

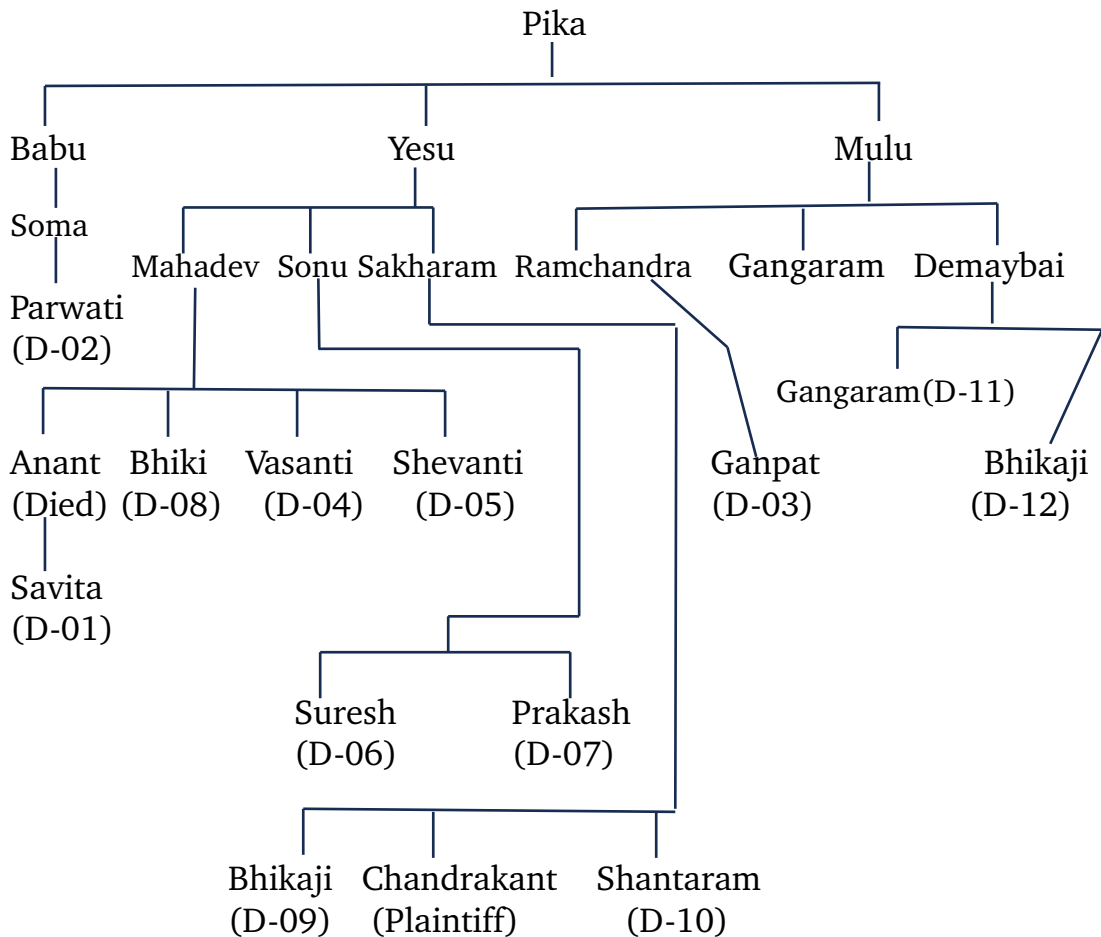


Order Below Exh. 67 in R.C.S. No. 45/2022
(CNR No. MHRT080003482022)

This is a suit for partition and separate possession.

02. It is case of the plaintiff that the suit properties are joint family properties of himself and defendants. He contends that, the suit properties were earlier owned by his great grandfather Pika Mate. Said Pika Mate had three sons, namely, Babu, Yesu and Mulu. They are no more. He and the defendants are heirs of said Babu, Yesu and Mulu.

03. Genealogy of the parties can be stated as follows -



04. As stated above, Pika Mate and his sons Babu, Yesu and Mulu are no more.

05. Babu was survived by his son Soma. Soma is now no more. He is survived by his daughter Parwati (Defendant No. 02).

06. Yesu was survived by three sons, namely, Mahadev, Sonu and Sakharam. They are no more. Mahadev is survived by defendants No. 01, 04, 05 and 08. Sonu is survived by defendants No. 06 and 07. Sakharam is survived by the plaintiff and defendants No. 09 and 10.

07. Mulu was survived by Ramchandra, Gangaram and Demaybai. They are no more. Ramchandra is survived by defendant No. 03 and Demaybai is survived by defendants No. 11 and 12.

08. According to the plaintiff, on death of Pika Mate, name of Pika's elder son Babu was recorded to the suit properties. Further, after death of Yesu, name of Yesu's elder son Mahadev was recorded, alongwith Babu, to the revenue record concerning the suit properties. Thereafter, names of defendants No. 02 to 05, 08 and Demaybai (mother of D-11 and 12) were recorded to the suit properties, alongwith defendant No. 01. Names of other heirs of Pika Mate are not so recorded to the suit properties. However, being heirs of Pika Mate, the plaintiff and other defendants are also entitled to a share in the suit properties which are joint family properties of the parties. Thus, present suit is instituted for partition and separate possession of those twenty seven joint family properties.

