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	Duration	:	Y M D 11 04 17

IN THE COURT OF JT. CIVIL JUDGE JUNIOR DIVISION,**KOREGAON, AT : KOREGAON**

(Presided over by P. D.Yavatkar)

Regular Civil Suit No. 62/2015**Exhibit No.128****Ashok Raghunath Shirke**

Age: 55 years, Occ: Agriculturist & Pensioner,
Permanent R/o. Bobadewadi, Tal. Koregaon,
Dist. Satara.

Now R/o Asana Co-operative Hsg.Society,
Plot no.306/2, Room no.303, Sector no.21,
Nerul, Navi Mumbai.

----- Plaintiff.***Versus*****1) Raghunath Ramchandra Shirke (Dead)****1A) Vimal Nivrutti Kadam (Dead)****Through Legal Heirs:-****1A.1) Nivrutti Bandu Kadam**

Age: 70 years, Occ: Agriculturist,

1A.2) Dattatray Nivrutti Kadam

Age: 44 years, Occ: Agriculturist,

1A.3) Chandrakant Nivrutti Kadam

Age: 40 years, Occ: Agriculturist,

1A.4) Lata Shankar Chavan

Age: 46 years, Occ: Household,

----- Defendants.

1B) Laxmi @ Parubai Balasaheb Salunkhe

Age: 32 years, Occ: Household,

2) Shantaram Raghunath Shirke

Age: 48 years, Occ: Agriculturist and Service,

3) Jaywant Raghunath Shirke

Age: 46 years, Occ: Agriculturist and Service,

4) Bhagwan Raghunath Shirke

Age: 44 years, Occ: Agriculturist,

5) Mangal Shantaram Shirke

Age: 40 years, Occ: Household,

6) Meena Bhagwan Shirke

Age: 38 years, Occ: Household,

Defendant No.4, 5 & 6 R/o. Bobadewadi,

Tal. Koregaon, Dist. Satara.

Defendant No.2 and 3 R/o. Building no.40,

Room no.9, Sarpojarkhana road, Warli,

Infront of R.T.O office, Mumbai.

Defendant nos.1A.1 to 1A.4 R/o Chanchali,

Tal.Koregaon, Dist.Satara.

Defendant no.1B R/o 42, Yodogopal Peth, Satara.

--- Defendants.

Suit for Declaration, Partition and Separate possession.

Advocates appeared :-

For the plaintiff :- Advt.Smt.A.V. Bhosale

For the defendants :- Advt.Shri.S.S.Shedge.

J U D G M E N T

(Delivered on 04th August, 2026)

The present suit is filed by plaintiff for declaration,

partition and separate possession and permanent injunction against defendants.

2. The plaintiff in the suit described the suit properties as per Schedule A to C as under.

SCHEDULE 'A'

Agricultural Lands situated at Mauje Bobdewadi, Tal. Koregaon, Dist. Satara

Sr. No	Gat No.	Area (H-Are)	Assessment (Rs. Ps.)	Share/ Description
1.	173/1	1=96 Pot Kharab (0=01)	26=39	Northern side 41 Are
2.	82	0=24 Pot Kharab (0=01)	01=94	Entire
3.	13	0=72	09=92	Western side 8 Annas
4.	102	0=64	08=00	Southern side 8 Annas share
5.	38	0=68	08=91	Southern side 8 Annas share
6.	124	0=94	12=55	Northern side 30 Are
7.	23	0=03	00=37	Joint share in the well
8.	123	1=43	17=25	—

SCHEDULE 'B'**1. Property at Mauje Tadawale, Tal. Koregaon:**

Gat No.	Area	Assessment	Details	New Gat No.
776	0=73	09=28	Entire Gat	14
778	2=18	12=31	Entire Gat	15

Including the house located within this share as per Mutation Entry No. 2146.

