

Presented on : 04/08/2008  
Registered on : 05/08/2008  
Decided on : 09/07/2010  
Duration : 01 Y 11 M 05 D

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION**  
**AT : AKKALKOT**

(Presided over by Shri S. G. Dabadgaonkar)

**Regular Civil Suit No. 57/2008**

**Exh. No. 47**

01. Uttam Laxman Ghodke  
Age - 67 yrs., Occup. Agril ,  
R/o.Kini,Tal.Akkalkot.

... Plaintiff

**Versus**

01. Vishvambhar Laxman Ghodke,  
Age - 55 yrs. , Occup.Agril.  
R/o. Kini, Tal.Akkalkot.  
02. Raghunath Laxman Ghodke,  
Age 57 yrs. , Occup.-Agril,  
03. Premnath Laxman Ghodke,  
Age 53 yrs. , Occup.-Agril,  
All R/o. Kini, Tal.Akkalkot.

... Defendants

**Claim** : Suit for partition and separate possession.

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Shri. S.A.Futane(Jadhav) advocate for the plaintiff  
Defendant nos.1 to 3 proceeded ex-parte.  
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## **JUDGMENT**

(Delivered in open court on this 09<sup>th</sup> day of July 2010)

01. This is a suit for partition and separate possession.

02. Brief facts of case of the plaintiff are as under :

The plaintiff and the defendants are real brothers interse. Their father is alive and he is having three acre land in his name. The plaintiff and the defendants have purchased some agricultural lands out of their joint income at village Kini. These lands are subsequently converted into various gat numbers i.e. Gat no.382/2, 383/2, 381/1, 383/1-A, 381/2-A, 380/1, 379/1-B, 379/1-A, 381/2-B, 381/3-B and 380/2. In the year 1990 father of the plaintiff and the defendants partitioned the joint property. At the time of the said partition land which was purchased in the name of the defendant no.1 during jointness i.e. Land gat No.382/2 admeasuring 4 H 12 R was kept unpartitioned. It was further agreed that, mother of the plaintiff and the defendants will utilize the land for her livelihood. It was further agreed that, after her death the said land will be partitioned in the plaintiff and the defendants equally. After death of mother the plaintiff demanded his 1/4<sup>th</sup> share out of gat No.392/2 but the defendant no.1 flatly denied to it. The plaintiff therefore issued legal notice on 20/5/2008 calling upon him to give his share out of gat no.382/2. The said notice was not received by the defendant no.1. Hence, present suit is filed. It is alternatively contended that partition of entire lands of family of the plaintiff and the defendant be effected and the plaintiff be allotted with 1/4<sup>th</sup> share out of it. It is further demanded that, mesne profit be given from the defendant.

03.            The defendant no.1 to 3 though served with suit summons, have failed to appear. Hence, the suit proceeded ex-parte against them.

04.            Following points arise for my determination I have recorded my findings there on with the reasons stated below. :

<u>Issues</u>	<u>Findings</u>
01. Does the plaintiff proves that land gat No.382/2 of village Kini was kept without partition ?	... Yes
02. Whether the plaintiff is entitled to partition and separate possession of his share out of the said property ?	... Yes
03. What order and decree ?	...The suit is partly decreed.

### **REASONS**

05.            The plaintiff in order to support his contention has relied upon various revenue record in respect of gat No.379,380,381,382,383. So also he has filed revenue record of old survey numbers as well as Mutation Entries (Exh.6 to 22 and 32 to 41). The plaintiff has relied upon his own oral testimony as well as oral testimony of Raghunath (PW-2) and Ambadas (PW-3) .

#### **AS TO POINT NO.1 AND 2 :**

06.            In order to established that land gat No.382/2 was kept unpartitioned the plaintiff has relied upon his own testimony as PW-1.

