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CNR No.MHSI080001692016

**IN THE COURT OF NYAYADHIKARI, GRAMNYAYALAYA,
VAIBHAVWADI
AT : VAIBHAVWADI, TAL.VAIBHAVWADI, DISTRICT
SINDHUDURG**

(Presided over by Shubham G. Laturiya)

REGULAR CIVIL SUIT No. 22/2016

Exh.No. - 145

Babaso Shripati Patil,
Age - 47 years, Occu.- Agri.,
R/o. - at post.Vaibhavwadi, Ganeshnagar,
Tal. Vaibhavwadi, Dist. Sindhudurg.

.... Plaintiff

... Versus ...

1. Prakash Shivram Teli (Mathkar),
Age – 45 years , Occu. - Agri.,
2. Dipak Rajaram Teli (Mathkar),
Age-47 years, Occu. - Agri.,
3. Maya Daulat Teli (Mathkar),
Age-40 years, Occu. -Household,
4. Jayashri Rajaram Teli (Mathkar),
Age-70 years, Occu. -Household,
5. Prabharkar Dattaram Teli (Mathkar),
Age-67 years, Occu. - Agri.,
6. Uday Dattaram Teli (Mathkar),
Age-48 years, Occu. -Agri.,

7. Ganesh Dattaram Teli (Mathkar),
Age-42 years, Occu. -Agri.,
 8. Vaishali Eknath Vayangankar,
Age-45 years, Occu. -Household,
 9. Latika Lavu Bandivadekar,
Age-52 years, Occu. -Household,
 10. Prakash Dattaram Mathkar,
Age-38 years, Occu. - Agri.,
 11. Anusuya Parshuram Bambarkar,
Age-65 years, Occu. -Household,
 12. Shweta Chandrashekhar Kesarkar,
Age-45 years, Occu. -Household,
 13. Shila parshuram Bambarkar,
Age-42 years, Occu. -Household,
 14. Gurunath Parshuram Bambarkar,
Age-38 years, Occu. -Agri.,
 15. Yogita Parshuram Bambarkar,
Age-43 years, Occu. -Agri.,
- Defendant Nos.01 to 15 R/o. - at post Gadmath,
Tal.Vaibhavwadi, Dist.Sindhudurg.
16. Sadashiv Gopal Teli @ Wadekar – Deceased
Legal Heirs -
 - 16(1). Santosh Sadashiv Wadekar,
Age – 48 years, Occu. - Agri.,
 - 16(2). Sandip Sadashiv Wadekar,
Age – 38 years, Occu. - Agri.,
 - 16(3). Samir Sadashiv Wadekar,
Age – 36 years, Occu. - Agri.,
 - 16(4). Bhakti Bhaskar Wayangankar,
Age – 50 years, Occu. - Household,

Defendant Nos.16(1) to 16(4) R/o.-at post Gadmath,
Tal.Vaibhavwadi, Dist.Sindhudurg.

17. Krishna Bhikaji Teli,
Age-53 years, Occu. -Agri.,
18. Sakharam Bhikaji Teli,
Age-50 years, Occu. - Agri.,
19. Tukaram Bhikaji Teli,
Age-45 years, Occu. -Agri.,
20. Laxmi Mahadev Teli,
Age-67 years, Occu. -Household,
21. Amol Mahadev Teli,
Age-33 years, Occu. -Agri.,
22. Sangita Mahadev Teli,
Age-42 years, Occu. -Household,
23. Vaishali Mahadev Teli,
Age - 35 years, Occu. - Household,
24. Vishakha Vinay Kolambkar,
Age - 40 years, Occu. - Household,
25. Tejashri Tukaram Dabholkar,
Age - 45 years, Occu. - Household,
26. Puja Vinay Kharade,
Age - 40 years, Occu. - Household,
27. Babaji Laxman Teli,
Age - 50 years, Occu. - Agri.,

Defendant Nos.17 to 27 all R/o. - at post Gadmath,
Tal.Vaibhavwadi, Dist.Sindhudurg.

28. Dattaram Lingu Sapkal – Deceased

Legal Heirs -

- 28(1). Raghunath Dattaram Sapkal,
Age - 50 years, Occu. - Agri.,
- 28(2). Sanjay Dattaram Sapkal,
Age - 45 years, Occu. - Agri.,
- 28(3). Vijay Dattaram Sapkal,
Age - 38 years, Occu. - Agri.,
- 28(4). Shridhar Dattaram Sapkal,
Age - 40 years, Occu. - Agri.,
- 28(5). Anandibai Dattaram Sapkal,
Age - 65 years, Occu. - Agri.,
- 28(6). Vaishali Ramkrishna Sapkal,
Age - 35 years, Occu. - Agri.,

29. Sumati Sadashiv Dicholkar,
Age - 57 years, Occu. - Household,

30. Sushma Sadanand Bavadekar,
Age - 45 years, Occu. - Household,

31. Lila Vithoba Teli,
Age - 55 years, Occu. - Household,

32. Rajani Vithoba Teli,
Age - 45 years, Occu. - Household,

33. Vijay Shankar Mathkar,
Age - 45 years, Occu. - Agri.,

34. Harishchandra Shankar Mathkar,
Age - 58 years, Occu. - Agri.,

35. Gajanan Shankar Mathkar,
Age - 50 years, Occu. - Agri.,

36. Uday Shankar Mathkar,
Age - 48 years, Occu. - Agri.,

37. Vishvanath Bhikaji Teli,
Age - 75 years, Occu. - Agri.,

38. Kashiram Bhikaji Teli,
Age - 71 years, Occu. - Agri.,
39. Prakash Aba Teli,
Age - 50 years, Occu. - Agri.,
40. Shital Aba Teli,
Age - 45 years, Occu. - Household,
41. Subhash Shantaram Teli,
Age - 55 years, Occu. - Household,
42. Santosh Shantaram Teli,
Age - 48 years, Occu. - Agri.,
43. Sulochana Shantaram Teli,
Age - 65 years, Occu. - Household,
44. Vijaya Vijay Prindavankar,
Age - 45 years, Occu. - Household,

Defendant Nos.29 to 44 all R/o. - at post Gadmath,
Tal.Vaibhavwadi, Dist.Sindhudurg. **Defendants**

Claim :- Suit for Partition

Appearance :

Shri. R.V. Raorane advocate for plaintiff.

Shri. U.S. Sawant for defendant Nos.1 and 2

Ex-parte against defendant Nos.16, 16(1) to 16(4), 20 to 23, 27, 33 to 36, 38 to 43.

Suit Dismissed against defendant Nos.5 to 15, 17 to 19, 24 to 26, 28(1) to 28(6), 29 to 32 and 44.

Without written statement against defendant Nos.3, 4

Abated against defendant No.37

JUDGMENT
 (Delivered on 25/03/2026)

This suit is instituted for partition.

