

MHSO130004612015	Received on	:-	09/03/2015
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IN THE COURT OF Jt. CIVIL JUDGE (Jr.Dn.)
BARSHI, TAL.BARSHI DIST.SOLAPUR
(Presided over by Smt. P.V. Raut)

Exh. No.97

Reg. Civil Suit No. 209/2015
CNR No.MHSO130004612015

Padmin Balasaheb Aware,
Padmin Shivaji Pangare (Before Marriage)
Age:- 35 years, Occ.- Household,
R/o. Korphale, Tal.Barshi,
Dist.Solapur.

.....Plaintiff.

...Versus...

1. **Shivaji Soma Pangare,**
Age:- 60 years, Occ.- Agri.,
2. **Vishnu Shivaji Pangare,**
Age:- 25 years, Occ.- Agri.,
3. **Kisan Soma Pangare,**
Age:- 55 years, Occ.- Agri.,
All R/o. Uplai (Tho.), Tal.Barshi,
Dist.Solapur.

.....Defendants.

SUIT FOR DECLARATION, PARTITION AND
SEPARATE POSSESSION

Advocates

Mr. P.P. Karanjkar, the learned advocate for the plaintiff.
Mr. P.D. Ubale, the learned advocate for defendant No.1 &2.
The suit is proceeded *exparte* against defendant No.3.

:: J U D G M E N T ::
(Delivered on 31st March, 2026)

The present suit is instituted for declaration, partition and separate possession against the defendants.

The brief facts of the plaintiff's suit are as under :-

02. The property situated at mouje Uplai (Tho.), Tal.Barshi Dist.Solapur bearing Gat No.1037 total ad-measuring 02 H 11 R to the extent of 00 H 70 R land situated towards Western side (hereinafter referred as 'suit property No.1A' for brevity), Gat No.1319 total ad-measuring 05 H 72 R to the extent of 01 H 90 R land situated towards Western side (hereinafter referred as 'suit property No.1B' for brevity), the house situated at mouje Uplai (Tho.), Tal.Barshi having house No.118 ad-measuring 420 Sq.feet (hereinafter referred as 'suit property No.1C' for brevity) and the house situated at mouje Uplai (Tho.), Tal.Barshi having house No.119 ad-measuring 2009 Sq.feet (hereinafter referred as 'suit property No.1D' for brevity) are the ancestral properties of defendant No.1.

03. The plaintiff is daughter of defendant No.1 and

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defendant No.2 is son of defendant No.1 from his second wife Sangita. Defendant No.1's first wife is Gayabai Shivaji Pangare. The plaintiff was born out of the legal wedlock between the Gayabai and defendant No.1. Defendant No.1 was sentenced for murder and was serving his sentence at Yerwada Jail. At that time, the plaintiff was minor, so she was taken care by her maternal grand parents at Korphale. The defendant No.1 after serving his sentence, married illegally with Sangita in spite of first marriage with Gayabai and his first wife Gayabai was alive. From that illegal marriage, defendant No.2 born to defendant No.1. Defendant No.1 did not take care of his first wife and plaintiff. Therefore, the plaintiff had to live with her maternal grand parents and studied up to 3rd standard at Korphale. Then after, her grand-parents got her marriage. Defendant No.1 is her biological father so he used to visit plaintiff time to time at Korphale.

04. The suit properties are ancestral properties of defendant No.1 and came into the share of defendant No.1 in partition in the year 1987. Therefore, the name of defendant No.1 and his brothers Kisan and Manohar have been mutated in mutation extract No.1626 since then, the suit properties are ancestral properties of defendant No.1 and the plaintiff is legitimate daughter of defendant No.1 and she have half undivided share in suit properties since her birth. In such situation, defendant No.1 with intention to avoid her

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share has in collusion with mother of defendant No.2 filed suit bearing RCS No.460/2001 for the relief of partition and in that suit they illegally and by misleading the court made compromise with each other and got compromise decree. The plaintiff was not party in that suit, therefore, the decree passed in RCS No.460/2001 is not binding upon her as it was void-ab-initio. Defendant No.1 and 2 deliberately concealed the fact from the plaintiff regarding the suit and tried to alienate the suit properties to third person. Defendant No.1 and 2 have mutated the name of defendant No.2 in mutation extract No.3700 by cancellation the entry of defendant No.1 and thereby recorded the name of defendant No.2 regarding suit properties. Now defendant No.2 trying to alienate the suit properties. The plaintiff came to know the said fact on 17/11/2014 when defendant No.1 told her about alienation and on 25/11/2014 when she got 7/12 extract of suit properties, therefore, the plaintiff has issued notice to defendant No.1 and 2 through RPAD on 04/12/2014. Defendant No.1 and 2 served the said notice and replied false answer and denied the relation in between plaintiff and defendant No.1.