2. Property at Mauje Tadawale, Tal. Koregaon, Dist. Satara:

Gat No.	Area	Assessment	New Gat No.
787	1=19	12=70	16

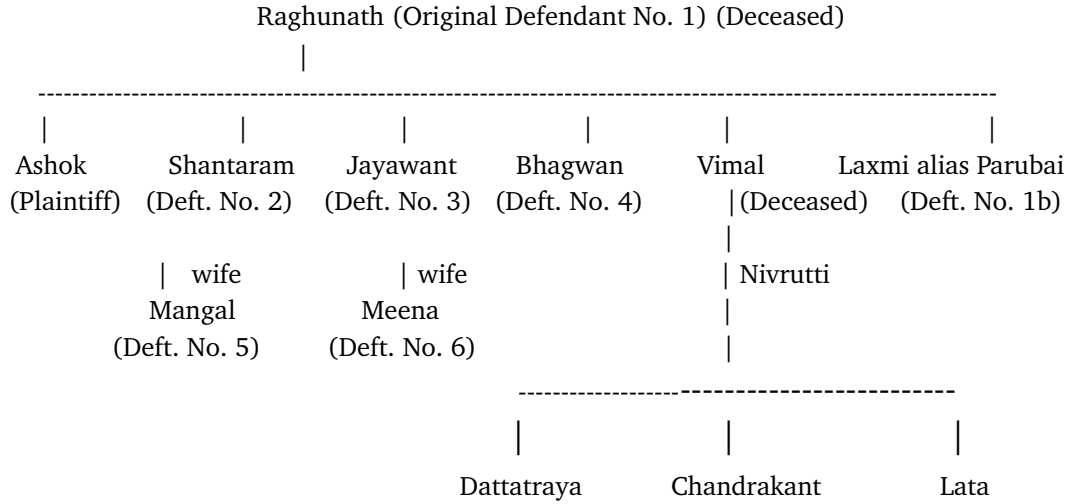
3 Annas 6 Paise joint share therein, i.e., Eastern side area measuring 26 Are.

SCHEDULE 'C'**Property situated at Mauje Bobdewadi, Tal. Koregaon, Dist. Satara:**

- Gram Panchayat Property No.: 52
- Description: Open space 43.1, south-facing cement post tinshed structure measuring 37 x 11 (C.T.S no.881)

The properties described in **Schedule 'A'** and **Schedule 'C'** of the plaint constitute the joint ancestral property and suit schedule property B are self acquired property of plaintiff is the subject matter of dispute in this suit.

3. The relevant genealogical tree of the Plaintiff and Defendants for the purpose of this suit is as follows:



Defendant No. 1 is the father of the Plaintiff and Defendant Nos. 2 to 4. Vimal and Laxmi are the daughters of Defendant No. 1. Defendant No. 5 is the wife of Defendant No. 2. Defendant No. 6 is the wife of Defendant No. 4.

The agricultural lands described in **Schedule 'A'** of the plaint are ancestral properties belonging to the father of the plaintiff and defendant nos. 2 to 4. The properties described in **Schedule 'B'** are self-acquired properties purchased by the plaintiff through his own earnings. The house property described in **Schedule 'C'** is ancestral property of the plaintiff and defendant nos.2 to 4.

4. The plaintiff further stated that on 10/02/2008, Defendant No. 1 executed a partition deed for the benefit of Defendant Nos. 2 to 4. However, Defendant Nos. 2 to 4 did not act according to it. During that period, the plaintiff was serving in the Military. Whenever he came home on leave with his family, Defendant Nos. 2 to 4 used to harass the plaintiff regarding the enjoyment/possession of the property. On 29/04/2009, Defendant Nos. 2 to 4 executed a partition deed for the house property along with the Plaintiff. On the same day, a water agreement/deed regarding the

well in Gat No. 123 was also executed. However, to date, those documents have not been implemented by the Defendants. On the contrary, taking shelter under those documents, Defendant Nos. 2 to 4 continue to harass the Plaintiff and obstruct him from drawing water from the well. Consequently, the Plaintiff is helplessly forced to buy water from neighbors.

