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IN THE COURT OF DISTRICT JUDGE - 03, PANDHARPUR
(Presided over by Shri. A. S. Salgar)

Regular Civil Appeal No. 19 of 2016.

Exh. - 47

Tukaram Sopan Kadam,
Age - 56 years, Occu. - Labour,
R/o. - C.S. No. 3531/A/1/B/B,
near Bankatswami Math,
Dhavalekarmath, Pardikshana road,
Pandharpur, Dist. Solapur.

Appellant

Versus

1. Sopan Tukaram Kadam,
Age – 77 years, Occu. - Nil,
R/o. - C.S. No. 3531/A/1/B/B,
near Bankatswami Math,
Dhavalekarmath, Pardikshana road,
Pandharpur, Dist. Solapur.

2. Dyaneshwar @ Prakash Sopan Kadam,
Age – 58 years, Occu. - Nil,
R/o. - C.S. No. 3531/A/1/B/B,
near Bankatswami Math,
Dhavalekarmath, Pradakshina road,
Pandharpur, Dist. Solapur.

Respondents

3. Bhagwant Sopan Kadam,
Age – 47 years, Occu. - Service,
R/o. - Malshiras, Dist. Solapur.

4. Kalpana Pandurang Patole,
Age – 50 years, Occu. - Service,

R/o. - Anandnagar, Takali road,
Pandharpur, Tal. Pandharpur, Dist.
Solapur.

5. Ramdas Dnyaneshwar Kadam,
Age – 29 years, Occu. - Agri.,
R/o. - C.S. No. 3531/A/1/B/B,
near Bankatswami Math,
Dhavalekarmath, Pardikshana road,
Pandharpur, Dist. Solapur.
6. Devidas Dyaneshwar Kadam,
Age – 47 years, Occu. - Agri.,
R/o. - C.S. No. 3531/A/1/B/B,
near Bankatswami Math,
Dhavalekarmath, Pardikshana road,
Pandharpur, Dist. Solapur.
7. Rushikesh Balaso Yadav,
Age – 20 years, Occu. - Education,
All R/o.- Nazra, Tal. - Sangola, Dist.
Solapur.

The appeal is filed under Sec. 96 of Code of Civil Procedure Code

Appearances -

Shri. T. B. Salunkhe Advocate for the Appellant.
Shri. S. K. Ranade, Advocate for the Respondents.

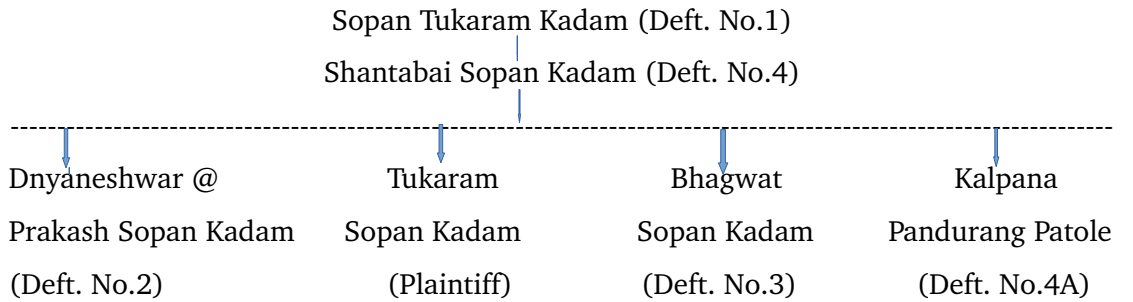
J U D G M E N T

(Delivered on 30th June, 2026)

The appellant (original plaintiff) has preferred this appeal against impugned judgment and decree passed in Special Civil Suit bearing No. 5/2009 by Ld. Civil Judge, Sr. Div., dated 28.10.2014, whereby the Ld. Civil Judge Sr. Div. dismissed the suit of the plaintiff and

also dismissed the counter claim of the defendant. (The parties in this appeal are described as per their original nomenclature in the suit.)