The brief facts of the plaintiff's case are as follows:

2. The case of the plaintiff, in brief, is that within the limits of village Gadmath, Taluka Vaibhavwadi, District Sindhudurg, there exist several immovable properties bearing different survey numbers and hissa numbers, the details whereof are specifically described as follows. (For the sake of convenience and to avoid prolixity, all such properties have been collectively referred to as the "suit properties." These properties are categorized under different schedules, namely Schedule 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H' and 'I', each containing distinct agricultural lands with specified survey numbers and areas)

Schedule 'A' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|---------|------------|-----------|------------------|
| 1 | 50 | 9 | 0-23-0 0-05-0 |
| 2 | 55 | 3 | 0-25-0 0-02-0 |
| 3 | 78 | 17 | 0-26-4 0-02-0 |
| 4 | 87 | 7 | 0-12-0 |
| 5 | 88 | 1 | 0-09-0 0-46-0 |
| 6 | 179 | 33 | 0-16-7 |

Schedule 'B' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|----------------|-------------------|------------------|--------------------|
| 1 | 46 | 31 | 0-22-0 |
| 2 | 48 | 1 | 1-39-0 0-09-0 |
| 3 | 54 | 1 | 1-24-0 0-05-0 |
| 4 | 57 | 41 | 0-08-0 |
| 5 | 83 | 2 | 1-17-0 |
| 6 | 95 | 1 | 0-33-0 |

Schedule 'C' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|----------------|-------------------|------------------|--------------------|
| 1 | 61 | 1 | 0-23-3 |
| 2 | 61 | 19 | 0-19-7 0-02-0 |

Schedule 'D' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|----------------|-------------------|------------------|--------------------|
| 1 | 55 | 5 | 0-64-0 |
| 2 | 37 | 2 | 0-68-0 |

Schedule 'E' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|---------|------------|-----------|-------------|
| 1 | 88 | 10 | 1-99-0 |

Schedule 'F' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|---------|------------|-----------|------------------|
| 1 | 80 | 1 | 2-23-0 |
| 2 | 97 | 1 | 1-92-0 0-03-0 |

Schedule 'G' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|---------|------------|-----------|------------------|
| 1 | 62 | 10 | 0-30-0 0-02-0 |

Schedule 'H' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|---------|------------|-----------|-------------|
| 1 | 58 | 19 | 0-12-2 |

Schedule 'I' Properties

| Sr. No. | Survey No. | Hissa No. | Area (H.R.) |
|---------|------------|-----------|-------------|
| 1 | 78 | 1 | 0-88-9 |

3. It is the specific contention of the plaintiff that the aforesaid suit properties are ancestral in nature and constitute joint family properties, which were originally held jointly by the predecessor of the plaintiff, namely late Kunda Ramji Gupta (also known as Kunda Babla Mathkar alias Teli), along with the father of defendant Nos. 1 to 4.

4. Tracing the genealogy, the plaintiff has pleaded that one Budhaji was the common ancestor, who had three sons, namely Babla, Shivram and Rajaram. Late Kunda was the sole daughter and legal heir of Babla. Defendant No. 1 is the sole heir of Shivram, whereas defendant Nos. 2 to 4 are the heirs of Rajaram. According to the plaintiff, the suit properties have descended from the said common ancestor Budhaji and have retained their character as ancestral joint family properties.

5. The plaintiff has further averred that late Kunda had contracted an inter-caste marriage against the wishes of her paternal family with one Ramji Ipat Gupta, a resident originally from Uttar Pradesh and residing at Mumbai. On account of such marriage, her relations with defendant Nos. 1 to 4 were completely strained, and she was allegedly ostracized from the family. It is contended that she and her husband were not permitted to visit the native place at Gadmath, and were denied any participation in family affairs. Consequently, late Kunda constructed a small residential house bearing Gram Panchayat House No. 512 at Gadmath from the independent earnings of her husband. However, even from the said house, she and her family were allegedly dispossessed by defendant Nos. 1 to 4, compelling them to reside in a rented premises at Kankavli.

6. According to the plaintiff, during the period when late Kunda was residing at Gadmath, her husband and son used to work occasionally as labourers for the plaintiff, which resulted in a close and affectionate relationship between them. It is further pleaded that considering the poor financial condition of late Kunda and her family, the plaintiff extended financial assistance and also took care of her medical needs and livelihood. Owing to such circumstances, late Kunda is stated to have treated the plaintiff as her foster son (Manasputra).

7. It is the further case of the plaintiff that late Kunda expired on 11/11/2015. Prior to her death, she executed a registered Will dated 13/10/2015 bequeathing her share in the suit properties in favour of the plaintiff with absolute ownership rights. The said Will is asserted to be her first and last testament. After her demise, the plaintiff applied to the revenue authorities for mutation of his name in respect of the suit properties on the basis of the said Will. Accordingly, Mutation Entry No. 1370 came to be recorded and, as no objections were raised by any of the defendants, the said mutation entry was duly sanctioned on 17/12/2015, thereby recording the plaintiff's name as successor to the share of late Kunda. It is also averred that the house bearing Gram Panchayat House No. 512 was likewise entered in the plaintiff's name in the Panchayat record.

8. The plaintiff has further contended that in January 2016, he requested defendant Nos. 1 to 4 to effect partition of the share which had devolved upon him through the Will of late Kunda. However, the said request was refused by the defendants. Hence, according to the plaintiff, it has become impossible for him to continue in joint possession of the suit

properties, thereby necessitating the institution of the present suit for partition and separate possession of his share.

9. The plaintiff has also specified his alleged shares in the respective schedules of the suit properties, namely, 1/3rd share in Schedule 'A', 1/6th share in Schedule 'B', 1/4th share in Schedule 'C', 2/9th share in Schedule 'D', specified two annas and two paises share in Schedule 'E', 7/24th share in Schedule 'F', specified 4 annas and 5 paises share in Schedule 'G', 1 anna and 12 paises share in Schedule 'H', and 5/24th share in Schedule 'I'. It is further pleaded that the names of defendant Nos. 5 to 66 are reflected in the revenue record as co-sharers on the basis of Annewari, and therefore they have been impleaded as parties to the suit, though, according to the plaintiff, their presence is only formal in nature if they do not contest the partition.

10. On the basis of the aforesaid pleadings, the plaintiff has sought partition and separate possession of his alleged share in the suit properties.

Case of Defendant Nos. 1 & 2 -

11. Defendant Nos. 1 and 2 have appeared and resisted the present suit by filing their written statement at Exhibit 42, wherein they have categorically denied the claim of the plaintiff and have contended that the suit is false, vexatious and filed with mala fide intention, and therefore not maintainable either in law or on facts.

