

MH50130002182021



Received on - 16/03/2021

Registered on - 18/03/2021

Decided on - 16/03/2026

Duration - 05 Yrs. 00 Ms. 00 Ds.

**IN THE COURT OF 3rd JOINT CIVIL JUDGE, JUNIOR
DIVISION, BARSHI, DISTRICT - SOLAPUR**
(**Presided over by: Smt. H. U. U. Patil**)

REGULAR CIVIL SUIT NO. 169/2021.**Exh. No. 59.**

Swati Rajendra Barangule,
Age: 31, Occ. Agri.,
R/o. Khandavi, Tal. Barshi
Dist. Solapur.

...Plaintiff

Versus

1. Subhash Govind Pawar,

Age: 60 yrs, Occ. Agri.

2. Sau. Rukmini Subhash Pawar,

Age: 53 yrs. Occ. Household,

3. Dipak Subhash Pawar,

Age: 26 yrs, Occ. Agri.,

4. Jyoti Amol Raut,

Age: 28 yrs, Occ. Household,

R/o.Narkhed, Tal. Mohol,

Dist. Solapur.

5. Kum. Shivraj Dipak Pawar,

Age: 02 yrs, Occ. Nil. (Minor through
guardian his mother Sau. Pratiksha

Dipak Pawar, Age 21 yrs. Occ. Household **..Defendants**

Deft. nos. 1, 2, 3 and 5 R/o. Godsewadi,
Post Soundare, Tal. Barshi, Dist.Solapur. **..Defendants**

Advocates' appearance:

For plaintiffs: Shri. R. U. Vaidya.
For defendant nos. 1, 3 and 5 : Shri. P. J. Kulkarni.
For defendant nos. 2 and 4 : Shri. K. P. Raut.

J U D G M E N T
(Delivered on : 16/03/2026)

This is a suit for declaration, perpetual injunction and partition.

Suit properties :-

2. The following properties situated at village Khandavi, Tal. Barshi, Dist. Solapur are suit properties.

Gat no.	Area H. R.	Aakar	Four boundaries			
			East	South	West	North
325, Southern side	1-20	00-55	Road	Road	Shivaji Thongal	Ashok Pawar
517/1, On middle side.	01-00	02-11	Land of Shirame	Land of Tikate	Land out of same Gat	Land of Tikate
517/2A Eastern side of (517/2/1)	00-60	01-26	Bhagwan Shrirame	Land of Kadam	Land out of same Gat	Land of Tikate
518, South West corner.	00-51	01-34	--	--	--	--

366/1, Western side	00-40	01-22	--	--	--	--
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One bore and Vasti in Gat no. 325, so also 1/4th share in bore in Gat no. 366/1, One well situated in Gat no. 518, electric motor, pipeline, electric connection etc. (Hereinafter, referred to as “the suit properties.”)

Admitted facts :

3. The parties are Hindu by religion. The relationship between both parties is not disputed. The plaintiff and defendant nos. 3 and 4 are real brothers and sisters. The defendant no. 1 and 2 are their parents. The defendant no. 5 is son of the defendant no. 3 and grandson of the defendant no. 1 and 2. Further, it is admitted fact that the defendant no. 3 instituted a suit i.e. RCS no. 10/2017 against the defendant no. 1 and 2 in the Barshi Court for partition of Gat no. 325, 517/1 and 517/2/1. In that suit, the defendant nos. 1 to 3 are arrived at compromise and award has made by Lok Adalat. The effect of said award has given to the record of rights of the properties in that suit. Further, it is admitted that the defendant no. 2 i.e. mother of the plaintiff has executed sale deed no. 678/2021, dated 02.02.2021 in relation with property in Gat no. 517/1 in favor of the plaintiff. Accordingly, effect of said sale deed has given to revenue record of the said property. Further, it is admitted fact that the defendant no. 1 has executed gift deeds no. 1610/2021 and 1611/2021 in favour of the defendant no. 5.

Plaintiff's case :

4. According to the plaintiff, the land ad-measuring 60 R in

Gat no. 325 is an ancestral property of their family. The remaining properties out of the suit properties are purchased by the defendant no. 1 from the income of their joint family properties and out of sale consideration of their ancestral house properties and the land ad-measuring 46 R in Gat no. 325. According to her, suit properties are their joint family properties. The plaintiff and defendant nos. 1 to 4 have undivided 1/5th share in the suit properties. Till today, partition has not taken place between them by metes and bounds.

5. According to the plaintiff, the plaintiff and defendant no. 4 were not made party to that suit RCS no. 10/2017. The said suit was instituted on 03.01.2017 and compromised in Lok Adalat on 08.07.2017. The defendant no. 1 to 3 obtained award in Lok Adalat without impleading the plaintiff and defendant no. 4 as a party. Further, they obtained award without adding all properties belonging to joint family. Therefore, they have obtained the said award by committing fraud on the Court. Therefore, the compromise and award in Regular Civil Suit no. 10/2017 is illegal and not binding on the share of plaintiff and same is liable to be cancelled.