02. The appellant/plaintiff had filed Special Civil Suit No. 5/2009 against respondent/defendant for the relief of partition and separate possession of the suit property. The agricultural land bearing Gat No. 319/1/B admeasuring 1 H 22 R of village Shegaon Dumala and City Survey No. 3531/B/1/B/B admeasuring 223.56 sq. meter of Pandharpur City and open plot at village Takali, Tal. Pandharpur, bearing Gat No. 103/2 admeasuring 175.50 sq. meter and one Indica Car bearing registration No. MH-13/N-6242 which are described as suit property. These properties are suit properties, which are described as A to D in the plaint. The defendant No. 1 is father of the plaintiff. The defendant No. 4 is the mother of plaintiff and defendant No. 2 and 3 are real brothers of plaintiff. The plaintiff has given genealogy of their family, which is as under.



03. According to plaintiff, suit property described in para No. 1-B of plaint, is ancestral and joint family property of plaintiff and defendant No.1 to 4. The suit property described in para No. 1 B and 1-C are also joint family properties and it is owned and possessed by plaintiff

and defendant No. 1 to 4. The plaintiff and defendant No. 1 to 4 are jointly cultivating the suit property described in para No. 1-B and 1-C. The plaintiff and defendant Nos. 1 to 4 are having 1/5th share in suit properties 1-A to 1-C. The defendant No. 1 is addicted to liquor and bad vices. Therefore, he is thinking to alienate the suit property. There was no legal necessity to sale out the suit property. In order to deprive the right of plaintiff in property the defendant No. 1 is trying to alienate suit property. No partition has been effected in between plaintiff and defendant Nos. 1 to 4. In May 2008 the plaintiff demanded his 1/5th share in suit property to defendant No. 1. But defendant refused to effect the partition. Hence, plaintiff published notice in respect of same in the newspaper Lokmat dated 08.05.2008. But the defendant No. 1 and 2 did not effected partition of the suit properties. The plaintiff is still residing in suit property 1-B. Hence, the plaintiff filed present suit against the defendants and claimed partition and separate possession of his 1/5th share in the suit property.

04. The defendant No.1 and 4 submitted their written statement at Exh. 31 and resisted suit. Defendants denied exclusive possession of plaintiff over suit properties 1-A to 1-C. They have denied that suit properties are ancestral properties of plaintiff and defendants. According to defendant No.1 and 4 suit property 1-A to 1-C are separate and self acquired property of defendant No.1 and these properties are received from his adopted mother Jijabai Kadam. The suit property 1-B ie. house No. 3531/1-B/1/B/1/B/B was a open plot and defendant No.1 has carried out RCC construction over said property from his own income.

Defendant No. 1 used to give lessons in respect of Mrudung Vadak in both state of Maharashtra and Karnataka. He has also purchased property 1-B from said income. He has obtained loan from Solapur Vikas Bank for laying one pipeline from Bhima river. The defendant No. 1 has also alienated 1 acre land to repay the loan. According to defendant No.1 and 4 these properties are self acquired properties and separate properties of defendant No.1 and therefore, plaintiff cannot claim any partition of suit properties.

05. The defendant No.1 and 4 further contended that, the defendant No. 1 has allotted one room from the suit property 1-B to the plaintiff as licensee as there was domestic dispute between his in laws. These defendants requested to the plaintiff not to use said room for commercial purpose but the plaintiff refused to heed their advice. Therefore, the defendants have filed counter claim against the plaintiff and they sought perpetual injunction against the plaintiff restraining plaintiff and defendant No. 3 from allotting the said room of suit property 1-B to pilgrims to reside in it. The defendants also sought possession of said room from plaintiff.

06. The defendant No. 3 has filed his W. S. and admitted suit claim. He contended that, suit properties are not self acquired properties of defendant No. 1. Suit of the plaintiff be decreed and counter claim be rejected.

07. The defendant No. 4-A filed pursis and adopted the W. S. filed by defendant Nos. 1 and 2.

08. The plaintiff has filed his W. S. to counter claim at Exh. 45 and contended that, he is residing in suit property as co parcener and not in the capacity of licensee. The construction of suit property has carried out jointly by plaintiff and defendants. The defendant No. 1 has purchased suit property after alienating their ancestral property. The defendant No. 1 is not exclusive possession over the suit property. Plaintiff is residing in suit property 1-B as co parcener. Therefore, question of eviction does not arise. Lastly plaintiff prayed for dismissal of counter claim.