05. The plaintiff has undivided share, therefore, defendants have no right to transfer suit properties. She has half share in landed properties and 1/4th share in house properties. Defendant No.3 is brother of defendant No.1 and defendant No.3 has undivided share in the house properties

and his name is mutated in house properties i.e. suit property No.1C and 1D. Therefore, the plaintiff made the defendant No.3 as a party in the suit. So that the plaintiff filed the present suit for the relief of partition and declaration that the decree passed in RCS No.460/2001 is null and void-ab-initio and not binding upon her right.

The defendant No.1 and 2's story as per their written statement as under :-

06. Defendant No.1 by filing of written statement (Exh.15) admitted the fact that defendant No.1 was sentenced in murder case. The defendants strongly denied the other contentions of the plaintiff. The defendant have denied the relationship between plaintiff and defendant No.1. They contended that defendant No.1 and Gayabai never married and therefore, plaintiff is not daughter of defendant No.1. Therefore, the question of plaintiff's claiming share does not arise. Defendant No.1 has wife namely Sangita and son Vishnu. Gayabai has mutated her name as Gayabai Tanaji Pandhare in the extract of Gat No.590 in column of ownership, therefore it is clear that the name of the husband of Gayabai is Tanaji Pandhare and plaintiff's father is Tanaji Pandhare. Therefore, the present plaintiff has no right and share over the suit properties. The Gayabai herself has given the family relationship and connection of her husband and children to the Korphale Labour Co-operative Society.

Gayabai has orange ration card bearing SK No.1110048 having name of her family members. Defendant No.1 was in jail during the period of 1980 to 1995 and he never came at Uplai (Tho.), Tal.Barshi. The plaintiff is not legitimate or illegitimate daughter of defendant No.1. Defendant No.1 also asked for DNA test of defendant No.1 and plaintiff and prayed for dismissal of the suit. Defendant No.2 has adopted written statement filed by defendant No.1 by filing adoption pusi (Exh.65) on 25/07/2023.

07. After service of suit summons, defendant No.3 did not appear, therefore, suit is proceeded *exparte* against him by passing order below Exh.1 on 03/02/2016.

08. My Ld. Predecessor has framed issues at Exh.20. Those issues are reproduced below and recorded my findings with reasons thereon:-

Sr. No.	Issues	Findings
1.	Whether the plaintiff proves that she is legitimate daughter of defendant No.1 ?	In the affirmative.
2.	Whether the plaintiff proves that the suit properties are ancestral and joint family properties of herself and defendants ?	In the partly affirmative to the extent of suit property No.1A and 1B.
3.	Whether the plaintiff proves that the	In the

	decree passed in RCS No.460/01 is illegal and void therefore not binding on her ?	affirmative.
4.	Whether suit is within limitation ?	In the affirmative.
5.	Is plaintiff entitled for partition ? If yes, what would be respective shares of the parties ?	In the partly affirmative to the extent of suit property No.1A and 1B. The plaintiff would get 2/4 th share, defendant No.1 and 2 each would get 1/4 th each in suit property No.1A and 1B.
6.	What order and Decree?	As per final order.