6. In view of said compromise, name of defendants have mutated on the revenue record. By taking dis-advantage of the same, defendant nos. 1 and 3 are about to dispose the said properties. The plaintiff came to know about this on 24.08.2020 when she saw the 7/12 extract and mutation certificate no. 6262. On 25.08.2020, the plaintiff asked the defendant nos. 1 and 3 about the same and requested them for separation of her share by partition. She further requested to not dispose these properties. However, the defendant

nos. 1 and 3 clearly denied to do so. Therefore, the plaintiff inclined to file the present suit.

7. After institution of the suit, the plaintiff carried amendment in the plaint. She pleaded that during the pendency of suit, the defendant no. 1 in collusion with the defendant no.3 executed gift deed no. 1610/2021 and 1611/2021 in favour of defendant no. 5 with intent to avoid share of plaintiff. The defendant no. 1 executed gift deed of the land admeasuring 51 R located at eastern side in Gat no. 518 and land ad-measuring 1 H. 20 R located at eastern side in Gat no. 325. The said gift deeds have executed without consent of the plaintiff. Therefore, said gift deeds are illegal and not binding on share of the plaintiff.

8. Accordingly, in the present suit, the plaintiff has claimed relief of declaration that the compromise and award in the Regular Civil Suit no. 10/2017 is illegal and not binding on her share. Further, she prayed relief of declaration that gift deeds no. 1610/2021 and 1611/2021, dated 15.03.2021 executed by the defendant no.1 in favour of defendant no. 5 are illegal and not binding on the share of plaintiff. Further, she prayed for relief of partition to separate her 1/5th share in the suit properties. In addition, the plaintiff claimed relief that 1/5th share of the defendant no. 2 which was sold to her by the defendant no. 2 be given to the plaintiff. Further, at the time of final partition, the property sold to the defendant no. 2 be given to the share of defendant no. 2 and same to be final in favour of the plaintiff in accordance of sale deed. The plaintiff has further claimed relief of perpetual injunction to restrain the defendant no. 1 and 3 from creating third party interest

in the suit property. The plaintiff prayed to decree the suit as per relief claimed in the plaint.

Case of defendant nos. 2 and 4 :

9. The defendant no. 2 has filed written statement at Exh. 14 and admitted the claim of plaintiff. She submitted to allow the suit filed by the plaintiff.

10. The defendant no. 4 has filed written statement at Exh. 15 and admitted the claim of plaintiff. Further, she filed counter claim and re-iterated the facts in the original plaint. She also stated in accordance of averments made by the plaintiff in the plaint. She stated that the plaintiff informed her about award and compromise in RCS no. 10/2017. The defendant nos. 1 and 3 denied to separate shares of defendant no. 4 and plaintiff. Therefore, she has filed this counter claim. The defendant n. 4 prayed relief of declaration that the compromise and award in RCS no. 10/2017 is illegal and not binding on her share in the suit properties. Further, she claimed separation of her 1/5th share in the suit property through partition. The plaintiff has filed pursis (Exh. 58) and stated that she has no objection to allow the counter claim filed by the defendant no. 4.

Case of defendant nos. 1 and 3 :-

11. Defendant nos. 1 and 3 filed written statement at Exh. 20 and contested the suit. According to them, the suit is not tenable. It is barred by law of limitation. These defendants categorically denied all averments in the plaint. According to them, the defendant no. 2 is mother of plaintiff and defendant no. 3. However, she has affection only towards the plaintiff. She always instigates the

plaintiff against the defendant nos. 1 and 3. At the time of partition, the plaintiff stated that “I will not come to the Court, you file the suit and give the property of my share in the name of my mother (i.e. defendant no. 2). Then I will re-transfer the same in my name.” Therefore, defendants filed Regular Civil Suit no.10/2017 without impleadment of the plaintiff. Accordingly, the said suit was compromised before Lok Adalat and as agreed, the property mentioned in paragraph no. 4 of the plaint was given to the defendant no. 2 in order to give the same to the plaintiff. The plaintiff personally has knowledge of all these facts. The defendant no. 1 has purchased the suit properties by doing dairy milk business and labour work. Therefore, the suit properties are self acquired properties of the defendant no.1.

12. In view of that compromise, the defendant no. 2 has executed the sale deed in favour of the plaintiff in relation with land ad-measuring 1 H in the middle side of Gat no. 517/1 on 2.2.2021 vide sale deed no. 678/2021. The effect of sale deed has given to the record of rights of the suit property. The plaintiff had knowledge of the suit RCS no. 10/2017 and the compromise therein. The plaintiff has got executed the said sale deed without giving any consideration to the defendant no. 2. Therefore, the suit filed by the plaintiff is not bonafide. These defendants prayed to dismiss the suit filed by the plaintiff and claimed compensatory costs of Rs. 1,000/-.