12. It is the principal contention of Defendant Nos. 1 and 2 that the alleged Will dated 13/10/2015, which forms the very foundation of the

plaintiff's claim, is false, fabricated and surrounded by suspicious circumstances. According to them, the said Will has not been proved in accordance with the mandatory provisions of the Indian Evidence Act and the Indian Succession Act, nor has it been declared valid by any competent court of law. Hence, no right, title or interest can be said to have accrued in favour of the plaintiff on the basis of such an unproved and disputed document.

13. The defendants have further pleaded that late Kunda had her natural heirs, namely her husband and son, who were alive at the relevant time and with whom she maintained cordial relations. In such circumstances, the execution of a Will in favour of a third person like the plaintiff, bypassing her own natural heirs, is inherently improbable and gives rise to serious suspicion regarding the genuineness of the alleged Will. It is their case that the family of late Kunda and the defendants was joint in nature, and the relations between them were cordial, contrary to what is alleged by the plaintiff.

14. Defendant Nos. 1 and 2 have also contended that late Kunda was an aged, illiterate and ailing woman, suffering from various ailments including high blood pressure, diabetes and paralytic stroke, particularly in the year 2015. It is their specific case that her physical as well as mental condition was not sound, and she was not in a position to understand the nature and consequences of any document allegedly executed by her. It is further alleged that she used to affix her thumb impression and had no independent understanding of legal transactions. In such circumstances, the possibility of her being misled or influenced cannot be ruled out.

15. The defendants have further alleged that the plaintiff had no close or natural relationship with late Kunda, and that he came into contact with her family only when her husband and son started working as labourers under him. It is contended that during the period when late Kunda was ill and was taken to Kankavli for medical treatment, the plaintiff had complete control and influence over her and her family, thereby creating a situation conducive for obtaining such a document under undue influence and misrepresentation. It is also alleged that no information regarding her death was given to the defendants or other villagers, which further adds to the suspicious circumstances surrounding the alleged Will.

16. The defendants have further pointed out several inconsistencies and suspicious features in the alleged Will itself. According to them, there are discrepancies regarding the age of late Kunda mentioned in the document, including overwriting and contradictions within the contents, which cast doubt on its authenticity. It is also contended that though the Will refers to the plaintiff as a foster son (Manasputra), the existence of her direct descendants, including grandchildren, makes such a bequest highly unnatural and improbable.

17. A significant contention raised by Defendant Nos. 1 and 2 is that on the very same day i.e. 13/10/2015, apart from the alleged Will, an Agreement to Sale in respect of the suit properties was executed between late Kunda and the plaintiff for a consideration of ₹10,00,000/-, and a Power of Attorney was also executed in favour of the plaintiff. It is contended that the contents of the Agreement to Sale and the alleged Will are mutually inconsistent and contradictory in nature. According to the

defendants, if late Kunda had intended to bequeath her property by way of Will, there was no occasion for her to execute an Agreement to Sale and a Power of Attorney on the same day. This circumstance, according to them, clearly indicates that the plaintiff has acted fraudulently and has taken undue advantage of the situation to obtain the alleged Will.

18. The defendants have further contended that the plaintiff, in collusion with revenue authorities, has got his name entered in the revenue records on the basis of the alleged Will without issuing any notice to Defendant Nos. 1 to 4. It is stated that the defendants have challenged such mutation entries by filing appropriate proceedings. Similar allegations are made regarding mutation of the house property in Gram Panchayat records. According to them, the defendants were in fact managing and supervising the suit properties on behalf of the family, and such arrangement was in accordance with the wishes of the family members, including late Kunda.

19. The defendants have also made allegations regarding the antecedents of the plaintiff, contending that he has been involved in fraudulent land transactions and that criminal cases are pending against him. On that basis, it is contended that there is a strong probability that the plaintiff has defrauded late Kunda and has obtained the alleged Will by deceitful means.

20. On the aforesaid grounds, Defendant Nos. 1 and 2 have contended that the plaintiff has no manner of right, title or interest in the suit properties and that the present suit has been filed only with an intention to grab the properties and to harass the defendants. They have, therefore,

prayed for dismissal of the suit with costs, and have further sought compensatory costs under Section 35 and Section 95 of the Code of Civil Procedure.

21. The suit has proceeded *ex-parte* against several defendants pursuant to the respective orders passed below Exhibit 1 by my learned predecessor. It was ordered to proceed *ex-parte* against Defendant Nos. 16, 20 to 23, 27, 33 to 36, 38 to 43 by order dated 10/08/2016, against Defendant Nos.16(1) to 16(3) by order dated 27/04/2022, against Defendant Nos. 16(4) by order dated 14/09/2022. Further, the suit as against Defendant Nos.5 to 15, 17 to 19, 24 to 26, 28(1) to 28(6), 29 to 32 and 44 came to be dismissed in terms of the order passed below Exhibit 1 by my learned predecessor on 13/06/2018. The suit is abated against defendant No.37 vide order below Exh.1 passed on 13/06/2018.

22. It is also borne out from the record that Defendant Nos.3 and 4 has not filed his written statements and, by order dated 10/08/2016, the suit has proceeded against them without written statement.

23. The issues in the present matter came to be framed by my learned predecessor below Exhibit 43, which are hereby reproduced herein below, accompanied by the findings thereon, with detailed reasons to follow hereinafter.

| Sr. No. | ISSUES | FINDINGS |
|---------|--|----------|
| 1. | Does the plaintiff prove that the suit properties are the ancestral ownership and possessory properties of the plaintiff's predecessors and defendants No. 1 to 4? | Yes. |

| | | |
|----|--|-----------------------------------|
| 2. | Does the plaintiff prove that the plaintiff's predecessor, late Kunda Ramji Gupta, gave her share in the suit properties to the plaintiff with permanent ownership rights by way of a Will dated 13/10/2015? | No. |
| 3. | Whether the suit is bad for non-joinder of necessary parties? | Yes. |
| 4. | Whether the plaintiffs are entitled to the relief of partition? If so, what are the shares of the parties? | No. |
| 5. | What order and decree? | The suit is dismissed with costs. |

REASONS

24. The plaintiff, in support of his contentions, has adduced substantial documentary evidence to substantiate his claims. The documentary evidence placed on record includes:

- 7/12 extracts of suit properties at Exhibits 5 to 26, 105 to 114.
- Extract of Mutation entry no 1370 at Exh 27.
- Death certificate of Kunda Babla Mathkar at Exh.80
- Agreement to Sell at Exh.81.
- Power of attorney at Exh.82.
- Will deed at Exh.91.
- Death certificate of Shripati Santu Patil at Exh.103
- 8A extract at Exh.104, 119, 120
- Death certificate of Shripati Ganpati Patil at Exh.118.
- Identity Cards of Dadaso Shripati Patil at Exh.121 to 123.