09. The Ld. Trial Court framed issues at Exh.50. In support of pleading the plaintiff namely Tukaram Kadam is examined at Exh.68. He also examined PW-2 Gajanan Patil at Exh.77. He also placed on record documentary evidence.

10. In rebuttal the defendant No. 3 examined herself at Exh. 83 and also relied upon DW-2 Gajanan Pawar at Exh. 94. Defendant No. 1 and 4 did not lead any oral evidence. The defendant No. 2 also did not lead any oral evidence. During pendency of suit the defendant No. 4 was died. The legal heirs of defendant No. 4 is already on record. The defendant No. 4 is represented by plaintiff and remaining defendants.

11. After considering oral and documentary evidence the Ld. Trial Court dismissed suit of plaintiff by observing that, the plaintiff has failed to prove that suit properties are ancestral and joint family properties of plaintiff and defendants. The Ld. Trial Court observed that, the plaintiff is not entitled to claim partition and separate possession of

the suit properties and therefore, Ld. Trial Court dismissed suit of plaintiff. The Ld. Trial Court also dismissed counter claim filed by defendants.

12. Being aggrieved and dissatisfied by the judgment and decree, the appellant/plaintiff preferred this appeal challenging the judgment and decree on the following grounds.

a) The impugned judgment and decree passed by Ld. Trial Court is against factual aspect and against principles of law.

b) The Ld. Trial Court has committed error by observing that, the suit properties are self acquired properties of defendant No. 1.

c) The Ld. Trial court ought to have answered the issue No. 1 in the affirmative.

d) The Ld. Trial Court ought to have given affirmative finding on issue No. 5.

e) The Ld. Trial Court has not drawn any adverse inference against the defendants as the defendant not entered witness box.

f) The Ld. Trial Court has not properly appreciated evidence on record.

Lastly, appellant prayed that the appeal may be allowed and judgment and decree passed by the learned Civil Judge Sr. Dn., Pandharpur, in Special Civil Suit No. 5/2009 be set aside and suit of plaintiff be decreed with costs.

13. The respondents(original defendants) appeared through their advocate and they supported the impugned judgment and decree passed by Ld. C.J.S.D., Pandharpur.

14. In the light of aforesaid discussion, I have gone through the record and proceeding of case. From the rival contention of parties. Following points arise for my determination and I have recorded my findings as below.

Sr.No.	Points	Findings
1.	Whether the plaintiff proves that, suit properties No. 1-A and 1-B and 1-C are ancestral and joint family properties of plaintiff and defendants ?	In the negative
2.	Whether the defendant No. 1 proves that, the suit property described in plaint para No. 1A to 1C are self acquired properties of defendant No. 1 ?	In the affirmative
3.	Whether plaintiff is entitled to claim partition and separate possession of his share in the suit property ?	In the negative
4.	Whether the defendant No.1 proves that, he has allotted one room admeasuring 20 x 10 ft. to the plaintiff as licensee ?	In the negative
5.	Whether defendant No.1 is entitled to claim possession of the room as mentioned in counter claim from plaintiff ?	In the negative
6.	Whether any interference of this Court is required in the impugned judgment and decree passed by the learned Civil	In the negative

	Judge Sr. Dn., Pandharpur ?	
7.	What order ?	As per final order.

REASONS

15. Heard learned advocate Shri. Salunkhe for the appellant/plaintiff and learned advocate Shri. Ranade for the respondents, at length. The ld. Advocate for the appellant submitted written argument at Exh.44. He also relied upon following ruling.