Case of defendant no. 5 :-

13. The defendant no. 5 filed written statement at Exh. 40 and contested the suit. The defendant no. 5 is minor and his mother has appointed as his guardian in view of order below application

(Exh. 23). The defendant no. 5 has re-iterated all facts in the written statement of the defendant nos. 1 and 3. In addition, he stated that the property Gat no. 517/1 which was transferred to him was purchased by the defendant no. 1 from Jankabai Prabhu Kadam on 13.04.2010 for consideration of Rs. 1,30,000/- in view of sale deed no. 1365/2010. Further, the property bearing Gat no. 325 is purchased by the defendant no. 1 from Hanmant Govind Pawar before 30 years. Therefore, the said properties are self acquired properties of the defendant no. 1. Therefore, in order to dispose the said properties, the defendant no. 1 does not need to ask any one. Therefore, the relief claimed against the defendant no. 5 by the plaintiff is not legal. He prayed to dismiss the suit with compensatory costs of Rs. 1,000/-.

14. My learned predecessor on the basis of pleadings of both parties, has framed issues at Exh. 23, which are reproduced as under-

<u>Sr.No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Does the plaintiff prove that the suit properties are joint Hindu family properties of herself and the defendants no. 1 to 4 ?	In the affirmative
2.	Is the plaintiff entitled to have partition of the suit properties ? If yes, what would be the respective shares of the parties ?	In the affirmative, 1/5th share for each to plaintiff and defendant nos. 1 to 4.
3.	Is the plaintiff is entitled to 1/5th share in the suit properties ?	In the affirmative

4.	Is the plaintiff entitled to other 1/5th share as per the sale deed dated 2/2/2021 with regard to property purchased by her from defendant no. 2 ?	Partly affirmative
5.	Whether plaintiff is entitled to the relief that, sale deed no.678/2021 dated 2/2/2021 entered in her favour by defendant no.2 be finalized ?	In the partly affirmative
6.	Is the plaintiff entitled to get relief of declaration that, the compromise and award dated 08/07/2017 in RCS No.10/2017 is unlawful and not binding on the plaintiff's share?	Partly affirmative
7.	Is the plaintiff entitled to get the declaration that, the gift deeds no.1610/2021 and 1611/2021 dated 15/3/2021 entered in favour of defendant no.5 by defendant no.1 are illegal and not binding on the plaintiffs share?	Partly affirmative
8.	Is the plaintiff entitled to the relief of perpetual injunction against the defendant nos.1 and 3 as prayed ?	In the negative.
9.	Whether counter claimant (defendant no.4) is entitled to the relief of declaration as prayed ?	Partly affirmative
10.	Whether counter claimant (defendant no.4) is entitled to the 1/5th share in the	In the affirmative

	suit properties ?	
11	Is the suit brought within the limitation period as per the Limitation Act ?	In the affirmative
12.	Whether defendant nos. 1 and 2 are entitled to compensatory costs as prayed ?	In the negative.
13.	What order and decree ?	As per final order.

Evidence :-

15. In order to substantiate the claim, the plaintiff has testified herself by filing affidavit in lieu of examination-in-chief (Exh. nos. 35 and 38). In support of oral evidence, the plaintiff has relied on documentary evidence filed along with list of documents (Exh. nos. 4, 8, 37 and 52). The proved documents will be discussed in the relevant part of reasoning. The plaintiff filed evidence closure pursis at Exh. 49,

16. Despite giving sufficient opportunities, defendants failed to appear and lead evidence. Therefore, no defence evidence order is passed against the defendants below Exh. 01 on 06.01.2026 and 10.02.2026.

17. Heard learned advocate Shri. R. U. Vaidya for the plaintiff. Despite giving sufficient opportunities, none appeared on behalf of defendants for argument. Therefore, no argument order has passed against defendants below Exh. 01 on 05.03.2026.

REASONS

As to issue no. 01 :-

18. In this suit, the plaintiff has claimed relief of partition by

taking stand that suit properties are belonging to their joint family. To prove the said fact, she adduced oral and documentary evidence. The plaintiff pleaded and deposed that the suit properties are belonging to their Hindu Joint Family. Therefore, these properties are joint family properties. The learned advocate for the plaintiff argued that in the earlier suit, RCS no. 10/2017, the defendant no. 3 has admitted that these properties are joint family properties. Therefore, on the basis of oral evidence of the plaintiff and admission of the defendants, it is clear that the suit properties are joint family properties of the parties. Now, it is necessary to consider evidence on record in relation therewith.

19. During evidence affidavit (Exh. 35), the plaintiff has reiterated all facts in the plaint. The defendants have not cross examined her. They have failed to challenge an oral testimony of the plaintiff. Therefore, the same has remained unchallenged. Nothing is brought on record by the defendants to prove or show that the plaintiff is deposing false statements against them. Further, there is no documentary evidence on record contrary to the oral evidence of the plaintiff. Therefore, I do not found any strong reason to disbelieve or discard the oral testimony of the plaintiff. Therefore, an oral testimony of the plaintiff is reliable and trustworthy.

20. The plaintiff deposed that the suit properties are purchased by the defendant no. 1 out of the income of Hindu joint family properties. She deposed that land ad-measuring 60 R in the Gat no. 325 is their ancestral property. The remaining properties out of the suit properties are purchased by her father from the income of joint family properties and out of sale consideration of ancestral

properties i.e. house properties and land ad-measuring 0 H. 46 R in Gat no. 325. She specifically deposed that these all suit properties are belonging to their Hindu undivided family.