5. The plaintiff further stated that thereafter, again on 22/06/2010, defendant Nos. 2 to 4 prepared a consent letter for the partition deed along with the Plaintiff and obtained signatures of all parties on it. Immediately on the very next day, i.e., on 23/06/2010, Defendant Nos. 2 to 4 without giving any notice to the Plaintiff and behind his back prepared another consent letter for a partition deed. However, to date, no action or implementation has taken place in furtherance of that between the Plaintiff and Defendants.

6. The plaintiff further stated that in Gat No. 15, on the western side area measuring 10 Are, the plaintiff had constructed a poultry farm and a 56 x 44 house out of his own funds. Taking undue advantage of the plaintiff's absence while he was away in Mumbai, defendant Nos. 2 to 4 demolished half of this house using a bulldozer, rendering the plaintiff completely homeless, and built a new house for themselves at that location. Despite complaints made by the plaintiff, nothing came of it.

7. On the contrary, the plaintiff has no house to reside in the village. Recently, when the plaintiff's daughter got married, religious rituals for the bride and village deity had to be performed by staying in a temple out of sheer helplessness. Defendant No. 4 has illegally residence in the remaining half portion of the house.

Meanwhile, Defendant No. 3 resides on the land given by the father. Therefore, the plaintiff is forced to file this suit seeking an order to reconstruct his residential house in its original position over the 10 Are area of Gat No. 15.

8. The plaintiff further stated that partition by metes and bounds has not taken place between the plaintiff and defendants. The plaintiff and defendants were, and still are, in joint possession and enjoyment of the suit properties. Merely to avail benefits of government schemes and due to discord among the wives of Defendant Nos. 2 to 4, paper entries were recorded separately in official records. However, since the Plaintiff retired from the Military, these disputes have been taken place. Thus, the Plaintiff is left with no option but to seek separation of his 1/5th share and obtain separate possession of the suit property.

9. Therefore, on 02/07/2014, the plaintiff issued a registered legal notice through an advocate to the defendants, demanding his 1/5th share by partition and separate possession of the suit property. However, defendant Nos. 2 to 4 failed to take any appropriate action and instead sent a reply containing false statements. Hence, the plaintiff became aware that defendant Nos. 2 to 4 will not partition the suit property voluntarily.

10. The plaintiff further stated that the properties described in **Schedule 'B'** of the plaint are self-acquired properties purchased by the Plaintiff from his own service earnings. The Plaintiff has been forced to file this suit to declare these properties as his self-acquired properties and to exclude them from the partition. On 02/07/2014,

the Plaintiff issued a registered notice demanding partition of the suit property by metes and bounds. However, the Defendants replied on 21/07/2014 refusing to grant partition. Hence, at that time and around that period, the cause of action for the suit arose at the location of the suit properties. Hence, the suit.

11. On service of summons to defendants they appeared in suit and filed their written statements on record. Defendant no.4 has filed his written statement vide Exh.47 stating that the entire contents in the suit are false, fraudulent, imaginary, and fabricated, hence, the same are not admitted or accepted by this defendant. Defendant further stated that the genealogy provided by the plaintiff showing the relationship between the plaintiff and defendants is incomplete. Therefore, the suit is bad for Non-joinder of Necessary Parties and ought to be dismissed. The properties listed in Schedule A, Schedule B and Schedule C are ancestral properties. Partition of these properties has already taken place, and therefore, the suit cannot proceed in law and is liable to be dismissed.

12. Defendants further stated that defendant No. 1 is the father of the plaintiff and defendant Nos. 2 to 4. He served in the Indian Armed Forces. After retirement, he funded the education and family expenses of his children through his salary and pension. In 1976, defendant No. 1 joined the Food Corporation of India (Dehu Road, Pune). From his pension and salary, he built a house in 1984 and funded agricultural activities. He served in Pune for 16 years until retiring in 1992. Defendant No. 1 got the Plaintiff recruited into the Armed Forces, but the Plaintiff was discharged due to medical unfit status, receiving no pension or salary. Thus, no question of

purchasing land from the Plaintiff's earnings ever arose.