:: **REASONS** ::

09. After accepting Written Statement, the issues were framed at Exh.20. Accordingly, both parties have given an opportunity to lead evidence and hearing of the matter. The plaintiff has tender her evidence by examining herself as PW-1 (Exh.21), PW-2 Dadarao Soma Pangare (Exh.23), PW-

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3 Babu Soma Pangare (Exh.22), PW-4 Shanta Bapurao Barade (Exh.33), PW-5 Angad Ganpati Gavali (Exh.35) and PW-6 Jalindar Baliram Kale (Exh.79) and closed her evidence by filing of closing pursis at Exh.80. Along with oral evidence, the plaintiff has relied upon the documents which are as following;

Sr.No.	Document	Exhibit No.
1)	7/12 extract of land Gat No.1037 of mouje Uplai (Tho.), Tal.Barshi	87
2)	7/12 extract of land Gat No.1319 of mouje Uplai (Tho.), Tal.Barshi	88
3)	7/12 extract of land Gat No.1037 of mouje Uplai (Tho.), Tal.Barshi	89
4)	7/12 extract of land Gat No.1319 of mouje Uplai (Tho.), Tal.Barshi	90
5)	Assessment List of house No.118 of mouje Uplai (Tho.), Tal.Barshi	91
6)	Assessment List of house No.119 of mouje Uplai (Tho.), Tal.Barshi	92
7)	Mutation entry No.1626	93
8)	Certified copy of suit register of RCS No.460/2001	94

9)	Certified copy of compromise decree in RCS No.460/2001	95
10)	Mutation entry No.3700 of Gat No.1037 and 1319	96
11)	School leaving certificate of the plaintiff	34
12)	Voter list of Assembly (Barshi) 1980	53
13)	Certified copy of Crime No.887/80 register	54

10. The defendants have examined DW-1 Shivaji Pangare (Exh.38), DW-2 Tusharkumar Rushiket Mirgane (Exh.46) and closed their evidence by filing closing pursis at Exh.54. Along with oral evidence, the defendants have not tendered any documentary evidence.

11. Heard both side at length. The learned Advocate of the plaintiff argued that the plaintiff is legitimate daughter of defendant No.1. The plaintiff was born on 02/06/1979 and later on the defendant No.1 was in jail in the sentence of murder case. The name regarding the mother of plaintiff Gayabai have also been made in the voter's list as wife of defendant No.1. Therefore, the marriage of defendant No.1 and her mother was duly proved. The plaintiff have filed the application at Exh.73 for DNA test, however, the defendant

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No.1 was not present at laboratory for the DNA test, therefore, adverse inference under section 114 of Indian Evidence Act can be taken against the defendant. The suit properties are ancestral properties and entries regarding partition has been mutated in mutation extract. The plaintiff is legitimate daughter of defendant No.1. The Ld. Advocate also argued that the suit of the plaintiff is well within limitation under Article 59 and 113 of Limitation Act. In support of the argument he placed reliance upon the judgment of Hon'ble Supreme Court in the case of ***Shantidevi through LR's Vs. Jagandevi & ors.*** Hence, prayed for decretal of the suit.

12. Learned Advocate of the defendants argued that the plaintiff is neither legitimate nor illegitimate daughter of defendant No.1. The plaintiff has not proved that the suit properties are ancestral properties. In the present suit, the plaintiff is claiming for declaration regarding the compromise decree passed in RCS No.460/2001 dt.04/09/2001 and the present suit is filed on 09/03/2015, therefore, the suit of the plaintiff is not within limitation. Furthermore, the necessary party also not added in the present suit, therefore, the suit is also hit by non-joinder of necessary parties. Hence, prayed for dismissal of the suit of the plaintiff.

As to issue No.1 :-

13. The plaintiff came with the case that she is

legitimate daughter of defendant No.1 who begotten from the first wife namely Gayabai and defendant No.1. Therefore, she has undivided share in the ancestral properties of defendant No.1. Whereas defendant No.1 denied the relationship in between the plaintiff and defendant No.1. He contended that plaintiff is neither legitimate or illegitimate daughter of defendant No.1. There was no marriage solemnized in between the defendant No.1 and Gayabai. In this way, the defendant straightway denied the paternity and status of the plaintiff.

14. Considering the fact, legitimacy of the plaintiff is significant factor in determining the right to seek partition from her father under Hindu Law. Under Hindu Succession (Amendment) Act, 2005, a legitimate daughter is coparcener by birth with equal right as a son.

15. Under section 112 of Indian Evidence Act, 1872 (116 of BSA, 2023) a child born during a valid marriage, or within 280 days of its dissolution, is conclusively presumed to be the child of that husband and wife. The presumption can only be rebuttal by proving that parties to the marriage had no opportunity to access to each other. In the present case, defendant No.1 straightway denied the paternity as well as the marriage between him and Gayabai. In such circumstances, it is necessary to see what evidence the plaintiff and defendant brought on record to prove their

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respective contentions.