21. In support of oral testimony, the plaintiff relied on the admission of defendant no. 3 in RCS no. 10/2017. Perused the certified copy of plaint in RCS no. 10/2017 (Exh. 46). The defendant no. 3 herein is the plaintiff in that suit. The land ad-measuring 1 H. 20 R in Gat no. 325, the land ad-measuring 0 H. 60 R on Eastern side of Gat no. 517/2/1 and land ad-measuring 1 H. on Eastern side of Gat no. 517/1 were the suit properties in that suit. In that suit, the defendant no. 3 pleaded that properties in that suit are their joint family properties. The defendant nos. 1 and 3 have admitted the institution of this suit in their written statement. The statement of the defendant no. 3 in the plaint in earlier suit is an admission given by him regarding the nature of properties in view of Section 21 of the Indian Evidence Act (Section 19 of Bharatiya Sakshya Adhinyam) In this situation, this admission of the defendant no. 1 in the earlier suit is relevant to the present suit.

22. The defendant no. 1 and 3, in written statement, stated that the suit properties are self acquired properties of the defendant no.1. Therefore, in view of Section 101 of Indian Evidence Act, 1872 (Section 104 of Bharatiya Sakshya Adhinyam, 2023), the burden lies on them to prove the said fact. However, despite giving sufficient opportunities, they have not led any evidence to prove that suit properties are self acquired properties of the defendant no. 1. The defendant nos. 1 and 3 have not brought on record any documentary evidence to prove that suit properties are purchased by the defendant

no. 1 from his own earning. Moreover, the defendant no. 1 and 2 have not entered in the witness box and deposed the said fact on oath. Therefore, there is no oral as well as documentary evidence on record in support of the claim of defendant no. 1 and 3. Considering entire evidence on record, it does not reveal that suit properties are self acquired properties of the defendant no. 1. Therefore, these defendants have failed to discharge burden casted on them.

23. In addition to oral evidence, the plaintiff has filed 7/12 extract of the suit properties. The 7/12 extract of Gat no. 325 (Exh. 39) transpires that the defendant no.1 is occupant therein for land admeasuring 1 H 20 R. The 7/12 extract of Gat no. 366/1 (Exh. 40) transpires that the defendant no. 1 is occupant therein for a land admeasuring 0 H 40 R. The 7/12 extract of Gat no. 517/1 (Exh.41) transpires that earlier the defendant no. 1 was occupant of land admeasuring 1 H. Thereafter, his name was deleted in view of mutation certificate no. 6262 and the name of the defendant no. 2 was taken on record. Thereafter, the name of defendant no. 2 was deleted and the name of plaintiff has taken on record by the mutation certificate no. 7032. The 7/12 extract Gat no. 517/2/A (Exh. 42) transpires that earlier the defendant no. 1 was occupant of land ad-measuring 0 H. 60 R. Thereafter, in view of mutation entry no. 6262 his name has deleted and the name of defendant no. 3 has taken on record. The 7/12 extract of Gat no. 518 (Exh. 43) reveals that the defendant no. 1 is occupant of land ad-measuring 0 H. 51 R therein. Considering these all 7/12 extracts, it reveals that earlier the defendant no. 1 was occupant in all these properties and subsequently, the name of defendant no. 2, defendant no. 3 and plaintiff has taken on record of right of some of the properties.

24. The plaintiff on oath deposed that the land admeasuring 0 H. 60 R is their ancestral property. Further, the defendant no. 1 has purchased remaining properties out of the fund of Hindu undivided family properties. Further, she brought on record that the defendant no. 1 and 2 had no alternative means other than agriculture. The said statements of the plaintiff are not challenged or questioned by defendants through cross examination. Therefore, the same has remained unchallenged. In this situation, the same is reliable and acceptable. The oral evidence of the plaintiff about the nature of suit property is corroborated by the admission of defendant no. 3 in earlier suit RCS no. 10/2017 to some extent. Further, the entries in revenue record also supports the claim of plaintiff. Considering the unchallenged testimony of the plaintiff, admission of the defendant no.3 in the earlier RCS no. 10/2017 and revenue record of the suit properties it is concluded that the suit properties are belonging to the Hindu undivided family of the plaintiff and defendants. Therefore, the suit properties are Hindu undivided family properties. Accordingly, I answer issue no.1 in affirmative.

As to issue no. 2, 3, 6, 9 and 10 :-

As these issues are interlinked with each other, discussed together.

25. The plaintiff averred and deposed that the suit properties are belonging to their joint family. Till today, partition has not taken place between them. She claimed that she has 1/5th share in the suit properties along with defendant nos. 1 to 4. Further, the counter claimant i.e. the defendant no. 4 also claimed

that she has 1/5th share in the suit property. Considering the claim of plaintiff and defendant no. 4, it is necessary to decide that whether they have any share or right in the suit properties.