13. Defendants further stated that before the plaintiff got a job, defendant No. 1 (as the elder brother) purchased land in the plaintiff's name while farming himself. In 1992, defendant No. 1 secured a dock worker job for the plaintiff in Mumbai through personal contacts and purchased a house in Nerul, Mumbai, taking a bank loan. Since the plaintiff's salary was low, defendant No. 1 paid the loan installments.

14. During the 2007 partition, defendant No. 1 paid funds to the Plaintiff from ancestral agricultural income to pay off loan installments and property purchases. The plaintiff's earnings were barely enough to cover basic family expenses. The properties purchased in the names of defendant Nos. 5 and 6 were acquired through their own self-earned income (Defendant No. 5's husband is in the Mumbai Police Force, and defendant No. 4 does farming/business). The Plaintiff has no claim or right over these properties. Following the 2007 partition, revenue entries were made, and independent possession was established. When the Plaintiff demanded valuation for his Nerul (Mumbai) house, the parties agreed to hire a Certified Valuer. However, instead of fulfilling his promise, the Plaintiff falsely claimed via legal notice on 02/07/2014 that no partition had occurred.

15. Defendant further stated that the plaintiff married twice. His first wife lives with two daughters in Bobdewadi at Property Gat No. 15 (allotted during partition). His second wife lives with her children in the ancestral house in Nerul, Mumbai. After retiring as a

dock worker, the Plaintiff moved to Bobdewadi and drove his first wife and daughters out of the house. The Plaintiff did not attend his daughters' weddings nor spend a single money. Defendant Nos. 2 & 4 and maternal uncles funded the said weddings. Consequently, the first wife filed a partition suit R.C.S. No. 257/2014 against the plaintiff in Koregaon Court. Angered by this, the plaintiff filed this false and fabricated suit against the defendants. Hence, the suit be dismissed with costs.

16. Defendant nos.1A/1 to 1A/4 filed pursis at Exh.70, defendant nos.1, 2, 5 and 6 filed pursis at Exh.52, defendant no.3 filed pursis at Exh.93B and adopted the written statement as per Exh.47 filed by defendant no.4.

17. My learned Predecessor has framed Issues at Exh.94. Considering the rival pleadings. I recorded my findings to each of them for the reasons discussed as under :-

Sr. No.	Issues	Finding
1)	Does plaintiff proves that the suit properties described at Schedule A and C are ancestral properties ?	In the negative
2)	Does plaintiff proves that the suit properties described at Schedule B are his self acquired property ?	In the negative
3)	Does defendants proves that the partition took place on 08/05/2007 ?	In the affirmative
4)	Whether the plaintiff is entitled for partition and separate possession of suit property? If	

	yes, what would be shares of respective parties ?	In the negative
5)	What order and decree?	The suit is dismissed with costs.

REASONS

18. The plaintiff, in order to prove his suit, plaintiff examined himself as P.W.1 at Exh.96, P.W.2 Waman Kondiba Sawant at Exh.113, P.W.3 Sampat Hanmant Mahadik at Exh.116. In support of his contentions plaintiff filed documents alongwith Exh.3 i.e 7x12 extract of suit properties and 8A extract of house property shown in Schedule A to C, certified copy of sale deed for Gat no.787 on 21/08/1990, copy of sale deed dated 30/11/1983 for Gat nos.776 and 778, Consent letter for the partition deed dtd 22/06/2010 and notice sent by the plaintiff to the defendant, Water share sheet for the well, Heirship letter (वाटणी पत्र) of Raghunath Ramchandra Shirke, extract of M.E.no.166, dead certificate of defendant no.1A Vimal Nivrutti Kadam (Exh.67), Acknowledgment copy of the notice sent by Advt Wagh to General Manager Jarendeshwar Sugar Mills, Ltd., Acknowledgment receipt of payment, Acknowledgment copy of the written complaint submitted to Koregaon Police Station Koregaon (Exh.75), Paper notice (Exh.89), Xerox copies of the sale-deed regarding Gat nos.787, 776 and 778, M.E.no.2785, pay slip of the plaintiff from Mumbai Port Trust where he was employed at Exh.103 to Exh.106, xerox copy of plaintiff's service book, certified copy of the sale deed regarding Gat nos. 787, 772 and 776 at Exh.no.101 and 102, copy of Service Discharge book of plaintiff at Exh.110. The plaintiff closed his evidence by filing evidence close pursis at Exh.118.