16. To establish the fact that she is legitimate daughter of defendant No.1, plaintiff lead her evidence at Exh.21 and thereby reproduced the contents of the plaint. PW-2 Dadarao Pangare and PW-3 Babu Pangare are the brother of defendant No.1. According to their evidence, the marriage of defendant No.1 was solemnized in the year 1971 with the daughter of Bhimrao Babu Dukare namely Gayabai. The plaintiff is daughter of Gayabai and Shivaji. After 1½ year of birth of the plaintiff, defendant No.1 was sentenced for murder and was in jail for 14 years. When defendant No.1 was in jail, Gayabai used to visit defendant No.1 in jail. At that time, defendant No.1 told Gayabai if she wants to live with him or do second marriage, then she can do it. Therefore, after five to six years of sentence, Gayabai married with Tanaji Bajirao Pandhare by leaving plaintiff with her mother and father. Shivaji after released from the jail, did second marriage with Sangita and defendant No.2 his son from second marriage.

17. PW-3 Babu during his cross-examination admitted the fact that on the extract of Gat No.590, the name of Gayabai is mentioned as Gayabai Tanaji Pandhare and both these witnesses denied the suggestion that the marriage in between Shivaji and Gayabai was not solemnized.

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18. The plaintiff came with the case that she was living with her maternal grand-parents and studied up to 3rd standard at Korphale. To support the contention, the plaintiff examined PW-4 Shanta Barade (Exh.33) who is Head Mistress of Zilha Parishad School, Korphale by issuing her witness summons. The witness deposed that the school leaving certificate of Padmini has been issued from the original register of the school and the contents of the school leaving certificate (Exh.34) dated 22/11/2014 are true and correct. During cross-examination no fruitful evidence came which will help to defendant's case.

19. The plaintiff also placed reliance on the evidence of PW-5 Angad Gavali who was serving as a teacher at Primary School, Korphale. According to his evidence, the plaintiff since 1984 to 1986 was studied at Korphale Primary School and he taught her during this period.

20. In this way, according to the oral evidence of the plaintiff, she is daughter of defendant No.1 and Gayabai. PW-2 and PW-3 are the real brothers of defendant No.1 and they consistently deposed that the marriage of Shivaji and Gayabai has been taken place and after birth of the plaintiff, defendant No.1 was sentenced and was in jail. The learned Advocate of the defendants failed to bring on record any fruitful evidence which help their contention during the cross-examination of these witnesses. The plaintiff also examined

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the independent witness who is Head Mistress (PW-4) of Zilha Parishad School, Korphale and teacher (PW-5) of Primary school who deposed that the plaintiff was studied in their school and school leaving certificate (Exh.34) was issued by their school. The school leaving certificate (Exh.34) discloses that the name of the plaintiff is mentioned as Padmini Shivaji Pangare and her date of birth is 02/06/1979 and she was taken admission in this school on 15/06/1984 and left the school on 23/06/1986. The document of school leaving certificate has *prima facie* evidential value regarding the candidate's name and their date of birth. The defendants have not placed on record any contradictory birth record which exist or deny the entry of this school leaving certificate (Exh.34) to challenge the contents of the school leaving certificate (Exh.34). Considering the fact, the document of school leaving certificate is admissible under section 35 of the Indian Evidence Act. Furthermore, the evidence of PW-5 is also supported to the evidence of PW-4. After perusal of this certificate (Exh.34) as discussed herein above, the date of birth of the plaintiff is mentioned as 02/06/1979. Defendant No.1 himself stated that during the period of 1980 to 1995 he was in Yerwada jail. Therefore, as per the oral evidence of the witnesses and the documentary evidence, it clearly shows that the birth of the plaintiff was prior to the sentence of defendant No.1.