26. Here, the plaintiff and defendant no. 2 are claiming their share in the suit properties as co-parcenar thereof. As discussed above, the basis of evidence on record, it is proved that the suit properties are Hindu undivided family properties. In this situation, it is necessary to consider that whether plaintiff and defendant no. 4 are co-parcenars of the suit properties.

27. Considering the claim of plaintiff and defendant no. 4, it is necessary to consider provision of Section 6 of Hindu Succession Act, 1956.

6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,— (a) by birth become a coparcener in her own right the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition. (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,— (a) the daughter is allotted the same share as is

allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be. Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. (4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect— (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted. Explanation.—For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005). (5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004 Explanation.—For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]

28. The Hon’ble Supreme Court has discussed the scope and applicability of Section 6 in the case of **Vinita Sharma Vs. Rakesh Sharma, AIR 2020 SC 3717**. In this Judgment, the Hon’ble Apex Court has held as follows :

- (i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.
- (ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with

savings as provided in Section 6 (1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been effected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

29. Considering the amended provision of Section 6 of Hindu Succession Act, 1956 and the above mentioned decision of the Hon'ble Apex Court, now, it is clear position of law that in joint Hindu family governed by Mitakshara Law, the daughter born before or after the amendment is a co-parcener with same rights and liabilities of son. Therefore, it is clear position that the daughter has equal share in the joint family properties along with the son. The plaintiff and defendant no. 4 are daughters of the defendant no. 1. As discussed above, it is proved that the suit properties are Hindu undivided family properties. Therefore, in view of Section 6 of Hindu Succession Act, 1956, the plaintiff and defendant no. 4 have undivided share in the suit properties as co-parcener thereof. However, it is necessary to consider that whether they had share in suit properties at the time of filing of the suit RCS no. 10/2017.

30. The plaintiff has filed relevant documents in RCS no. 10/2017. On perusal of certified copy of plaint in that suit, (Exh. 46) it transpires that the said suit was filed by the defendant no. 3 against

the defendant no.1 and 2 in relation with properties bearing Gat no. 325, 517/2/1 and 517/1. In that suit, both parties filed compromise pursis. The verified copy of said compromise pursis is on record at Exh. 47. The order below Exh. 01 in that suit reveals that the said suit has compromised before Lok Adalat. The plaint in that suit apparently reveals that the plaintiff and defendant no. 4 were not parties to that suit. Here, it is worth to note that in the plaint of that suit, the defendant no. 3 pleaded that till filing of that suit, suit properties in that suit were not partitioned. This statement shows that at the time of filing of that suit, properties in that suit were belonging to joint family. Therefore, at the time of filing of that suit, plaintiff and defendant no. 4 had undivided share in the properties in that suit.

31. When the defendant no. 1 to 3 arrived at compromise in RCS no. 10/2017, that time, the plaintiff and defendant no. 4 were also co-parcener of the properties therein. However, the defendant no. 3 did not implead them as party to that suit. Indeed, the plaintiff and defendant no. 4 were necessary parties to that suit. Therefore, the question raises on the tenability of that suit. Further, the plaint in RCS no. 10/2017 (Exh. 37) reveals that the defendant no. 3 did not disclosed before the Court that he has two sisters and they have shares in the properties. Therefore, it reveals that the defendant no. 3 has concealed material facts before the Court. Further, in compromise pursis of that suit, the defendant nos. 1 to 3 have not uttered any single word about the plaintiff and defendant no. 4. Therefore, it reveals that the defendant no. 1 to 3 have obtained award in the earlier suit by suppressing material facts before the Court and Lok Adalat.

32. While entering into compromise in the earlier suit, the defendant nos. 1 to 3 had knowledge about the share and right of plaintiff and defendant no. 4 in the suit properties. Despite that, they partitioned suit properties amongst them behind back of the plaintiff and defendant no. 4. Further, they suppress material facts from the Court and Lok Adalat as well and obtained the award. Therefore, it reveals that the defendant nos. 1 to 3 have committed fraud not only with the plaintiff and defendant no. 4, but also on the Court and Lok Adalat also. Though the situation is this, it would not be proper on the part of this Court to decide the validity or legality of the award passed by Lok Adalat in that suit.

33. Here, the plaintiff and defendant no. 4 are claiming relief that compromise and award in RCS no. 10/2017 are not binding on their share in the suit properties as it is illegal. As discussed above, the legality of that award cannot be decided in this proceeding. However, this Court has jurisdiction to decide whether the said compromise and award are binding on the plaintiff and defendant no. 4. In this regard, it is necessary to consider provision of Section 21 of Legal Services Authority Act, 1987 :

21. Award of Lok Adalat.—1 [(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section(1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).]

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

34. Considering the above mentioned provision, it is gathered that the award made by Lok Adalat is final and binding on

all the parties to the dispute. As discussed above, the defendant no. 1 to 3 were parties to the dispute in that suit. The plaintiff and defendant no. 4 were not parties to the dispute in that suit. Therefore, in view of provision in sub section 2 of Section 21 of Legal Services Authority Act, 1987, the award made by Lok Adalat in RCS no.10/2017 is not binding on the plaintiff and defendant no. 4. Resultantly, it is not binding on the shares of plaintiff and defendant no. 4 in the suit properties.