19. On the other hand, the defendants examined Defendant no.4 Bhagwan Raghunath Shirke at Exh.122. In support of their contentions they filed documents vide Exh.40 i.e copy of Khata extract no.8 standing in the name of plaintiff, copy of Khata extract no.91 standing in the name of defendant, copy of 7x12 extract Gat no.16, certified copy of M.E.no.166 at Exh.127. The defendant nos.2, 3, 5, and 6 closed their evidence by filing evidence close pursis at Exh.124.

Arguments:-

20. The learned advocate of plaintiff argued that, properties described in Schedule A and C are ancestral joint family properties of plaintiff and defendant no.1 to 4. Defendant no.1 Raghunath Ramchandra Shirke was father of plaintiff and defendant nos.2 to 4 and defendant no.1 never effected a lawful and final partition between the plaintiff and defendant nos.2 to 4. Therefore, plaintiff have undivided 1/5th share in the suit property Schedule A and C.

21. The learned Advocate of plaintiff further argued that the properties described in Schedule B were self acquired properties of plaintiff under registered sale deed dtd 30/11/1989 and 21/08/1990. The plaintiff has examined the attesting witnesses to these sale deeds by examining those witnesses. Plaintiff proved the execution of sale deed, therefore properties mentioned in Schedule B are self acquired properties of plaintiff and are liable to be excluded from partition.

22. The learned advocate of plaintiff further argued that defendants have relied upon M.E.No.166. The said mutation entry neither creates nor extinguish the title. The alleged partition dated

08/05/2007 has not been include in accordance with law by the defendants. The mutation entries in revenue record is only for taking advantages of Government scheme, but properties remained joint.

23. The learned advocate of plaintiff further argued that there has never been any legal and final partition made between the parties and plaintiff proved that properties Schedule A and C are joint family properties and liable to partition and Schedule B are his self acquired properties and prayed to decree the suit in favour of plaintiff and prayed to decree the suit.

24. The learned advocate of defendants argued that joint family properties had already been partitioned by way of family arrangement dated 08/05/2007. The said partition was acted upon by all family members and M.E.No.166, dated 01/07/2007 was certified in this regard. The plaintiff has never challenged M.E.No.166 nor prayed for declaration that the family partition dated 08/05/2007 is illegal, void and not binding upon him. In absence of such relief, the suit is not maintainable.

25. The learned advocate of defendants further argued that Schedule B properties, though the original sale deed stands in the name of plaintiff, though the properties allotted during the partition and M.E.No.166 specifically included all those properties and these properties are joint properties and not self acquired properties of plaintiff.

26. The learned advocate of defendants further argued that the continous separate possession of parties coupled with certified mutation entries, it establish that partition had already been taken in

effect. The plaintiff is not brought on record any reason to deny the partition made in 08/05/2006 and plaintiff is not entitled to fresh partition or separate possession because already partition was effected between the parties.

27. The learned advocate of defendants in support of his suit filed on record the case laws

H.Vasanthi Vs. A.Santha (Dead through Lr's), Civil Appeal No.7374/2008, Hon'ble Supreme Court, in which it is held that, " the factum of division is decided by the cumulative effect of or attending circumstances proved by the parties. Either the previous partition or separate ownership of any property is accepted all the evidence placed on record by the parties

Thus, prayed to dismiss the suit with costs.

Admitted facts :

28. The admitted facts in the suit are that plaintiff and defendant nos.2 to 4 are brother. Defendant no.1 is their father. Defendant no.5 is wife of defendant no.2. Defendant no.6 is wife of Defendant No.4. The defendants admitted in their W.S that out of suit property Schedule 1A, Gat no.173/1. 102, 123, 124 and suit property Schedule C, Milkat no. 52 are ancestral property of plaintiff and defendant nos.1 to 4 family. It is also admitted that suit Schedule B property were purchased in the name of plaintiff. It is also admitted that no registered partition deed has been executed between the parties. M.E.No.166 is in existence.

