of her share in suit properties in favour of plaintiff on 13-01-1997.

32. The defendants have raised objection that registered Gift Deed executed by Ayesha on 13-01-1997 in favour of plaintiff is hit by the provisions of Consolidation and Fragmentation Act as Ayesha has not transferred her whole share out of suit properties in favour of plaintiff by said Gift Deed.

33. To decide the said point, it is necessary to consider both the documents executed by Ayesha in favour of plaintiff including Registered Gift Deed Dtd. 13-01-1997 and Registered Will Deed Dtd. 21-12-2000 and consolidated effect of it. Perusal of Gift Deed executed by Ayesha in favour of plaintiff vide Exh. No.160 and Perusal of registered Will Deed executed by Ayesha in favour of plaintiff in respect of property of her share out of suit properties at Exh. No.132 shows that Ayesha has transferred her whole share in suit properties by virtue of both these deeds in favour of plaintiff. Considering consolidated effect of Gift Deed as well as Will Deed executed by Ayesha in favour of plaintiff, it is clear that Ayesha transferred her whole share out of suit properties in favour of plaintiff by those deeds. When it is proved that Ayesha transferred her whole share out of suit properties to plaintiff by virtue of both deeds, no question of transaction of transfer of whole share of Ayesha in suit properties to the plaintiff hit by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 arise. So the Gift Deed Dtd. 13-01-1997 executed by Ayesha in favour of plaintiff is not hit by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Hence defendants have failed to prove that Gift Deed executed by Ayesha in favour of plaintiff Dtd. 13-01-1997 is hit by provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and Ayesha had no authority

to execute will deed of her property out of suit properties and so said Will Deed is invalid. On the contrary, plaintiff has proved that Ayesha executed Gift Deed Dtd. 13-01-1997 and Will Deed Dtd. 21-12-2000 in favour of plaintiff and transferred her whole share out of suit properties to plaintiff. Hence, I answer Point No. 3 in the affirmative and Point No. 4 in the negative.

**AS TO POINT NO. 5 and 6**

34. Both these points are interlinked with each other and so I am deciding them collectively together.

35. The plaintiff has proved that initially, the suit properties were originally owned by Mr. Kaka Patankar. Mr. Kaka Patankar executed registered Gift Deed of suit properties in favour of his daughter-in-law namely Ayesha i.e. predecessor of plaintiff and Ashu i.e. defendant No. 1 and gifted half share each out of suit properties to both of them. Mr. Kaka Patankar has delivered possession of suit properties on same day to Ayesha and Ashu and they accepted them is also proved by the plaintiff. Further plaintiff has proved that Ayesha gifted some property of her share out of suit properties by registered Gift Deed Dtd. 13-07-1997 to the plaintiff and Ayesha bequeathed her remaining share in suit properties by registered Will Deed Dtd. 20-12-2000 to the plaintiff. Due to consolidated effect of Gift Deed and Will

Deed executed in favour of plaintiff, plaintiff has become owner of half share in suit properties which is whole share of Ayesha acquired by her in suit properties by virtue of registered Gift Deed executed by Kaka Patankar in her favour in Year 1960. So plaintiff is entitled to the declaration that she is owner of ½ share in suit properties and she is entitled to get her share separated by way of partition out of suit properties. Hence, I answer Point No. 5 and 6 in the affirmative.

**AS TO POINT NO. 7**

36. Considering the evidence of rival parties produced in suit and discussed above as well as my findings on the points recorded above, Ld. Trial Court has properly appreciated the evidence of both parties and rightly held that plaintiff is owner of half share in suit properties and she is entitled to partition of her share out of suit properties. The defendants have failed to prove their defence raised in their written statement. Hence I held that the Judgment and Decree passed by the Ld. Trial Court in RCS No. 13/2004 is just, proper and legal. No interference is required in it in this appeal. Hence, I answer Point No.7 in the affirmative.

**AS TO POINT NO. 8**

37. In view of my findings on Point No. 1 to 7 recorded above, appeal is devoid of merit and deserves to be dismissed. Hence in

answer to point No. 8, I pass following order :-

**ORDER**

1. The appeal is dismissed with costs.
2. The Judgment and Decree passed by the Learned Trial Court in RCS No. 13/2004 is hereby confirmed.
3. Decree be drawn up accordingly.
4. Inform the Learned Trial Court accordingly and record and proceeding of RCS No. 13/2004 be sent back to the Learned Trial Court after appeal period is over.

(Dictated and pronounced in open Court.)

Date : 28 /04/2026

(S. G. Baokar)  
Ad hoc District Judge-1, Ratnagiri.