35. Now, it is important to decide that whether the plaintiff and defendant no. 4 are entitled to have partition of the suit properties. As discussed above, the partition of the suit property no. 1 to 3 have earlier taken place in RCS no. 10/2017 in view of compromise and award therein. The said award has passed without considering the shares of plaintiff and defendant no. 4. Further, as discussed above, the said award and compromise are not binding on shares of the plaintiff and defendant no. 4 in the suit properties. Further, in that suit, all properties belonging to joint family of both parties were not impleaded and partitioned. Further, in that suit and compromise, the plaintiff and defendant no. 4 were not allotted with any share. Therefore, the plaintiff and defendant no. 4, as co-parceners, have right to reopen the partition of the suit properties. Therefore, the earlier partition in RCS no. 10/2017 does not disentitle the plaintiff and defendant no. 4 from claiming partition of the suit properties.

36. As discussed above, the plaintiff and defendant no. 4 have undivided shares in the suit properties. Further, they are co-parceners of the suit properties. As co-parcener, they have right to

claim partition. The plaintiff brought on record that she requested the defendant no. 1 and 3 for partition. However, they denied to do so. In this situation considering all above reasons, as the plaintiff and defendant no. 4 do not want to keep their share along with other defendants, they are entitled to separation of their share through partition. Therefore, it is concluded that the plaintiff and defendant no. 4 are entitled to have partition of the suit properties.

37. Now, it is necessary to decide shares of both parties. The plaintiff is claiming 1/5th share in the suit properties. The defendant no. 4 is also claiming 1/5th share in the suit properties. In this regard, it is necessary to decide the share of both parties in the suit properties as per their claims. Here, the defendant no. 1 is father of the plaintiff and defendant no. 3 and 4. The plaintiff, the defendant no. 1, defendant no. 3 and defendant no. 4 are co-parceners of the suit properties. Therefore, they are entitled to equal share in the suit properties. Further, the defendant no. 2 is wife of the defendant no. 1 and mother of the plaintiff and defendant no. 3 and 4. Therefore, she is equally entitled to share of the defendant no. 1. Considering the status of relationship between the parties, the plaintiff and defendant nos. 1 to 4 are equally entitled to 1/5th share for each in the suit property. Therefore, it is concluded that the plaintiff and the defendant no. 4 have 1/5th share for each in the suit properties. Accordingly, I answer issue no. 2, 3 and 10 in affirmative and issue no., 6 and 9 in partly affirmative.

As to issue no. 4 and 5 : -

38. The plaintiff pleaded and deposed that on 2.2.2021, she purchased the property i.e. land admeasuring 1 H. in the middle side

of Gat no. 517/1 from the defendant no. 2 in view of sale deed no. 678/2021. The plaintiff prayed that the said property be given to share of the defendant no. 2 and the sale deed be finalized in the favour of the plaintiff. Further, she prayed to give the said property to her share in the final partition. Considering pleading and prayer of the plaintiff, it is necessary to consider the material available on record in this regard.

39. The plaintiff has filed on record sale deed no. 667/2021. The said sale deed (Exh. 50) has duly proved in view of contents of evidence affidavit of plaintiff (Exh. 35). Here, it is important to note that the defendant no. 1 and 3, and defendant no. 2 also have admitted execution of this sale deed, in their written statement. In this situation, in view of oral evidence of the plaintiff and admissions of defendants, the existence, execution and contents of the said sale deed (Exh.50) have duly proved.

40. The sale deed(Exh. 50) transpires that on 2.2.2021, the plaintiff has purchased the property i.e. land admeasuring 1 H. in the middle side of Gat no. 517/1 from the defendant no. 2 for consideration of Rs. 9,00,000/-. Here, it is important to note that in this sale deed, it is recited that the defendant no. 2 has acquired the said property in view of compromise/award in RCS no. 10/2017. The compromise pursis (Exh. 47) also transpires that in that compromise, this property was allotted to share of defendant no. 2. considering these all sequence, it reveals that this property was given to the defendant no.2 in compromise in RCS no. 10/2017. Thereafter, she sold the said property to the plaintiff. The 7/12 extract (Exh.41) and mutation certificate (Exh. 44) reveals that effect of the said sale deed

has given to the record of right of the said property.

41. Here, the plaintiff pleaded that she has purchased 1/5th share of the defendant no. 2 in the suit properties and she is entitled to the same. The defendant no. 2, in her written statement has admitted the claim of the plaintiff. Considering the admission of defendant no. 2, the plaintiff is entitled to the 1/5th share of the defendant no. 2. However, the plaintiff is claiming that the property which is the subject matter of the sale deed (Exh. 50) be allotted to her share. Here, it is important to note that the defendant no. 2 had acquired the right in that property in view of award in RCS no. 10/2017. In this suit, the plaintiff claimed that the said award is illegal. The plaintiff cannot blow hot and cold at the same time. Here, as discussed above, partition of the suit properties has re-opened in this suit. Therefore, it is not proper on the part of plaintiff to claim right over the specific property which is mentioned in the sale deed Exh. 50.