21. To prove the fact that Gayabai was wife of

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defendant No.1. The plaintiff has placed on record the voter list of Assembly (Barshi) 1980 (Exh.53). After perusal of this list (Exh.53), it appears that the name of defendant No.1 Shivaji Soma Pangare and the name of Gayabai Shivaji Pangare was mentioned in this list which clearly shows that Gayabai Shivaji Pangare was known as wife of Shivaji Soma Pangare. According to the evidence of PW-2 and PW-3, the marriage of defendant No.1 Shivaji and mother of plaintiff Gayabai was solemnized in the year 1971 and the birth of the plaintiff was taken place in the year 1979. As per admission in cross-examination of the defendant, he was sentenced in the year 1980. All these oral and documentary evidence disclose that the marriage of the Shivaji and Gayabai was solemnized in the year 1971 and the birth of the plaintiff was taken place before sentencing of defendant No.1 i.e. in the year 1979.

22. According to defendant No.1, Gayabai's husband is Tanaji Pandhare, therefore, plaintiff's father is Tanaji Pandhare and in the orange ration card of Gayabai the name of her family members are mentioned. Defendant No.1 was in Yerwada Jail since 1980 to 1995 and during that period, he never came to Uplai and therefore he has no access to Gayabai. He has married with Sangita after released from the jail. According to evidence of PW-2 Dadarao, Gayabai got married with Tanaji Pandhare with consent of defendant No.1 after five to six years of sentence of defendant No.1. The plaintiff during her cross-examination admitted the fact

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that the full name of Gayabai is Gayabai Tanaji Pandhare and the entry regarding this name has also been taken in the 7/12 extract.

23. In the present matter, the issue that whether the mother of the plaintiff has solemnized second marriage or not is not in dispute. In fact, the sole disputing fact is that whether the plaintiff is legitimate child of Gayabai and defendant No.1. According to oral and documentary evidence, Gayabai got married with defendant No.1 in the year 1971, the entry regarding her name has been taken in voter list in the year 1980 (Exh.53), the document of school leaving certificate (Exh.34) shows that the plaintiff is using her father's name as Shivaji Pangare. The persons who are real brothers of defendant No.1 themselves stated that defendant No.1 is father of the plaintiff and Gayabai is his first wife, then it is crystal clear that the plaintiff is legitimate daughter of defendant No.1.

24. Defendant No.1 boldly came with the case that the plaintiff is not his daughter. He was in jail and therefore, there is no access in between Gayabai and defendant No.1. The defence taken by defendant No.1 requires strong, clear and conclusive evidence to prove non access. The documentary evidence which is school leaving certificate shows that the plaintiff birth took place before sentence of defendant No.1. He further stated that Tanaji Pandhare is

husband of Gayabai and plaintiff is his daughter. However, the defendant has not produced any evidence to prove this fact. The defendant has placed on record his evidence and during cross-examination he admitted the fact that after release from the jail, he married with Sangita but their marriage was not solemnized as per the Hindu rituals. The defendants have not placed any document which significantly shows that the plaintiff is not daughter of defendant No.1.

25. It appears that during the pendency of the suit, the plaintiff has filed application for DNA test of her and defendant No.1, however, the defendant No.1 failed to remain present at Laboratory of DNA test whereas the plaintiff was and is ready for the test. From the conduct of the defendant, the adverse inference under section 114 of Indian Evidence Act for the legitimacy of the plaintiff and the paternity of defendant No.1.

26. Considering the fact and evidence on record, defendants miserably failed to rebut the presumption of legitimacy of plaintiff under section 112 of Indian Evidence Act. According to oral and documentary evidence, the plaintiff establish and prove the fact that she is legitimate daughter of defendant No.1. Therefore, I recorded my finding to issue No.1 in the affirmative.

As to issue No.2 and 5 :-

27. According to evidence of plaintiff, suit properties are ancestral properties of defendant No.1 and he got it in his share in partition which took place in between defendant No.1 and his brothers in the year 1987. The important aspect is that defendant in his evidence or in the written statement nowhere denied the fact that the suit properties are not ancestral properties. It is also not contention of the defendants that properties are the self-acquired properties. During cross-examination of the plaintiff and her witnesses, the defendants did not put any question or suggestion to bring on record the fact that suit properties are not ancestral properties. In fact, during cross-examination of PW-2, the defendants themselves brought on record that partition took place in the year 1987 between defendant No.1 and his brothers. The most important aspect is that defendant No.1 in his cross-examination also admitted the fact that the suit properties are ancestral properties of his and his brothers and partition has been taken place between them. Defendant No.1 also specifically admitted that he got the suit properties in partition. It clearly shows that it is the admitted fact by the defendants that the suit properties are ancestral properties. The plaintiff relied upon the documentary evidence which is mutation extract No.1626 (Exh.93), after perusal of this revenue record, it appears that the partition in defendant No.1 and his brother Babu, Dadarao and Kisan have been