25. The plaintiff examined himself and tendered an affidavit in lieu of his examination-in-chief, which has been marked as Exhibit 40. In his affidavit, he reiterated the averments made in the plaint. He also examined PW-2 namely Dadaso Shripati Patil who deposed at Exh 85.

26. Defendant Nos. 1 & 2 in support of their contentions, have adduced substantial documentary evidence to substantiate their claims. The documentary evidence placed on record includes:

- Certified copy of Mutation entry extract No.773 at Exh.94.
- 8A extract at Exh.95.
- 7/12 extract at Exh.96 to 98.

27. Defendants did not lead any oral evidence.

28. Heard learned Advocate Shri R. V. Raorane for the plaintiff at length. The learned counsel has taken the Court through the pleadings, documentary evidence and oral evidence on record and has advanced elaborate submissions in support of the plaintiff's claim.

29. Learned counsel submitted that the foundation of the present suit rests upon the registered Will dated 13/10/2015 at Exhibit 91, which, according to him, has been duly executed by late Kunda Ramji Gupta in favour of the plaintiff. It is submitted that the said Will is a registered document and is further supported by mutation entry No. 1370 at Exhibit 27, which has been duly certified by the revenue authorities without any objection from the defendants. According to the learned counsel, such mutation entry lends corroborative value to the plaintiff's claim and reflects

acceptance of the Will in revenue proceedings.

30. Learned counsel further submitted that the suit properties were ancestral in nature, however, upon the death of Babla, the share of Kunda Ramji Gupta became her absolute property. Placing reliance on Section 14 of the Hindu Succession Act, it is contended that once a female Hindu acquires property, she becomes its absolute owner and is fully competent to dispose of the same in any manner, including by way of a testamentary disposition. It is thus argued that late Kunda had every legal right to execute the Will in favour of the plaintiff and such exercise of testamentary freedom cannot be questioned merely because the bequest is in favour of a person outside the natural line of succession.

31. It is further submitted that even assuming, for the sake of argument, that the Will is to be scrutinized strictly, the defendants have failed to demonstrate any legally sustainable suspicious circumstances. Learned counsel has placed reliance on the judgment of the Hon'ble Punjab and Haryana High Court in ***Baljinder Singh and others vs. Wattan Singh and others***, AIR 2018 P&H 148, wherein it has been held that a duly proved registered Will cannot be discarded on the basis of alleged suspicious circumstances which have no substantive foundation on record. It is submitted that mere conjectures or theoretical doubts are not sufficient to invalidate a Will once due execution and attestation are established.

32. Learned counsel has further relied upon the judgment of the Hon'ble Bombay High Court in ***Wilma Levert Canuaao and others vs. Allan Sebastian D'Souza and another***, 2014(3) Mh.L.J. 1, wherein it is held that

once execution and attestation of a Will are duly proved in accordance with Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, the Will must be accepted as valid. It is further observed therein that absence of registration or delay in seeking probate, by itself, does not create suspicion if the execution is otherwise proved and the evidence inspires confidence. On the strength of this authority, it is argued that in the present case, the Will being registered and supported by attesting witness, stands on a stronger footing.

33. Learned counsel also relied upon the judgment of the Hon'ble Kerala High Court in *C.G. Raveendran vs. C.G. Gopi AIR 2015 Kerala 250*, wherein it is held that mere exclusion of natural heirs or deviation from normal succession does not, by itself, constitute a suspicious circumstance, since the very purpose of executing a Will is to depart from the ordinary line of succession. It is thus submitted that the argument of the defendants that natural heirs have been excluded is legally untenable and cannot invalidate the Will.

34. Further reliance is placed on the judgment of the Hon'ble Supreme Court in *Vidhyadhar vs. Manikrao and another, (1999) 3 SCC 573*, wherein it is held that when a party does not enter the witness box to substantiate its pleadings, an adverse inference can be drawn against such party under Section 114 of the Evidence Act. Learned counsel submits that the defendants have not effectively discharged their burden to prove their allegations of fraud, undue influence or fabrication, and therefore, adverse inference deserves to be drawn against them.

35. It is further argued that the contention of the defendants regarding execution of Agreement to Sell and Power of Attorney on the same day as the Will is wholly irrelevant for the purpose of adjudication in the present suit. According to learned counsel, the present lis is confined to the validity of the Will, and the said transactions, even if assumed to exist, do not dilute or invalidate the testamentary disposition.

36. Learned counsel has also submitted that there is no prejudice caused to Defendant Nos. 1 to 4 by execution of the Will, as the Will pertains only to the share of late Kunda. It is argued that the shares of the defendants in the joint family properties remain intact and unaffected. It is further contended that even if the Will is ignored, the share of Kunda would devolve upon her natural heir, namely her son, and not upon Defendant Nos. 1 to 4. Hence, according to the learned counsel, the defendants have no locus to challenge the Will.

37. Lastly, learned counsel has addressed the objection raised regarding the attesting witness. By referring to documents at Exhibits 118 to 123, it is submitted that PW-2 is not related to the plaintiff and is an independent witness. Therefore, the allegation that the Will is supported by interested witnesses is devoid of substance.

38. On the basis of the aforesaid submissions, learned counsel for the plaintiff has urged that the Will at Exhibit 91 stands duly proved in accordance with law, that no suspicious circumstances have been established by the defendants, and that the plaintiff is entitled to seek partition and separate possession of the share bequeathed to him.

39. Heard learned Advocate Shri U.S. Sawant for Defendant Nos. 1 to 3 at length. The learned counsel has taken this Court through the pleadings, documentary evidence and oral evidence on record and has assailed the claim of the plaintiff on multiple legal as well as factual grounds.

40. At the outset, learned counsel submitted that the suit properties are admittedly ancestral properties coming from the common predecessors of the parties. In such circumstances, the alleged disposition by way of Will cannot be examined in isolation without impleading all necessary and proper parties. It is submitted that the son and husband of late Kunda, who are natural and Class-I legal heirs, have not been impleaded in the present suit. The non-joinder of such necessary parties strikes at the very root of the maintainability of the suit. In this regard, reliance is placed on ***Ali Amad vs. Sindhi Ebrahim Kasam, AIR 1983 Guj 156***, wherein it is held that a decree in a partition suit passed in absence of necessary parties is not sustainable in law.

41. Learned counsel further submitted that the present suit itself has suffered from serious procedural infirmities inasmuch as the suit has already been dismissed against several defendants and has abated against Defendant No. 37. It is argued that in a suit for partition, where the rights of all co-sharers are to be adjudicated, such partial abatement and dismissal render the suit defective and incapable of proper adjudication.

42. It is further submitted that the plaintiff has not approached the Court with a clean case as even the identity of the suit property is doubtful.