42. In above mentioned situation, though the plaintiff is not entitled to have share in specific property which is mentioned in the sale deed. However, the plaintiff is entitled to 1/5th share of the defendant no. 2 in the suit properties.

43. Considering above reasons, I come to the conclusion that the plaintiff is entitled to 1/5th share of the defendant no. 2 in the suit properties. However, the plaintiff is not entitled to relief that the sale deed no. 678/2021, dated 2.2.2021, entered in her favour by the defendant no. 2 be finalized. Accordingly, I answer issue no. 4 and 5 partly affirmative.

As to issue no. 7 :-

44. The plaintiff pleaded and deposed that during pendency of the suit, the defendant no. 1 in collusion with defendant no.3, executed gift deed no. 1610/2021 and 1611/2021 in favour of defendant no. 5 in relation with suit properties bearing gat no. 518 and 325. The defendant no. 5 in his written statement, has admitted the fact of execution of gift deeds. The plaintiff has filed xerox copies of said gift deeds along with list of documents (Exh. 8). However, the said gift deeds are not proved in accordance of provision of Indian Evidence Act, 1872. Therefore, those gift deeds cannot be read into evidence. Further, the plaintiff has filed on record mutation certificate no. 7080 and 7081 (Exh. 53 and 54). These certificates transpires that the defendant no.1 has alienated his interest in Gat no. 518 and 325 in favour of the defendant no. 5 by executing gift deeds. Considering the oral evidence of the plaintiff, admission of the defendant no. 5 in written statement and entries in revenue record, it is clear that the defendant no. 1 have alienated his interest in the suit properties i.e. Gat no. 518 and 325 in favour of the defendant no. 5 by mode of gift.

45. According to plaintiff, said gift deeds have executed without her consent. Therefore, same are illegal and not binding on her share. In this regard, it is necessary to decide that whether it is valid on the part of defendant no.1 to execute gift deed in favour of the defendant no. 5. According to Section 30,

*30. Testamentary succession.—1*** Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so 2 [disposed of by him or by her], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.*

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this 3 [section.]

46. In view of above mentioned provision, the defendant no. 1 can dispose his interest in any Mitakshara co-parcenary property by testamentary disposition. At the same time, it is necessary to consider that on what basis he disposed the said property. Here, as discussed above, in compromise taken place in RCS no. 10/2017, Gat no. 325 was allotted to the share of the defendant no.1. As discussed above, the legality of said compromise and award cannot be decided in this suit. Further, the said award is not set-aside till today. In this situation, the alienation made on the basis of said award cannot be held as illegal. At the same time, it has to be taken into consideration that the plaintiff was not party to that suit and award. The said award is not binding on her share in the suit properties. In this suit, she has re-opened the partition. Therefore, the said transaction between the defendant no. 1 and defendant no. 5 taken place on the basis of award made by Lok Adalat is not binding on the share of plaintiff in the suit properties.

47. However, here it is worth to note that initially these all suit properties were in the name of defendant no. 1. He has share in these suit properties. As discussed above, he is entitled to dispose his share by testamentary disposition. In this situation, the gift deeds executed by the defendant no. 1 to the extent of his share is valid one. In this situation, the transaction of gift between the defendant

no. 1 and defendant no. 5 cannot be held as invalid or illegal. It is valid to the extent of the share of defendant no. 1 in that property. Here, the plaintiff has not consented to said gift deeds. In this situation also, the said gift deeds are not binding on the share of plaintiff in the suit properties.

48. In this situation, considering all above reasons, it is concluded that the gift deeds executed by the defendant no.1 in favour of defendant no.5 are valid to the extent of share of the defendant no.1. However, the gift deeds executed by the defendant no.1 in favour of defendant no. 5 are not binding on the share of plaintiff in the suit properties. Accordingly, I answer issue no. 7 as partly affirmative.

As to issue no. 8 :-

49. The plaintiff has claimed relief of perpetual injunction against the defendant no. 1 and 2 to restrain them from alienating the suit properties in their name till the partition of the suit properties by metes and bounds. Considering said relief, it is important to note that the name of defendant no. 1 and 3 have mutated on the suit property no. 1 to 4 in view of award made by Lok Adalat. Further, the said award is not set aside. Moreover, it is worth to note that suit properties are joint family properties. The defendant no. 1 is karta of joint family of both parties. Further, the defendant no. 3 is co-parcener in the suit properties. It is settled law that the karta of joint family cannot be restrained by relief of perpetual injunction from alienation of the joint family properties. The aggrieved co-parcener would have remedy to challenge the said alienation. However, he is not entitled to get relief of perpetual

injunction against the karta of family. Further, being co-parcener, the defendant no. 3 can transfer his undivided share in the suit properties. In this situation, it would not be lawful to restrain him from disposing his interest in the suit properties. Considering these legal aspects, the plaintiff is not entitled to relief of perpetual injunction against the defendant no. 1 and 2 as prayed by her. Hence, I answer issue no. 8 in the negative.