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taken place on 02/01/1987 and entry regarding the said fact had been taken in revenue record regarding Gat No.1037 (Exh.87) and Gat No.1319 (Exh.88). However, it also appears that the entry regarding the house property bearing No.118 and 119 (Exh.91 & 92) has not been made in this mutation extract No.1626. After perusal of extract of house No.118 and 119, it appears that the name of defendant No.1 and his brother Kisan Soma Pangare has been mutated jointly. In such circumstances, it could not be held that these two house properties bearing house No.118 and 119 as suit property No.C and D are ancestral properties. No record brought by the plaintiff which shows that these two properties are ancestral properties. It is the contention of the plaintiff that name of the Kisan and defendant No.1 mutated jointly, hence, she claimed in the share of defendant No.1 which will allot to the defendant No.1. According to the documentary evidence which is mutation extract No.1626 (Exh.93), partition has taken place regarding suit properties bearing Gat No.1035, 1037 and 1319. In such circumstances, why the partition of these two house properties has not been taken place in 1987 is a factor to consider. It shows that the suit property No.1C and 1D are not ancestral properties or not available for partition on today. Therefore, considering the fact, the plaintiff is not entitled for share in the suit property No.1C and 1D bearing house No.118 and 119.

28. As plaintiff proved the fact that suit property

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No.1A bearing Gat No.1037 and suit property No.1B bearing Gat No.1319 are ancestral properties of defendant No.1. The plaintiff is legitimate daughter of defendant No.1, therefore, is a coparcener and having right by birth in the ancestral properties. Considering the fact, the plaintiff is entitled for $\frac{1}{2}$ share in defendant No.1's suit property No.1A and 1B. It appears that defendant No.2 is born from the second marriage of defendant No.1, therefore, he is illegitimate son of defendant No.1. The Hon'ble Supreme Court in the case of ***Revanasiddappa Vs. Mallikarjun*** held that children from void/voidable marriages are innocent and entitle to the same right as legitimate children and allowing them to claim a share in the father's ancestral property. However, the defendant No.2 is not coparcener, therefore, he can claim the $\frac{1}{2}$ share in the property that falls to defendant No.1's $\frac{1}{2}$ share upon notional partition. Therefore, defendant No.2 will get $\frac{1}{2}$ share which falls to defendant No.1's $\frac{1}{2}$ share. Considering the fact and oral as well as documentary evidence placed on record by the plaintiff, the plaintiff proved the fact that the nature of the suit property No.1A and 1B to be ancestral properties and she is legitimate daughter, therefore, coparcener and therefore entitled $\frac{1}{2}$ share, therefore, plaintiff will get $\frac{2}{4}$ th share, defendant No.1 will get $\frac{1}{4}$ th share and defendant No.2 will get $\frac{1}{4}$ th share in suit property No.1A bearing Gat No.1037 total ad-measuring 00 H 70 R and suit property No.1B bearing Gat No.1319 total ad-measuring 01 H 90 R. As discussed herein above, the

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plaintiff failed to establish her right over suit property No.1C bearing house No.118 and suit property No.1D bearing house No.119, therefore, not entitled for share in these house properties. Hence, I recorded my finding to issue No.2 and 5 in the partly affirmative.

As to issue No.3 :-

29. According to evidence of plaintiff, defendant No.1 along with Sangita filed a suit bearing No.460/2001 for partition and in collusion with Sangita, defendant No.1 has given all share to defendant No.2 who was minor at the time of the suit. Defendant No.1 deliberately not making the plaintiff as a party in that suit. In support of the oral evidence, the plaintiff also placed on record the documentary evidence which is certified copy of suit register (Exh.94) and the compromise decree (Exh.95). After perusal of this documentary evidence, it discloses that Sangita who is the second wife of the defendant No.1 filed suit bearing RCS No.460/2001 before Civil Judge Junior Division and filed the present suit as guardian of defendant No.2 against present defendant No.1 Shivaji Pangare on 07/08/2001 for the relief of partition regarding the suit property bearing No.1037 and 1319. The present suit has been compromised between the parties and compromise decree (Exh.95) be drawn in the present suit. The documentary evidence discloses that the plaintiff was not party in the civil suit bearing RCS