- a. AIR 2025 SC 523 Mahesh Vs. Sangram
- b. Privi Council Appeal No.59/1940 dated 26/07/1943 Anant Patil Vs. Shankar Patil
- c. 2019(7) ALL MR 121 Balkrushna Halde Vs. Yashodabai Halde

16. Before answering any point, it is necessary to mention admitted facts in this case. It is an admitted fact that, the plaintiff is son of defendant No. 1. The defendant No. 4 is wife of defendant No. 1 and she is mother of plaintiff and defendant No. 2 and 3. The defendant No. 2 and 3 are the brothers of plaintiff. It is admitted fact that, suit property described in plaint were purchased in the name of defendant No. 1. Admittedly the property at village Dhavali, Tal. Tasgaon was sold out and out of income from said land the suit property described in plaint were purchased in the names of defendant No. 1. It is also admitted fact that defendant No. 1 allotted one room to the plaintiff and plaintiff is residing in said room.

AS TO POINT NO. 1 and 2 -

17. It is case of plaintiff that, the suit property described in para No. 1 of the plaint are joint family properties of plaintiff and defendant Nos. 1 to 4. The plaintiff and defendants are having 1/5th share each in the suit properties. Suit properties are ancestral properties of plaintiff and defendants. This contention of plaintiff was denied by defendant No. 1 and 4. The defendants contended that, all the suit properties are separate and self acquired properties of defendant No. 1. The plaintiff has no concern with the suit properties and he cannot claim partition of suit properties.

18. For supporting the said contention the plaintiff has filed his evidence of affidavit at Exh. 68. The plaintiff has reiterated all the averments in the plaint. The plaintiff also examined PW-2 Gajanan Patil, who has also deposed that there was joint family between plaintiff and defendants and joint family was having agricultural land at village Dhavale, Tal. Tasgaon. He also stated that, ancestral property standing in name of defendant No.1 was sold out and out of said sale proceeds suit properties were purchased in the name of defendant No. 1. However there is no any documentary evidence in support of the contention of plaintiff that suit properties are joint family properties of plaintiff and defendants. The 7/12 extract of the suit properties filed on record by the plaintiff also shows that, the suit properties are standing in the name of defendant No. 1. The revenue record is not showing that, defendant No. 1 is joint family manager. It is admitted by the plaintiff as well as defendant No. 3 that suit property A was purchased by defendant No. 1

from the sale proceeds from the sale of agricultural land situated at village Dhavale. The certified copy of extract at Exh. 117 shows that, the suit property B came to share of defendant No. 1 in the partition from his adoptive family. There is no documentary evidence on record adduced by the plaintiff showing that, suit property B is joint family property of plaintiff and defendant. On the contrary defendant placed on record documentary evidence, which shows that, suit property B is self acquired property of defendant No. 1.

19. In present case, the plaintiff has not adduced any documentary evidence to show that, the suit properties were purchased out of income of joint family property. The plaintiff as well as PW-3 nowhere stated that, they have made contribution while purchasing suit property C. The sale deed dated 03.10.2000 shows that, the said land is standing in the name defendant No. 1. These documents show that, the defendant No. 1 is owner of suit property C and it is his self acquired property. Except oral evidence of plaintiff and his witness there is absolutely no evidence to show that, suit property described in plaint is joint family of plaintiff and defendant Nos. 1 to 4. It is submission of defendant No. 1 is that, he is adopted son of Tukaram Kadam and Jijabai Kadam. The defendant No. 3 in his cross examination has admitted that, plaintiff is adopted son of Tukaram Kadam. Certified copy of judgment in RCA No. 95/1952 is at Exh. 179 and certified copy of judgment in RCS 251/1950 at Exh. 180. It is crystal clear that, the defendant No. 1 was adopted by Jijabai W/s Tukaram Kadam and property situated at village Dhavali came to share of defendant No. 1 after fighting civil litigation.

The defendants have adduced documentary evidence on record to prove that, the properties at village Dhavli came to share of defendant No. 1 from his adoptive family. The documentary evidence shows that, the suit properties are self acquired properties of defendant No. 1. Hence, plaintiff and defendant Nos. 2 to 4 cannot claim any share in the suit property.