According to the learned counsel, House No. 512 is not even part of the suit property, yet the plaintiff has attempted to include it within the scope of the present litigation.

43. Learned counsel has then assailed the Will at Exhibit 91 on the ground that it is surrounded by several suspicious circumstances which go to the root of its genuineness. It is submitted that though the Will is a registered document, mere registration does not dispense with the mandatory requirement of proving due execution and attestation as per Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. In this regard, reliance is placed on *Bharpur Singh vs. Shamsher Singh, (2009) 3 SCC 687*, wherein it is held that even a registered Will must be strictly proved in accordance with law and the propounder must establish the sound disposing state of mind of the testator and remove all suspicious circumstances.

44. It is further submitted that the burden lies heavily upon the propounder of the Will to dispel all suspicious circumstances. Learned counsel relied upon *K. Laxmanan vs. Thekkayil Padmini, (2009) 1 SCC 354*, wherein it is held that the propounder must prove the genuineness of the Will by explaining all suspicious circumstances, and failure to do so renders the Will invalid.

45. Learned counsel has elaborated the suspicious circumstances in the present case as follows: Firstly, the natural legal heirs have been excluded without any explanation in the Will. It is submitted that when natural heirs are disinherited, the Will must contain reasons or surrounding

circumstances justifying such exclusion. Reliance is placed on **Niranjan Umeshchandra Joshi vs. Mrudula Jyoti Rao, (2006) 13 SCC 433**, wherein it is held that exclusion of natural heirs without justification is a strong suspicious circumstance. Secondly, it is submitted that the plaintiff has actively participated in the execution of the Will and is the sole beneficiary, which itself is a suspicious circumstance. Reliance is placed on **Apoline D'Souza vs. John D'Souza, (2007) 7 SCC 225**, wherein it is held that where the beneficiary plays an active role in execution and the attestation is not satisfactorily proved, the Will cannot be accepted. Thirdly, it is argued that there are material discrepancies in the Will itself. Learned counsel pointed out that in the registered Will at Exhibit 91, the age of Kunda is shown as 61 by handwritten correction in Devanagari script on multiple pages, whereas in the certified copy filed at list at Exhibit 144, the age is shown as 70 at page number 4 in printed form. This inconsistency, according to the learned counsel, creates serious doubt regarding the genuineness and authenticity of the document. Fourthly, it is submitted that though the plaintiff claims that the attesting witness is independent, the evidence shows that the witnesses are from places connected with the plaintiff, thereby creating doubt about their independence.

46. Further, learned counsel relied upon **Premakumari R. vs. O.K. Sivasankara Pillai, 2024 SCC OnLine Ker 3**, wherein it is held that where the propounder has active involvement, the Will remains in his custody, and natural heirs are excluded, such circumstances cast serious suspicion which must be satisfactorily explained.

47. Learned counsel also submitted that in cases where the Will is surrounded by suspicious circumstances and proper proof is not forthcoming, the Court must refuse to act upon such Will. In support, reliance is placed on ***Nalla Venkateshwarlu vs. Porise Pullamma, AIR 1994 AP 87***, wherein a Will was held to be concocted when surrounding circumstances created doubt.

48. Coming to the aspect of probate, learned counsel submitted that the plaintiff has not obtained probate of the alleged Will. It is argued that when rights are claimed solely on the basis of a Will, especially in contentious matters, the absence of probate weakens the claim of the plaintiff. Reliance is placed on ***Bipin Natwarlal Ganatra vs. Rohan P. Shah, 2010 (1) Bom CR 480***, wherein the importance of probate proceedings and judicial scrutiny of the Will has been emphasized. It is further submitted that even in ***I.R. Constructions Pvt. Ltd. vs. Yashpal Khullar, 2024 SCC OnLine All 3925***, it is seen that where probate proceedings are not pursued or are dismissed, the claim based on Will becomes doubtful.

49. Learned counsel has also relied upon ***Pandurang Jivaji Apte vs. Ramchandra Gangadhar Ashtekar, (1981) 4 SCC 569***, to submit that adverse inference cannot be lightly drawn unless the evidence on record justifies the same, thereby countering the reliance placed by the plaintiff on adverse inference. Further, placing reliance on ***Radhamma vs. H.N. Muddukrishna, (2019) 3 SCC 611***, it is submitted that though a coparcener may dispose of his share by Will, such disposition must be strictly proved in accordance with law, and unless the Will is proved, no right can be claimed on that basis.

50. In view of the aforesaid submissions, learned counsel contended that the plaintiff has failed to discharge the heavy burden cast upon him to prove the due execution and genuineness of the Will, that the Will is surrounded by multiple suspicious circumstances which remain unexplained, that the suit suffers from non-joinder of necessary parties and procedural defects, and therefore, the suit is liable to be dismissed.

AS TO ISSUE NO. 1:-

51. At the outset, the present issue pertains to the nature and character of the suit properties, namely, whether they are ancestral and jointly held by the predecessors of the plaintiff and Defendant Nos.1 to 4. This issue is foundational, as the entitlement to partition and the claim based on testamentary disposition would arise only if the joint and ancestral character of the property is first established.

52. The plaintiff has specifically pleaded that the suit properties situated at village Gadmath are ancestral properties descending from the common ancestor Budhaji, through his sons Babla, Shivram and Rajaram. It is further pleaded that late Kunda Ramji Gupta was the sole daughter of Babla, and Defendant Nos.1 to 4 are the heirs of Shivram and Rajaram respectively, thereby asserting that all parties derive their rights from a common ancestor.

53. In support of the said contention, the plaintiff has produced on record several revenue documents, namely 7/12 extracts at Exhibits 5 to 26 and 105 to 114, as well as 8A extracts at Exhibits 104, 119 and 120. These documents pertain to various survey numbers forming part of Schedule 'A'

to 'I' properties. The said documents are public documents within the meaning of Section 74 of the Indian Evidence Act, 1872, and certified copies thereof are admissible in evidence under Section 77 of the said Act. These documents reflect the names of various family members, including predecessors of the parties, as occupants or holders of the suit lands.

54. It is well settled that entries in revenue records are not documents of title, however, they are relevant under Section 35 of the Indian Evidence Act as entries made in official records in discharge of official duties. Such entries carry a presumption of correctness unless rebutted. In the present case, the defendants have not produced any cogent documentary evidence to dislodge the presumption arising from these entries.

55. Further, Defendant Nos.1 and 2, in their written statement as well as during the course of arguments, have not seriously disputed that the suit properties are derived from the common ancestors. On the contrary, learned counsel for Defendant Nos.1 to 3 has fairly submitted that the properties are ancestral in nature coming from common predecessors.