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No.460/2001. As discussed herein above regarding issue No.1, the plaintiff is legitimate daughter of defendant No.1. Therefore, it is just and necessary for defendant No.1 or Sangita to make the plaintiff as a party in that suit. However, she was not added in that suit as a party. The plaintiff being daughter of defendant No.1 is coparcener and she has coparcenary right over ancestral properties which are suit property No.1A and 1B. It appears that Sangita and defendant No.1 deliberately excluded the plaintiff from the suit for partition bearing RCS No.460/2001. The plaintiff was not party to the suit and compromise also, therefore, the compromise decree passed in RCS No.460/2001 is not binding upon the rights of the plaintiff. Therefore, I recorded my finding to issue No.3 in the affirmative.

As to issue No.4 :-

30. The plaintiff came with the case that on 04/09/2001, the parties to that suit and present defendant No.1 and 2 have entered into a false and unlawful compromise among themselves and thereby falsely representing to the Court that the property had been allotted to the share of defendant No.2 in partition. The defendants by playing fraud on court, obtained consent decree from the court. The learned advocate of plaintiff argued that the plaintiff came to know in the year 2014 the fact that defendant No.1 and defendant No.2 are trying to alienate the

suit properties to third person, therefore, she issued notice to defendants in December, 2014 and after that she filed the present suit in the year 2015, therefore in view of Article 59 and Article 113 of Limitation Act, she has filed present suit within limitation. In supported of his contention, he placed reliance upon judgment of Hon'ble Supreme Court in the case of *Shantidevi through her Lrs Vs. Jagandevi & ors, Civil Appeal No.11795 of 2025 [SLP (C) No.24821/2018]*.

31. The question before me is that whether the claim against the decree which is passed in the year 2001 is barred by law of limitation. Before discussion regarding the issue of limitation, it is necessary to go through the provision enumerated under Article 59 of Limitation Act. In view of Article 59 of Limitation Act, a suit to set aside decree must be filed within three years from the date the facts entitling the plaintiff to have the decree canceled first become known. A suit for declaration that a previously passed decree is not binding is generally governed by the Limitation Act, 1963 and required filing it within three years from when right to sue accrues. The Article 58 of the Limitation Act provides that the right to sue would accrue when there was a clear and unequivocal threat of infringement of the plaintiff's right means the limitation would commence when first the threat accrued. It appears from the written statement of defendant No.1 that there is no theory of defendant that plaintiff has been ousted by defendants from the suit property. If there is

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no theory of ouster of the defendants, then no question of limitation arise for partition suit but the plaintiff has challenged the decree passed in RCS No.460/2001 which was compromised in the year 2001. In the present case, the plaintiff is claiming that she was not party to the earlier suit neither she was aware about the said proceeding. The plaintiff pleaded that on 17/11/2014 the defendants trying to alienate the suit property, therefore, she raised objection by issuing notice to the defendants and in response to the same, defendants have narrated the facts regarding said compromise decree. Thereafter, the plaintiff on 25/11/2014 has obtained copy of 7/12 extract of the suit properties then she came to know the said fact. The plaintiff made inquiry with defendants about entry of 7/12 extract of the suit properties but they are not responding in proper manner and refused the right of the plaintiff. In fact, the defendant No.1 has refused the paternity of the plaintiff, on account of such fact, she has filed the present suit and claimed that the said compromise decree is not binding upon her and also claiming that the compromise decree is void-ab-initio, null and void. Furthermore, the plaintiff also claimed her $\frac{1}{2}$ share in the suit properties. From entire evidence and the documents, the defendants failed to bring on record that the plaintiff is having knowledge about the decree and they have declined the right of the plaintiff before said incident as narrated by the plaintiff. The plaintiff is claiming that she got the knowledge on 17/11/2014 and there was a clear and

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unequivocal threat of infringement of plaintiffs right by defendants. Hence, she claimed that the suit is well within limitation.