20. In present case, the defendant No. 1 has inherited property at village Dhavali in adoption. Admittedly Jijabai has adopted defendant No. 1 after demise of her husband. Therefore, property inherited by defendant No. 1 from female ancestral who had adopted him cannot be termed as ancestral property. Suit properties were purchased in the name of defendant No. 1 from the sale proceeds of property at village Dhavale. Therefore, these properties cannot be termed as ancestral properties of plaintiff and defendant No. 1 to 4. The plaintiff and defendant No. 3 have not contributed for purchasing any of the property. In my view, the plaintiff and defendant Nos. 2 to 4 have no right and title in the suit properties. The defendant No. 1 by adducing documentary evidence proved that, suit property A, B, C are self acquired properties. He has discharged burden casted upon him through documentary evidence. In short plaintiff has not adduced any evidence to prove that, suit properties are joint and ancestral properties of plaintiff and defendant No. 1. The defendant No. 1 by adducing documentary evidence sufficiently proved that, suit properties mentioned in plaint are self acquired properties of defendant No. 1. The plaintiff has failed to prove that, the suit properties are joint and

ancestral properties of plaintiff and defendants. The defendant No. 1 has proved self acquisition of suit property. The Ld. Trial Court has rightly observed that, the plaintiff has failed to prove that, the suit properties are joint and ancestral properties of plaintiff and defendants. Hence, I answer point No. 1 in the negative and point No. 2 in the affirmative.

AS TO POINT NO.3 -

21. In present case, the plaintiff has claimed partition and separate possession of his 1/5th share in the suit property. However, except bare words of the plaintiff there is absolutely no evidence to show that the suit properties are belonging to joint family of plaintiff and defendants No.1 to 4. There is no documentary evidence on record to show that the suit properties were ancestral and joint family properties of plaintiff and defendants. The evidence on record shows that, defendant No.1 is adopted son of Tukaram Kadam and Jijabai Kadam. The documentary evidence shows that the defendant No.1 was adopted by Jijabai and the properties came to the share of defendant No.1 after fighting civil litigation. The defendant No.1 sufficiently proved that the suit properties were self acquired properties of defendant No.1. The property inherited by defendant No.1 from female ancestor who had adopted him cannot be termed as an ancestral property. Admittedly, the property A, B, C were purchased from the sale proceeds of the properties situated at village Davali. And therefore these properties cannot be termed as ancestral property of plaintiff and defendant No.2 to 4. In my view the plaintiff and defendant No.2 to 4 have no right, title, interest in the suit property. Since plaintiff has failed to prove that suit properties

were joint family properties of plaintiff and defendants, the plaintiff is not entitled to claim partition and separate possession of the suit property. The learned Trial Court rightly observed that the plaintiff cannot seek the partition and separate possession in respect of suit properties. The defendant No.1 is the real owner of the suit properties. Hence, plaintiff cannot claim partition of the suit properties. Hence, I answer point No.3 in the negative.

AS TO POINT NO. 4 and 5 -

22. It is contended by defendant No. 1 and 4 that, he has given one room to the plaintiff as licensee. The plaintiff was indulging in receiving money from the pilgrims and used to allot room to the pilgrims on daily rent basis. The plaintiff in order to harass the defendant sent notice and filed false suit. Hence, by filing counter claim the defendant No.1 is claiming possession of the said room from the plaintiff. However the defendant No.1 has not adduced any oral and documentary evidence in order to show that, room was allotted to the plaintiff as licensee. The defendant No. 1 has not entered into witness box. He has not examined any other witness to prove that, room was allotted to the plaintiff as licensee. There is absolutely no oral and documentary evidence to show that, the plaintiff was receiving money from pilgrims and allotting room to the pilgrims on daily rental basis. Admittedly the plaintiff is son of defendant No. 1. A person residing with his parents cannot be treated as licensee. Being son of defendant No. 1, the plaintiff is residing in the room as a member of the family in the capacity of the defendant No. 1. The relationship of son and father cannot be termed as licensor and