09. Noticeably, defendants No. 02 to 05, 07 and 08 have admitted the contentions and claim of the plaintiff by filling pursis at Exh. 49. As per pursis at Exh. 53 and 61, respectively, defendants No. 10 and 06 have admitted the contentions and claim of the plaintiff.

10. Defendant No. 01 is contesting the suit by filling written statement at Exh. 48. She contends that, as per the oral partition, the

suit properties were allotted to her father-in-law Mahadev Yesu Mate. Mutation entry No. 190 was accordingly recorded in the year 1955. Thus, the suit properties are her separate properties. Therefore, the suit is liable to be dismissed.

11. By the present application, defendant No. 01 has contended that as per mutation No. 190, it is clear that the land Survey No. 58 Hissa No. 44-A was allotted to her father-in-law Mahadev. After death of Mahadev, her husband Anant was owner thereof. After death of Anant, now, she is owner of the said land Survey No. 58 Hissa No. 44-A.

12. Defendant No. 01 contends, that, defendants No. 06 and 07 are constructing a house in said land Survey No. 58 Hissa No. 44-A. She initially approached the Village Panchayat to restrain defendants No. 06 and 07 from carrying the construction. As the Village Panchayat did not take the appropriate steps, she approached Tahsildar. However, no action is taken, since present lis is pending before this Court. Accordingly, by the present application, defendant No. 01 has prayed for restraining the defendants No. 06 and 07 temporarily from carrying the construction.

13. As observed above, defendants No. 06 and 07 have admitted the claim and contentions of the plaintiff. They have opposed the present application by filing reply at Exh. 70. The reply is so filed as per and in consonance to the plaint. It is denied that, the oral partition was effected, as contended by defendant No. 01. Consequently it is denied that the suit properties including land in Survey No. 58 Hissa No. 44-A is separate property of the defendant No. 01. Thus, they prayed for rejecting the application.

14. Perused the record. Read the written notes of arguments (Exh. 74) filed by learned advocate for the defendant No. 01. Heard learned advocate for the defendants No. 06 and 07.

15. Having perused the record and heard both sides, following points arise for determination. Findings thereon are recorded for reasons to follow -

Sr. No.	Points	Findings
1.	Whether the defendant No. 01 has made out prima-facie case?	No.
2.	Whether the balance of convenience is in favour of the defendant No. 01?	No.
3.	Whether the defendant No. 01 would suffer irreparable loss if the temporary injunction, as prayed for, is not granted?	No.
4.	What order?	As per final order

REASONS

As to Points No. 01 and 02.

16. To avoid repetition as to facts, these points are discussed together.

17. To establish a prima-facie case and balance of convenience in her favour, defendant No. 01 was to apparently show the partition as alleged. She has just relied on copy of 7/12 extract of land Survey No. 58 Hissa No. 44-A to show the alleged partition. At the outset, it is noticeable that the entries in revenue record cannot be hold to be proof of title. Moreover, when a partition is asserted by a party, then it is for that party to establish the partition. Mere revenue entry, in itself,

cannot be conclusive proof of alleged partition between the parties. The attending circumstances must also be established. However, it is not clarified by the present defendant No. 01 that which of the family properties were allotted to her father-in-law Mahadev and which other properties were allotted to other branches of Pika Mate. There is no explanation about the same. Copy of mutation No. 190 is produced on record as per list at Exh. 69. However, said copy is not legible. Some numbers and words in the said copy could not be read for want of legibility.

18. Moreover, she has not produced the copies of applications which she allegedly made to the Village Panchayat and Tahsildar. There is no other document to show the alleged partition. Conduct of the parties in relation to the property is also not specified. Thus, even the circumstances showing partition are not stated. Thus, in fact, there is nothing on record to show, prima-facie, the partition as alleged by the defendant No. 01.

19. Further, defendants No. 04, 05, 08 are daughters of deceased Mahadev. They have admitted the contentions and claim of the plaintiff. Thus, daughters of Mahadev themselves contends that there is no partition of the suit properties.

20. In light of all the above facts and circumstances, the defendant No. 01 has failed to show prima-facie that land Survey No. 58 Hissa No. 44-A is her separate property, as contended. Accordingly, there is no prima-facie case or balance of convenience in her favour. Thus, points No. 01 and 02 are answered in the negative.

As to Point No. 03

21. Since the defendant No. 01 has failed to establish prima-

facie case and to show that the balance of convenience lies in her favour, it cannot be said that she would suffer irreparable loss, if the application is rejected. Hence, this point is answered in the negative.

As to Point No. 04

22. In view of negative findings as to points No. 01 to 03, application is liable to be rejected. Hence, I pass following order:

ORDER

The application is hereby rejected with costs.

(B. D. Tare)

Date : 09.07.2024

Civil Judge (Jr. Div.), Devrukh

- : C E R T I F I C A T E : -

Judgment/order in (R.C.S No.45/2022)

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

Name of Stenographer	:- S. A. Bhale
Court Name	:- The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Devrukh
Date of decision	:- 09/07/2024
Order signed by PO. on	:- 09/07/2024
Order uploaded on	:- 09/07/2024