56. Such an admission, even if made during arguments, is a relevant fact under Section 17 of the Indian Evidence Act and can be taken into consideration. Moreover, under Section 58 of the Evidence Act, facts admitted need not be proved. Therefore, the ancestral character of the property stands substantially admitted by the contesting defendants.

57. The oral evidence of PW-1 (plaintiff), as per Exhibit 40, also

reiterates the genealogy and the joint nature of the property. Though he has been cross-examined, nothing substantial has been elicited to discredit the basic fact that the properties belonged to the common ancestor Budhaji and devolved upon his successors. The defendants have also not led any positive evidence to show that the properties are self-acquired or exclusive properties of any individual.

58. In this regard, the principles governing joint family and ancestral property under Hindu law are required to be considered. Under the classical Hindu law, property inherited from a common ancestor up to three generations acquires the character of ancestral property in the hands of the descendants. After the enactment of the Hindu Succession Act, 1956, though the concept of coparcenary has undergone certain statutory modifications, the basic principle that property inherited from a common ancestor retains its joint character unless partitioned remains intact.

59. In the present case, there is no material on record to show that there was any partition between the branches of Babla, Shivram and Rajaram prior to the institution of the suit. In absence of such evidence, the presumption under Hindu law is that the property continues to be joint.

60. Learned counsel for the plaintiff has relied upon Section 14 of the Hindu Succession Act to contend that the share of late Kunda became her absolute property. However, this submission is not directly relevant for deciding the present issue. Section 14 deals with the nature of a female Hindu's property and her right to hold it as absolute owner, but the applicability of the said provision would arise only after determining the

share of Kunda in the joint property. Therefore, for the purpose of Issue No.1, the said contention does not dilute the joint and ancestral character of the property.

61. Learned counsel for Defendant Nos.1 to 3 has not seriously contested the ancestral nature of the property, but has focused his arguments primarily on the validity of the Will and non-joinder of parties. On the contrary, the absence of any plea or evidence from the defendants asserting that the properties are self-acquired or exclusively owned by any individual strengthens the case of the plaintiff. Under Sections 101 to 103 of the Evidence Act, the burden initially lies upon the plaintiff to prove his case. The plaintiff has discharged this burden by producing revenue records and establishing genealogy. Thereafter, the burden shifts upon the defendants to rebut the same, which they have failed to do.

62. Thus, upon a cumulative consideration of (i) the pleadings of the parties, (ii) the documentary evidence in the form of revenue records, (iii) the oral evidence of the plaintiff, (iv) the absence of rebuttal evidence by the defendants, and (v) the admission on the part of the defendants regarding the ancestral nature of the property, this Court is of the considered view that the plaintiff has successfully established that the suit properties are ancestral properties belonging to the predecessor of the plaintiff and defendant no. 1 to 4. Accordingly, Issue No.1 is answered in the Affirmative.

AS TO ISSUE NO. 2 AND 4:-

63. At the outset, both these issues are interlinked, as the

entitlement of the plaintiff to seek partition of a defined share is entirely dependent upon his success in proving that late Kunda Ramji Gupta validly bequeathed her share in the suit properties in his favour by way of the Will dated 13/10/2015. Hence, both the issues are being discussed together to avoid repetition.

64. The plaintiff has based his entire claim on the Will at Exhibit 91. It is his specific case that late Kunda, being absolute owner of her share, executed a registered Will bequeathing her share in his favour and thereby conferred upon him ownership rights. The plaintiff has also relied upon mutation entry No. 1370 at Exhibit 27 to show that his name has been entered in revenue records pursuant to the said Will.

65. Before appreciating the evidence, it is necessary to consider the settled legal position regarding proof of a Will. Under Section 63(c) of the Indian Succession Act, 1925, a Will is required to be attested by at least two witnesses. Further, Section 68 of the Indian Evidence Act mandates that at least one attesting witness must be examined to prove the execution of the Will. In addition to proving formal execution, the propounder is required to prove that the testator was in a sound disposing state of mind and that the execution was voluntary.

66. The law is equally well settled that where there are suspicious circumstances surrounding the execution of the Will, the burden on the propounder becomes heavier. The propounder must remove all such suspicious circumstances to the satisfaction of the Court. This principle has been reiterated in *Bharpur Singh vs. Shamsher Singh, (2009) 3 SCC 687*,

wherein it is held that mere registration of a Will does not dispense with the requirement of strict proof and the propounder must prove due execution, testamentary capacity and absence of suspicious circumstances.

67. Similarly, in *K. Laxmanan vs. Thekkayil Padmini, (2009) 1 SCC 354*, it has been held that even where suspicious circumstances are not specifically pleaded, if such circumstances arise from the record, the propounder must explain them satisfactorily.

68. In *Apoline D'Souza vs. John D'Souza, (2007) 7 SCC 225*, it is held that proof of attestation is mandatory and the propounder must establish that the contents of the Will were understood by the testator and that the execution was free from doubt.

69. Keeping the aforesaid legal position in mind, the evidence on record is required to be appreciated. The plaintiff has examined himself (PW-1) and one attesting witness (PW-2) to prove the Will. Though examination of one attesting witness satisfies the technical requirement under Section 68 of the Evidence Act, the evidence must be of such quality as to inspire confidence and to remove all legitimate doubts.

70. On careful scrutiny of the evidence of PW-2, it emerges that his testimony is not wholly reliable and free from doubt. The defendants have brought on record documentary evidence (Exh.94 to 98) to suggest that the attesting witness is closely connected with the plaintiff. Even though the plaintiff has attempted to rebut this by producing documents at Exhibits 118 to 123, the surrounding circumstances indicate that the

witness is not wholly independent. Though he has supported the execution of the Will in his examination-in-chief, his cross-examination reveals material infirmities. He has failed to clearly depose about the exact manner of execution and attestation as required under Section 63(c) of the Indian Succession Act. His testimony does not satisfactorily establish that the contents of the Will were read over and explained to late Kunda or that she executed the same in a sound and disposing state of mind. Further, his evidence does not inspire independence, as the material brought on record indicates his proximity and connection with the plaintiff. The absence of clear, cogent and convincing testimony regarding the essential requirements of attestation, coupled with surrounding suspicious circumstances, renders his evidence unreliable for the purpose of proving due execution of the Will.

71. Further, there are material suspicious circumstances surrounding the execution of the Will which have not been satisfactorily explained by the plaintiff. Firstly, it is an admitted position that late Kunda had natural heirs, namely her husband and son. The Will is in favour of a third person, namely the plaintiff, who is not a natural heir. Though it is true that exclusion of natural heirs is not by itself fatal, as held in *C.G. Raveendran vs. C.G. Gopi supra*, such exclusion becomes a suspicious circumstance when coupled with other factors. In *Niranjan Umeshchandra Joshi vs. Mrudula Jyoti Rao, (2006) 13 SCC 433*, it is held that exclusion of natural heirs without any explanation in the Will raises serious suspicion. In the present case, there is no convincing explanation in the Will or in the evidence as to why the natural heirs were completely excluded.