AS TO ISSUE NOS. 1 to 4 :-

(All issues are interlinked with each other. Hence, I took for reasoning all issues together.)

29. To prove the suit property described at Schedule A and C are ancestral properties and suit property of Schedule B are self acquired properties of plaintiff. Plaintiff stated in his plaint that defendant no.1 is his father and defendant nos.2 to 4 are his brothers. Defendant nos.5 and 6 are his sister-in-laws and wife of defendant nos.2 and 4 respectively. Plaintiff stated in the plaint that suit property mentioned in Schedule A and C are their ancestral properties and suit property mentioned in Schedule B are his self acquired properties. On 10/02/2008, defendant no.1 had issued partition deed in favour of plaintiff and defendants nos.2 to 4 for the property in Schedule A. But, defendant nos.2 to 4 did not act according to this partition deed. At that time, plaintiff was serving in Military and when he came to his village, defendant nos.2 to 4 used to disturb his possession over the suit property.

30. Plaintiff further stated that on 21/04/2009, defendant nos.2 to 4 alongwith the plaintiff made partition deed of house property and also made water share sheet (पाणी पत्रक) of well in Gat no.123. But, defendants not implemented this Pallipatrak and prevented to plaintiff from taking water from the well. Therefore, plaintiff buy water from the farmer adjacent to his field.

31. Plaintiff further stated that on 22/06/2010 again defendant nos.2 to 4 prepared consent deed for partition deed and took signature of all parties. Then after, immediately on next date i.e 23/06/2010 defendants nos.2 to 4 without giving any instruction to

plaintiff prepared second consent deed for partition. But, this partition is not yet to be implemented.

32. Plaintiff further stated that in Gat no.15, on western side of 10 R land, plaintiff built paltary and 56 x 44 house. Defendant nos.2 to 4 by taking advantage of fact that plaintiff resided at Mumbai demolished the house of plaintiff in this Gat number by Buldozer and built their new house. Thus, plaintiff does not have any house in village and when plaintiff came to village he has not house. Defendant no.4 resided in half portion of this Gat number without any right. Defendant no.3 resided in the property of defendant no.1. So, plaintiff failed to built house which was demolished by defendant nos.2 to 4 in Gat no.15 of 10 R land.

33. Plaintiff further stated that partition of suit property mentioned in Schedule A and C are not yet to be made. Only names of plaintiff and defendants mutated in revenue record only to take advantage of schemes of Government. The suit property not yet to be partitioned and plaintiff having his 1/5th share in suit property Schedule A and C.

34. Plaintiff further stated that defendants denied to partition of suit property Schedule A and C, so he filed this suit and prayed for make partition and separate possession of properties mentioned in Schedule A and C and declaration that property mentioned in Schedule B are his self acquired properties.

35. Defendants filed their written statement vide Exh.47 and denied that plaintiff is entitled to seek fresh partition of the suit property. It is specifically contend by defendant that actual and final

family partition took place on 08/05/2007 with the consent of plaintiff and defendant nos.1 to 4. It was executed on stamp paper and on its basis M.E.no.166 was effected and certified on 01/07/2007. As per said partition, each party separate possession of allotted share to them and has been cultivated the said property.

36. Defendants also denied that Schedule B property are not self acquired properties of plaintiff. The said property was purchased by their father defendant no.1 on the name of plaintiff and those properties are also taken into consideration while effecting family partition of 08/02/2007 and mutation entries were effected, accordingly.

37. Defendants to support their contention examined D.W.4 Bhagwan Raghunath Shirke as per Exh.122 and he deposed as per their claim and during his cross-examination admitted that suit property Gat nos.14, 15 and 16 were purchased on the name of plaintiff. He also admitted that no registered partition deed is in existence between the parties. It is also admitted that no revenue entry described in suit property Gat nos.14, 15 and 16 as joint family property, but denied all the suggestions which was given by learned advocate of plaintiff during his cross-examination.