licensee. In short there is absolutely no evidence on record to prove that, the defendant No. 1 has allotted room to the plaintiff as licensee and the plaintiff was receiving money from pilgrims. Hence, I hold that, the defendant No. 1 has failed to prove that, the plaintiff is licensee and he allotted room to the plaintiff as licensee. The defendant No. 1 is not entitled to claim possession of the room by way of counter claim. The Ld. Trial Court has rightly observed that, the plaintiff is residing in the room in the capacity of son of defendant No. 1 and he cannot be termed to be as licensee in any way. Therefore, the Ld. Trial Court has observed that, the defendant No. 1 is not entitled to seek possession of room as described in counter claim. Admittedly the counter claim filed by defendant No. 1 is dismissed by the Ld. Trial Court. The respondent (Original defendant No. 1) has not filed any cross objection before this Court nor challenged finding given by the Ld. Trial Court on issue No. 3 and 6. Since cross objection is not filed by the respondent No.1 the finding given by the Ld. Trial Court regarding counter claim filed by the respondent is binding upon him. In short the defendant No. 1 has not proved his contention that the room was allotted by him to the plaintiff as licensee and he is entitled to seek relief of possession of said room. Hence, I answer point No. 4 and 5 in the negative.

AS TO POINT NO. 6 -

23. It is submission of plaintiff that, the suit properties are joint family properties of him and defendants. However except bare words of plaintiff there is no evidence on record to show that, suit properties are joint family properties of plaintiff and defendants. The defendant No.3

admitted in cross-examination that, plaintiff is adopted son of Tukaram Kadam and properties situated at village Davali came to the share of defendant No.1 from his adoptive family. The evidence on record shows that, the defendant No. 1 was known as Davalekar Maharaj in the vicinity of Pandharpur. He also well known Mrudung Vadak. It is not the case of the plaintiff that he as well as other defendants have contributed for purchase of any of the suit property and he was getting income. The evidence on record shows that, suit properties were independently acquired by the defendant No. 1. The suit properties are not joint family properties of the plaintiff. Therefore, the Ld. Trial Court has rightly observed that, the suit properties are not joint family properties and suit properties were independently acquired properties of defendant No. 1.

24. In present case, the evidence on record shows that, the suit properties are self acquired properties of defendant No. 1. Since the suit properties are self acquired properties of defendant No. 1, the plaintiff has no right to claim partition of the suit property. The Ld. Trial Court has rightly observed that, the plaintiff has not entitled to claim partition of the suit property.

25. I have gone through impugned judgment passed by the Ld. Trial Court. The Ld. Trial Court has rightly considered and appreciated the evidence adduced by the parties and rightly given finding on all issues. There is no error committed by the Ld. Trial Court in dismissing the suit of plaintiff. The Ld. Trial Court has rightly given reasons and findings on all issues and rightly considered the admissions given by the plaintiff. The Ld. Trial Court has rightly held that, suit properties are self

acquired properties of defendant No. 1 and plaintiff is not entitled to claim partition of the suit properties. Therefore, the Ld. Trial Court has rightly dismissed the suit of plaintiff and also dismissed the counter claim filed by the defendant No.1. No error has been committed by the Ld. Trial Court by dismissing the suit as well as counter claim. In my view, the impugned judgment passed by learned trial Court is just and proper one. The judgment and decree does not suffer perversity. No interference is required by this Court in the said judgment. Hence, I find no substance in the appeal. Therefore, I answer point No. 6 in the negative.

26. In the light of aforesaid discussion, I am of the view that, Ld. Trial Court properly considered evidence on record and dismissed suit of plaintiff as well as counter claim of defendant No.1. No error committed by Ld. Trial Court. Hence, appeal is liable to be dismissed. The impugned judgment and decree passed by Ld. Trial Court needs to be confirmed. Hence, I pass following order.

ORDER

- 1) Regular Civil Appeal No.19/2016 stands dismissed.
- 2) The judgment and decree passed by the learned Civil Judge Sr. Dn. Pandharpur in Special Civil Suit No.05/2009 dated 28.10.2014 is hereby confirmed.
- 3) Parties to bear their respective costs.

- 4) Decree be drawn up accordingly.
- 5) The record and proceeding of Special Civil Suit No.05/2009 be sent back to the learned Trial Court.
- 6) Order accordingly.

(Judgment dictated and pronounced in open court)

Date – 30.06.2026.

(A. S. Salgar)
District Judge – 3, Pandharpur.

CERTIFICATE

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

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Pandhapur. |
| 03. | Order/judgment signed by P.O.
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