72. Secondly, and most importantly, it has come on record that on the very same day i.e. 13/10/2015, three documents were executed by late Kunda in favour of the plaintiff, namely (i) the alleged Will (Exh.91), (ii) Agreement to Sell (Exh.81), and (iii) Power of Attorney (Exh.82). Though it is correct that the Agreement to Sell and Power of Attorney are not directly in issue in the present suit, they are relevant facts under Section 11 of the Evidence Act, as they form part of the same transaction and throw light on the intention and conduct of the parties.

73. The simultaneous execution of these documents creates a serious doubt. If late Kunda intended to transfer her property by way of testamentary disposition, there was no necessity to execute an Agreement to Sell for consideration of ₹10,00,000/- and a Power of Attorney on the same day. Conversely, if the intention was to transfer property during her lifetime, the execution of a Will becomes redundant. This inconsistency remains unexplained and creates a cloud over the genuineness of the Will.

74. Thirdly, the discrepancy regarding the age of late Kunda in the Will is also significant. As pointed out by the defendants, in the original registered Will (Exh.91), the age is altered to 61 by handwritten correction, whereas in the certified copy (list vide Exh.144), the age is shown as 70 in printed form at page number 4. This inconsistency in a vital detail further weakens the authenticity of the document.

75. Fourthly, the defendants have raised a specific plea regarding the physical and mental condition of late Kunda, stating that she was suffering from serious ailments. Though the burden to prove incapacity lies

on the defendants, the surrounding circumstances coupled with absence of independent medical evidence and lack of convincing testimony of attesting witness create doubt about her testamentary capacity.

76. Further, the conduct of the plaintiff in obtaining mutation entry without notice to other co-sharers also assumes relevance. It is settled that mutation entries do not confer title but are only for fiscal purposes. Hence, mutation entry No.1370 cannot be treated as proof of title based on the Will.

77. Another important aspect is the absence of probate. Though it is correct that in the State of Maharashtra probate is not compulsory in all cases, particularly outside notified areas, the absence of probate assumes relevance where the Will is seriously disputed and surrounded by suspicious circumstances. In *Bipin Natwarlal Ganatra vs. Rohan P. Shah (supra)*, it is emphasized that probate proceedings provide judicial scrutiny of the Will. Similarly, in *I.R. Constructions Pvt. Ltd. vs. Yashpal Khullar, 2024 SCC OnLine All 3925*, it is observed that where probate proceedings are not pursued, the claim based on Will becomes doubtful. Thus, though probate is not strictly mandatory, the absence of such adjudication in a case involving serious dispute adds to the doubt.

78. Learned counsel for the plaintiff has relied upon *Baljinder Singh vs. Wattan Singh and Wilma Levert Canuao vs. Allan D'Souza* to contend that a registered Will should be accepted if execution is proved. However, these judgments are distinguishable on facts. In those cases, the evidence of attesting witnesses was found reliable and suspicious

circumstances were absent. In the present case, as discussed above, multiple suspicious circumstances exist and remain unexplained.

79. The reliance placed by the plaintiff on *Vidhyadhar vs. Manikrao, (1999) 3 SCC 573*, to draw adverse inference against the defendants is misplaced. It is well settled that the plaintiff must succeed on the strength of his own case. In *Umesh Bondre vs. Wilfred Fernandes, AIR 2007 Bombay 29*, the Hon'ble Bombay High Court has held that the burden of proof lies on the plaintiff and that adverse inference cannot be drawn merely because the defendant has not entered the witness box, particularly when the plaintiff has failed to establish his own case.

80. In the present case, the evidence adduced by the plaintiff itself gives rise to serious doubts and does not satisfactorily establish the genuineness of the Will. Therefore, merely because the defendants have not led evidence of a particular nature or have not entered the witness box in a particular manner, the plaintiff cannot derive any benefit. The principle laid down in *Vidhyadhar vs. Manikrao (supra)* does not assist the plaintiff in the facts of the present case.

81. On the contrary, the judgments relied upon by the defendants, namely *Bharpur Singh, K. Laxmanan, Niranjan Joshi, and Apoline D'Souza*, squarely apply, as they deal with the burden of proof and suspicious circumstances surrounding the Will.

82. Upon cumulative appreciation of the entire evidence, this Court is of the considered view that the plaintiff has failed to dispel the

serious suspicious circumstances surrounding the Will. The evidence of the attesting witness is not wholly reliable and the surrounding circumstances create reasonable doubt regarding the genuineness and validity of the Will.

83. Accordingly, this Court holds that the plaintiff has failed to prove that late Kunda Ramji Gupta validly bequeathed her share in the suit properties in his favour by way of the Will dated 13/10/2015. Issue No.2 is answered in the Negative.

84. Insofar as Issue No.4 is concerned, the plaintiff's claim for partition is founded entirely upon the alleged Will. Once the Will is not proved, the plaintiff cannot claim the share of late Kunda on that basis.

85. It is, however, required to be noted that the suit properties have been held to be ancestral in nature under Issue No.1. Therefore, the right of partition, as such, is not extinguished. The share of late Kunda would devolve upon her legal heirs in accordance with the provisions of the Hindu Succession Act, 1956. In the present case, the natural heirs of late Kunda, namely her husband and son, are not parties to the suit. In view of such non-joinder and in absence of necessary parties, an effective decree for partition determining shares cannot be passed.

86. It is necessary at this stage to clarify the legal position regarding the nature of the share of late Kunda Ramji Gupta in the suit properties. Once it is held under Issue No.1 that the suit properties are ancestral in nature and that Kunda derived her share therein from her father Babla, the effect of Section 14(1) of the Hindu Succession Act, 1956

becomes relevant. Section 14(1) provides that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner and not as a limited owner. The provision has been interpreted consistently to mean that any limited estate or restricted interest held by a female Hindu gets enlarged into absolute ownership, provided she is in possession of the property. Thus, the share inherited by late Kunda from her father, even if originally part of joint family property, became her absolute property to the extent of her share. However, once this Court has held that the Will propounded by the plaintiff is not proved, the said absolute property of Kunda must devolve by way of intestate succession. In such a situation, the devolution is governed by Sections 15 and 16 of the Hindu Succession Act, and as already discussed, the property would devolve upon her husband and son as Class-I heirs. This clarification removes any ambiguity that while Kunda had absolute ownership over her share enabling testamentary disposition, in absence of a valid Will, the succession must necessarily follow the statutory scheme of intestate succession.

87. Thus, the plaintiff is not entitled to claim partition on the basis of the alleged Will and is not entitled to the shares as claimed in the plaint. Accordingly, Issue No.4 is answered to the effect that the plaintiff is not entitled to partition on the basis of the alleged Will and is not entitled to the shares claimed.