As to issue no. 11 :-

50. The defendant nos. 1 and 3, in their written statement stated that from the year 2017, the plaintiff was aware about the compromise and award in RCS no. 10/2017. However, she has brought the suit in the year 2021. Therefore, the suit is barred by law of limitation.

51. In the present suit, the plaintiff has claimed relief of declaration that the compromise and award in RCS no. 10/2017, is illegal and not binding on her share. For the sake of period of limitation, the said relief will be governed by Article 58 of the Limitation Act, 1963. According to Section 58, the period of limitation to obtain declaration is three years and the time from which period begins to run is when the right sue first accrues. In the present facts and circumstances, the question of limitation is depend on the facts and law related thereto. The plaintiff pleaded and deposed that on 24.08.2020, she came to know about the compromise and award in RCS no. 10/2017. Thereafter, on 25.08.2020, she asked the defendant no. 1 and 3 for partition and they denied to do so. According to plaintiff, cause of action arose on 24.08.2020. On the other hand, according to defendants, she was

aware about the same from the year 2017. However, defendants have failed to brought on record any evidence in support of their contention. Therefore, no evidence is on record to prove that the plaintiff was aware about the compromise and award in that suit from the year 2017.

52. Considering averments in the plaint and evidence on record, it reveals that the plaintiff came to know about the compromise and award in that suit on 24.08.2020. Therefore, in present fact and circumstances, the cause of action arose therefrom. Therefore, considering the sequence of events, the relief of declaration claimed by the plaintiff is well in limitation. Further, nothing is on record to prove or show that other reliefs claimed by the plaintiff are barred by law of limitation. In this situation, it is concluded that the present suit is within limitation. Hence, I answer issue no. 11 in the affirmative.

As to issue no. 12 :-

53. The defendant no. 1 and 3 so also the defendant no. 5 have claimed compensatory costs from the plaintiff in view of Section 35A of the CPC. However, they have failed to prove that the claim brought by the plaintiff is false and vexatious. In this situation, they are not entitled to relief of compensatory costs as prayed by them. Hence, I answer issue no. 12 in the negative.

As to issue no. 13 :-

54. In Civil suit, degree of proof is preponderance of probability. As discussed above, the plaintiff has brought on record sufficient evidence to raise probability in her claim. The defendant

no. 4 has not led any evidence in support of her counter claim. However, on the basis of evidence brought on record, it is proved that the plaintiff and defendant no. 4 have shares in the suit properties. Further, as discussed above, they are entitled to have partition of the suit properties. In this situation, considering the finding of issue no. 1 to 12 and reasons mentioned thereon, the present suit and counter claim of the defendant no. 4 deserves to be partly decreed.

55. So far as, costs are concerned, it is worth to note that the defendant no. 3, by suppressing material facts obtained award in Lok Adalat which inclined the plaintiff to file the present suit. Further, the defendant no. 1 and defendant no. 3 denied for partition of her share. Therefore, she opted for legal proceeding in the Court. In this situation, the defendant no. 1 and defendant no. 3 are liable to pay costs of proceeding to the plaintiff. Therefore, the present suit deserves to be partly decreed with costs. Hence, in answer to issue no. 13, I pass following order :

ORDER

1. The suit is partly decreed with costs.
2. The counter claim by the defendant no. 4 is partly allowed.
3. It is hereby declared that the plaintiff and defendant no. 1 to 4 are entitled to 1/5th share for each in the suit properties. Further, the plaintiff is entitled to have 1/5th share of the defendant no. 2 in addition to her share.
4. It is hereby declare that the compromise and award in RCS no. 10/2017, dated 8.7.2017, are not binding on the share of plaintiff and defendant no. 4 in the suit properties.
5. It is hereby declared that gift deeds no. 1610/2021 and

1611/2021, dated 15.03.2021, executed by the defendant no. 1 in favour of defendant no. 5 are not binding on the share of plaintiff in the suit properties.

6. As per section 54 of the Code of Civil Procedure, 1908 decree be sent to The District Collector, Solapur for execution of partition and separate possession of 1/5th share of the plaintiff and defendant nos. 1 to 4, as mentioned above. The partition of the suit land effected by The Collector or any Gazetted subordinate of The Collector deputed by him, in accordance with the above declaration of shares of parties, in conformity with the law for the time being in force relating to partition or separate possession of shares of said suit properties and parties be delivered possession of their share. On effecting partition by metes and bounds, report be submitted to this Court.
7. The remaining reliefs claimed by the plaintiff are rejected.
8. The preliminary decree be drawn up accordingly.

(Pronounced in open Court).

Date : 16/03/2026.

(Smt. H. U. U. Patil)
3rd Jt. Civil Judge, Junior Division,
Barshi, Dist. Solapur.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order.

(a)	Name of the Stenographer	:	A. A. Chavan.
(b)	Court	:	Smt. H. U. U. Patil, 3 rd Jt. Civil Judge, J. D.& J. M. F. C. Barshi
(e)	Judgment /Order signed by P. O. on	:	16/03/2026
(e)	Judgment /Order uploaded on	:	18/03/2026