38. The plaintiff has produced on record document of 7/12 extract and other revenue record relating to suit properties described in Schedule A, B and C. Plaintiff also filed on record registered sale deeds dated 30/11/1983 relating to suit property Schedule B1 for old Gat no.776 and 778 (New Gat no.14 and 15) and examined attesting witness Waman Kondiba Sawant as per Exh.113 who have also

proved the execution of the document which is on Exh.102.

39. Plaintiff also produced on record registered sale deed dated 21/09/1990 in respect of suit property Schedule B2 Gat no.787 (new Gat no.16) and examined Sampat Hanumant Mahadik as per Exh.116 and proved the execution of document and said sale deed is at Exh.101. Plaintiff also filed on record 7x12 extract of said Gat nos.14, 15 and 16 on which the name of plaintiff recorded in 7x12 extract. Plaintiff also filed on record the copies of alleged partition documents dated 10/02/2008, 21/04/2009, 22/06/2010 and 23/06/2010.

40. Defendants have mainly relied on the documentary evidence related to alleged family partition M.E.no.166 vide Exh.127, certified on 01/06/2007, partition dated 08/05/2007 and also filed other documents to support their contention.

41. Upon careful perusal of admissions given by both parties in the suit, it is seen that during the cross-examination, the plaintiff admitted that the parties are enjoying different portions of property separately and it is also admitted by plaintiff that M.E.no.166 was not challenged before the competent authority by him.

42. Defendant no.4 admitted during cross-examination that Gat nos.14, 15 and 16 were purchased on the name of plaintiff. No registered partition deed is in existence between the parties. It is also admitted that no revenue entries showing Gat nos.14, 15 and 16 as a joint family properties. It is also admitted by the defendant in W.S that Gat no.102 and Grampanchayat property no.52 were originally joint family properties of parties.

43. On perusal of record and admission of both parties, it is seen that the burden to prove that suit Schedule A and C are ancestral properties and suit Schedule properties B are self acquired properties of plaintiff and plaintiff having 1/5th share therein. The defendants have admitted that some of suit properties of Gat no.173/1, 102, 123, 124 in Schedule 1A and suit properties Gat no.776, 778 and 787 (new Gat no.14, 15, 16) and suit properties in Schedule C Milkat no.52 are ancestral properties of their family. Defendants took defence that those ancestral properties were already partitioned on 08/05/2007 under family arrangement and M.E.no.166 dated 01/07/2007 was allotted for this. Plaintiff denied the partition made between the parties and prayed for partition of suit property Schedule A and C and prayed for declaration that suit property Schedule B were his self acquired properties.

44. The plaintiff examined himself at Exh.96 and contend his averments made in the plaint. Plaintiff further examined two attested witnesses on sale deeds in respect of suit property Schedule B. On the other hand, defendants have produced on record M.E.no.166 which is on Exh.127. On perusal of this mutation entry, it is seen that it is certified on 01/07/2007 on the basis of family partition dated 08/05/2007 between the parties and on perusal of said M.E.no.166 the Gat nos.124, 16, 173/1, 15, 123, 14 were allotted to the plaintiff, defendant nos.1 to 4. The mutation entry was certified by competent revenue authority.

45. On perusal of record of 7x12 extract which also shows the separate name of the respective parties came to be entered in accordance with M.E.no.166, though these entries do not establish

title, but it indicates that the family arrangement was acted upon in revenue record. Defendants specifically took defence that partition was made on dated 08/05/2007 which was acted upon and each party has been in separate possession of the properties allotted to him. This oral contention of defendants supported from the mutation entry and subsequent revenue record. Though, M.E.no.166 is not a document of title, but it is corroborative piece of evidence regarding family partition was took place on 08/05/2007 and already been effected and acted upon by the parties.