AS TO ISSUE NO. 3:-

88. The present issue pertains to the maintainability of the suit in view of the objection raised by Defendant Nos.1 and 2 regarding non-

joinder of necessary parties. The objection is twofold, namely, (i) non-impleadment of the natural heirs of late Kunda Ramji Gupta, and (ii) the effect of dismissal and abatement of the suit against several defendants.

89. At the outset, under Order I Rule 9 of the Code of Civil Procedure, 1908, no suit shall be defeated by reason of misjoinder or non-joinder of parties, however, the proviso thereto clearly states that nothing in the rule shall apply to non-joinder of a necessary party. Thus, if a necessary party is not impleaded, the suit itself becomes liable to fail.

90. The distinction between “necessary party” and “proper party” is well settled. A necessary party is one in whose absence no effective and enforceable decree can be passed, whereas a proper party is one whose presence may be necessary for a complete and final adjudication of the dispute. The Court is required to examine whether in absence of a party, an effective decree can be passed.

91. In the present case, it has already been held while deciding Issue No.1 that the suit properties are ancestral properties descending from the common ancestor. Late Kunda Ramji Gupta had a defined share therein. Once it is held that the Will propounded by the plaintiff is not proved (Issue No.2), the share of late Kunda would devolve as per the provisions of the Hindu Succession Act, 1956.

92. Under Section 15 of the Hindu Succession Act, the property of a female Hindu dying intestate devolves upon her heirs as specified in Section 15 of the Act. Section 15(1)(a) provides that the property of a

female Hindu shall devolve firstly upon her sons and daughters (including children of any pre-deceased son or daughter) and the husband. Thus, in the present case, upon failure of the Will, the share of late Kunda would devolve upon her husband and her son, who are Class-I heirs within the meaning of Section 15 read with Section 16 of the Hindu Succession Act. Although late Kunda inherited the share from her father, the exception under Section 15(2)(a) of the Act does not apply herein, because she left behind a surviving son. Hence, the general rule of succession under Section 15(1)(a) governs the devolution in the present case.

93. It is an admitted position on record that neither the husband nor the son of late Kunda have been impleaded as parties to the present suit. Their rights are directly affected, as they would be entitled to succeed to the share of late Kunda in absence of a valid Will.

94. In a suit for partition, all co-sharers are necessary parties. The Court is required to determine and declare the shares of all persons entitled to the property and thereafter effect partition. In absence of any co-sharer, no effective decree can be passed. Therefore, the husband and son of late Kunda are not merely proper parties but are necessary parties. In their absence, this Court cannot determine the true shares nor can pass an executable decree for partition.

95. This position is fortified by the principle laid down in *Ali Amad vs. Sindhi Ebrahim Kasam, AIR 1983 Guj 156*, wherein it has been held that in a partition suit, non-impleadment of co-sharers renders the decree ineffective and unsustainable. Further, the contention of the plaintiff

that the defendants have no prejudice as their shares remain unaffected cannot be accepted. In a partition suit, the shares of all co-sharers are interdependent, and the presence of all persons entitled to the property is essential for complete adjudication.

96. Another important aspect is the procedural history of the suit. As mentioned earlier, the suit has been dismissed against Defendant Nos.5 to 15, 17 to 19, 24 to 26, 28(1) to 28(6), 29 to 32 and 44, and has abated against Defendant No.37. In this regard, it is necessary to examine whether such parties were necessary or proper parties. The pleadings of the plaintiff indicate that Defendant Nos.5 to 66 were impleaded on the basis of entries in revenue record as co-sharers under Annewari. Thus, prima facie, they are co-sharers in the suit properties.

97. In a suit for partition, all co-owners are necessary parties, as the Court is required to pass a decree binding on all co-sharers. The dismissal of the suit against some of the co-sharers and abatement against others creates a serious defect, as the Court cannot now pass a decree determining their shares in their absence. The effect of abatement is that the suit stands terminated as against such party. In the present case, the abatement against Defendant No.37 and dismissal against several defendants has resulted in fragmentation of the lis, thereby rendering it impossible for the Court to pass a comprehensive decree for partition.

98. It is settled law that in a partition suit, partial adjudication is not permissible, as the shares of all co-sharers are to be determined in one proceeding. In absence of some co-sharers, the decree would be

inexecutable and may lead to multiplicity of proceedings. Thus, the non-joinder of the husband and son of late Kunda, coupled with dismissal and abatement of the suit against several co-sharers, strikes at the root of the maintainability of the suit.

99. The defect is not a mere irregularity but goes to the very root of jurisdiction to grant an effective decree. In such circumstances, the suit is liable to be held bad for non-joinder of necessary parties. Accordingly, Issue No.3 is answered in the Affirmative.

AS TO ISSUE NO. 5:-

100. Upon consideration of the entire material on record, this Court has answered Issue No.1 in the Affirmative holding that the suit properties are ancestral in nature belonging to the predecessors of the plaintiff and Defendant Nos.1 to 4. However, the plaintiff has failed to prove the Will dated 13/10/2015 (Issue No.2), as the same is surrounded by suspicious circumstances and has not been proved in accordance with law. Consequently, the plaintiff is not entitled to claim partition on the basis of the said Will (Issue No.4). Further, it has been held that the suit is bad for non-joinder of necessary parties, particularly the husband and son of late Kunda, and also suffers from defects arising due to dismissal and abatement against several co-sharers (Issue No.3). Thus, the plaintiff has failed to establish his entitlement to the reliefs sought in the present suit.

101. Insofar as the prayer of Defendant Nos.1 and 2 for compensatory costs under Section 35 and Section 95 of the Code of Civil Procedure is concerned, though the plaintiff has failed to prove his case, it

cannot be said that the suit is false or vexatious to such an extent so as to warrant imposition of compensatory costs. Hence, no compensatory costs are awarded. Accordingly, in answer to Issue No.5, the following order is passed.

ORDER

| | |
|----|---------------------------------|
| 1. | Suit is dismissed with costs. |
| 2. | Decree be drawn up accordingly. |

(Dictated and Pronounced in Open Court)

Vaibhavwadi
Date: 25/03/2026

(Shubham G. Laturiya)
Nyayadhikari, Vaibhavwadi
JO Code: - MH03297

CERTIFICATE

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

| | |
|--|-------------------------------------|
| 1.Name of Stenographer | :- A.N.Dhuri (A.A.Kudalkar) |
| 2.Name of Court | :- Civil & Criminal Court Kankavali |
| 3.Date | :- 25/03/2026 |
| 4.Judgment signed by Presiding Officer | :- 25/03/2026 |
| 5.Judgment uploaded on | :- 25/03/2026 |