32. It is pertinent to note that the plaintiff is not party to the said decree, therefore, in view of the Article 58 and 59 of the Limitation Act, the right to sue accrued when she came to know the fact regarding passing of the decree. The suit of the plaintiff is well within the period of limitation as it counted from the said date when the right to sue accrued to the plaintiff. Even as per Article 59 of Limitation Act, it is clearly shows that when the fact entitling the plaintiff to have the instrument or decree canceled or set aside first become known to them then this is the date for consideration of period of limitation. It is well settled that the right to sue accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Considering the pleading and evidence, the right to sue accrued on 14/11/2014 when the defendants refused the right of the plaintiff and the plaintiff got knowledge about the decree on 25/11/2014 as she obtained the revenue record. These are the date to attribute the knowledge and date of cause of action for filing the present suit, therefore, it appears that the present suit is well within the period of limitation.

33. The important aspect is that defendant nowhere in their pleading of written statement or during cross-

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examination of the plaintiff witnesses brought on record the fact that plaintiff had knowledge about the compromise decree passed in the year 2001. However, the defendants have not raised any objection in their contention or evidence regarding the question of limitation for filing of the present suit. The Ld. Advocate of the plaintiff has placed reliance upon the judgment of *Shantidev* cited supra the Hon'ble Supreme Court in the present judgment has very elaborately discussed the issue of limitation governs under Article 56, 65 and 59. The facts of the present case and case in hand are similar and the present judgment is helpful to the case of the plaintiff and the suit of the plaintiff is within limitation. Accordingly, I recorded my finding to issue No.4 in the affirmative.

As to issue No.6 :-

34. In view of findings to issue No.1 to 5 that the plaintiff is found entitled for the relief as sought by her in the present suit and she is entitled for the decree. The plaintiff established her case and proved that she is legitimate daughter of defendant No.1 and is having share in the ancestral properties. Furthermore, the plaintiff also proved that the compromise decree passed in RCS No.460/2001 in the year 2001 is not binding upon her as she was not party to the present suit. It also proved by the plaintiff that her suit is filed well within the limitation. In this way, the plaintiff has

discharged the burden of proof casted upon her on the contrary, the defendants have avoided to give legal rights of the plaintiff which forced her to file the present suit and bear the expenses of the suit. Therefore, I am of the view that defendant No.1 and 2 should bear the costs of the plaintiff of the suit and that of their own.

35. As regard to suit property No.1A and 1B, it is property assess to payment of revenue to the Government and in that case in a decree for partition after declaring a share of parties to the suit all further proceedings are required to be taken before the Collector or any Gazetted officer subordinate to him to whom the powers are delegated by the Collector as per section 54 r/w Order XX Rule 18 of the CPC. Accordingly, present decree is required to be sent to the Collector for effective partition as per Section 54 of CPC. Accordingly, with this findings, I proceed to pass following order:-

ORDER

1. Suit is partly decreed.
2. It is hereby declared that the compromise decree passed in RCS No.460/2001 dt.04/09/2001 is null and void and not binding upon the rights of the plaintiff.
3. The plaintiff is hereby declared as entitled

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for 2/4th share, defendant No.1 is entitled for 1/4th share and defendant No.2 is entitled for 1/4th share out of suit property No.1A bearing Gat No.1037 and Gat No.1319 of mouje Uplai (Thonge), Tal.Barshi Dist.Solapur.

4. Precept be sent to the Collector, Solapur, for effecting partition of the suit property No.1A and 1B in view of Section 54 of the Code of Civil Procedure.
5. Defendant No.1 and 2 to bear the costs of the plaintiff for the suit and that of their own.
6. Preliminary decree be drawn up accordingly.

(Dictated and pronounced in open Court.)

Barshi.
Date: 31st March, 2026.

(Smt. P.V. Raut)
Jt. Civil Judge, Jr. Div., Barshi.

*(Judgment)*RCS No.209/2015
Padmin Vrs. Shivaji & ors.**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	:	Shri.S.R. Barangule, Stenographer Grade-III
(b)	Court	:	Smt. P.V. Raut, Jt.C.J.J.D. & J.M.F.C., Barshi.
(c)	Judgment /Order declared on	:	31/03/2026
(d)	Judgment /Order checked on	:	04/04/2026
(e)	Judgment /Order signed by P.O. on	:	04/04/2026
(f)	Judgment /Order uploaded on	:	04/04/2026