46. The plaintiff produced on record the 7x12 extract and 8A extract which showing separated entries in the name of respective parties in suit properties. These entries are consistent with the case or prior partition. It is true that mutation entries by itself neither create nor extinguish title. In present suit, the mutation entries are corroborated by separate revenue entries continuing since 2007. Therefore, though the properties were originally ancestral, the plaintiff has failed to establish they continue to remain joint family property on the date of institution of suit. The evidence on record shows that it stood on the names of respective parties as per partition made in 2007 and M.E.no.166 was effected in revenue record. Hence, plaintiff failed to prove that suit property Schedule A and C are ancestral properties of plaintiff and defendants and plaintiff is entitled for partition.

47. The plaintiff also stated that the suit properties described in Schedule B are his self acquired properties. The burden lies on plaintiff to prove that suit Schedule property B were self acquired properties of plaintiff. The plaintiff stated that said properties were

purchased by him from his independent income and examined attesting witnesses P.W.2 and P.W.3 and sale deed placed on record as per Exh.no.101 and 102. It is also admitted by defendant no.4 that in his cross-examination that Gat nos.14, 15 and 16 were purchased in the name of plaintiff. He also admitted that no registered partition deed was effected between them, no revenue entry described on sale deed that these properties are joint family properties.

48. It is well settled law that when any property purchased on the name of any person under the registered sale deed in his name, it is initial presumption is that the property belongs to him. In the suit, defendants pleaded that although suit properties Schedule B were originally purchased by the plaintiff. Though the properties were included in the family partition dated 08/05/2007, in support of this contention defendants filed on record M.E.No.166, which shows that these Gat numbers also taken into partition and separate entries were allotted to different family members after the said partition.

49. The plaintiff has not challenged M.E.no.166 before the competent authority, nor declared partition dated 08/05/2007 illegal or void or not binding upon him. Therefore, it is seen from the record that though properties Schedule B is on the name of plaintiff, but plaintiff has failed to prove that the said properties were his self acquired properties. When these properties were allotted to the family members as per partition and revenue entries was effected. In this regard, it is proved that suit properties Schedule B are not self acquired properties of plaintiff and plaintiff failed to prove that suit property Schedule B are his self acquired property.

50. The defendants have produced on record certified copy of M.E.166 which shows that on 08/05/2007 the parties prepared written partition and on the basis of this partition separate mutation entries were effected in favour of respective parties. The revenue record shows that the name of parties mutated as per partition made between the parties and such entries have been remain inforce from 2007. As per settled law, it is an oral partition under Hindu Law is valid and does not require compulsory registration, if it records and already completed transaction.

51. It is well settled that under Hindu Law, partition of joint family property need not necessarily been effected by a registered document. A partition may be oral and if such oral partition is subsequently reduce into writing, such a partition does not require compulsory registration. Family arrangement entered into voluntarily for maintaining peace and harmony in the family should ordinarily be legal.

52. Considering all above evidence on record, defendants have proved that valid family partition took place on 08/05/2007 which was subsequently reflected in M.E.no.166.

53. Defendants have proved that ancestral suit properties have already been partitioned on 08/05/2007. Plaintiff has not prayed for cancellation, declaration that family partition dated 08/05/2007 or M.E.No.166 is illegal, void or not binding upon him. Without setting aside, earlier partition a fresh suit for partition of the same properties is not maintainable. Hence, plaintiff has failed for entitlement for fresh partition and separate possession as prayed.

Hence, I conclude to answer *Issue nos.1, 2 and 4* in the *negative* and *Issue no.3* in the *affirmative*.

AS TO ISSUE NO. 5:-

54. In view of the aforesaid findings, the plaintiff is not entitled for partition and separate possession of the suit property. Therefore, the present suit is liable to be dismissed. Hence, in answer to Issue no.5, I pass the following order:-

ORDER

(1) The suit is dismissed with costs.

(2) Decree be drawn up accordingly.

(Dictated and Pronounced in open Court.)

Koregaon

Date : 04/08/2026

(P. D.Yavatkar)

Jt. Civil Judge Junior Division, Koregaon,
Tal.Koregaon, Dist.Satara.