He reiterated contents in the plaint. He specifically deposed that, agricultural land gat No.382/2 was kept unpartitioned. It was further agreed that, after death of their mother the said land be partitioned in the brothers interse. He further deposed that the defendant no.1 to 3 in collusion with each other are now not agreed to give  $\frac{1}{4}$  th share of the plaintiff . Contention of the plaintiff went unchallenged from other side. Therefore I have no alternative to relay upon it.

07. The plaintiff has further relied upon testimony of Raghunath (PW-2) and Ambadas (PW-3). These witnesses have also specifically deposed that, land gat No.382/2 was kept unpartitioned and kept for maintaining livelihood of mother of the plaintiff and the defendants. They specifically deposed that, as per the agreement, the land was to be partitioned after death of Trivenibai i.e. mother of the plaintiff. They specifically deposed that, the plaintiff is having  $\frac{1}{4}$ <sup>th</sup> share in the said property. Testimony of both these witnesses is not at all challenged from other side. Therefore, I have no alternative to accept it.

08. On the basis of aforesaid evidence it is established by the plaintiff that, agricultural land gat N.382/2 of village Kini was kept without partitioned till death of his mother. He has also established that the said land was to be partitioned between the brothers interse after death of their mother. Therefore, the plaintiff is definitely entitled to get his  $\frac{1}{4}$ <sup>th</sup> share out of the said property. Hence, I answer point no.1 and 2 in the affirmative.

**AS TO POINT NO.3 :**

09. On the basis of the adduced evidence the plaintiff has established that, land gat No.382/2 of village Kini was joint family property and he is having share in it.

10. Ld. Counsel for the plaintiff, at the time of final argument, has submitted that, considering other lands allotted to the plaintiff and defendant No.1,2,3 during previous partition, it is unreasonable to allot 1/4<sup>th</sup> share out of gat No.382/2 to the plaintiff. If 1/4<sup>th</sup> share will be allotted to the plaintiff definitely land which falls into the share of the defendant no.1 would be reduced than that of holding of the plaintiff and the defendant no.2 and 3.

11. I have gone through entire revenue record showing ownership of the plaintiff and the defendants. It is contention of the plaintiff that the defendant no.2 and 3 have surrendered their right in respect of the gat No.382/2 in favour of the defendant no.1 and in lieu of that they have received other lands. The said contention is not at all challenged by either defendant no.1 or the defendant no.2 and 3. Therefore, considering holdings of the plaintiffs and the defendant and also considering submission of Ld. Counsel for the plaintiff I am of the view that, equitable partition will have to be given to the plaintiff in respect of land Gat No.382/2.

12. Ld. Counsel for the plaintiff fairly submitted that, allotment of 0.66 R land to the plaintiff would meet the ends of justice. As per record the plaintiff is having 5 H 76 R land and the defendant no.1 is having 7 H 9 R land. After the equitable partition as proposed by the counsel for the plaintiff, the plaintiff will get 6 H 42 R land and land of 6

H 43 R will be remained with the defendant no.1.

13. The plaintiff has claimed mesne profit in respect of his share from the defendant no.1.No any cogent evidence is brought on record by the plaintiff in respect of income of agricultural land gat No.382/2. In such situation in my opinion it is essential to hold enquiry under Order XX Rule-12 of the Civil Procedure Code for determination of mesne profit.

14. Considering facts and the circumstances of the case and relation of the parties interse, it will be unreasonable to saddle cost of the litigation on either side. Hence in answer to point no.3 I proceed to pass the following order. :-

### **ORDER**

1. The suit is partly decreed .
2. It is declared that the plaintiff is having 0.66 R share in agricultural land gat No.382/2 of village Kini Tal.Akkalkot.
3. Partition be effected through Collector.
4. Enquiry under Order-20 Rule -12 of the Civil procedure Code be made.
5. Preliminary decree be drawn up accordingly.

( S .G. Dabadgaonkar )  
Civil Judge Jr.Dn.,

Date :- 09/07/2010

Akkalkot.