



Presented on : 09.09.2015
Registered on : 18.09.2015
Decided on : 31.07.2026
Duration : 10Y.10M.22D.

IN THE COURT OF 5th JT. CIVIL JUDGE, J.D., AT PHALTAN
(Presided over by – Smt. P. S. Mule)

Regular Civil Suit No.217/2015
(MHST-1400-1627-2015)
Exh. No.88.

1. **Surekha Mohan Gaikwad**)
Age: 49, Occupation : Agricultural)
2. **Abhishekh Mohanrao Gaikwad**)
Age: 22, Occupation : Education)
Sr. No.1 and 2 R/o Taradgaon Prerana)
188-A, Somwar Peth Karad,)
(Panyachya Takijaval) Tal. Karad, Dis. Satara) **Plaintiffs**

VERSUS

1. **Sugandha Hanmant Mane**)
Age: 63, Occupation : Household)
R/o Taradgaon-Chalishaon)
Tal- Phaltan Dist. Satara)
2. **Meena Bhagwan Jadhav**)
Age: 47, Occupation : Household)
R/o Gulumb Tal. Wai Dist. Satara)

3. **Uttam Dinkar Mane**)
Age: 55, Occupation : Agricultural)
R/o Taradgaon Tal. Phaltan Dist. Satara)
4. **Sunil Maruti Shinde**)
Major, Occupation : Agricultural)
5. **Kalpana Bhagwan Mohite**)
Major , Occupation : Agricultural)
6. **Daulat Hanmant Gaikwad**)
Major, Occupation : Agricultural)
7. **Appaji Gaikwad**)
Major, Occupation : Agricultural)
8. **Satish Shivaji Suryavanshi**)
Major, Occupation : Agricultural)
Sr. No. 4 to 8 R/o Taradgaon,)
Tal.Phaltan Dist.Satara) **Defendant**

Claim: Suit for partition, separate possession and injunction.

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Appearance : Ld. Adv. Shri. C.E.Barge for Plaintiffs.

Ld. Adv. Shri. K.B.Shinde for Defendants.

J U D G M E N T**(Delivered on 31.07.2026)**

This is a suit for partition, separate possession and declaration in respect of Gut No.1131 admeasuring 00.06R share 8 aana, 1132 admeasuring 01H.33R share 4 anna, 1146 admeasuring 00.13R share 8 aana, 2239 admeasuring 00.03R share 8 anna, 1520/1 admeasuring 07H.11 share 4 anna and house Property No.1159 situated at village Taradgaon Tal. Phaltan, Dist. Satara. More particularly described in Para No.1 of 1A of the plaint. (here-in-after referred to as suit property for the sake of brevity).

The plaintiffs are asked partition in the Gut No. 1520/1 and claiming 4 aana share of defendant No.1.

Facts giving rise to the plaintiff suit are as under

2. It is averred by the plaintiffs that, suit property originally belongs to Hanmanta Dinker Mane. He died in the year 1975. He had two wives. The name of the first wife was Sugandha. She died in the life time of Hanmanta, therefore he remarried with Defendant No.1. He also gave same name Sugandha to the defendant No.1. She had two children from Hanmanta. Both children are dead. After death of Hanmanta name of the Defendant No.1 is recorded to the suit property Gut No.1520/1 for 4 aana share. The name of the Defendant No.3 was recorded for 8 aana share in this suit property. On 4/3/1982 the mutation entry approved by the village circle officer. The Defendant No.2 is claiming

she is daughter of Hanmanta. But, plaintiff had no knowledge about it. The Defendant No.1 had share in the suit property. She was in actual possession of the suit property Gut No.1520/1.

3. It is further averred by the plaintiffs that, the name of the Defendant No.1 recorded on suit property Gut No.1520/1. In the year 2002 the defendant No.1 had financial need therefore she want to sale her share from the suit property. After discussion between defendant No.1 and husband of the plaintiff No.1, on 03.08.2002 the defendant No.1 executed registered sale deed infavour of plaintiff's husband namely, Mohanrao Gaikawad for land 88.875 out of Gut No.1520 for a consideration Rs. 2,00,000/-. On same day Defendant No.1 gave possession of the said land. Also, on 03.08.2002 the defendant No.1 executed registered sale deed in favour of plaintiff No.1 land 88.875 out of Gut No. 1520 for consideration an amount Rs. 2,00,000/-. On same day Defendant No.1 gave possession of the said land. In view of said sale deed M.E. Nos. 3088 and 3089 were recorded in the revenue record. Since they are in possession and cultivating suit property.

4. It is further averred by the plaintiffs that, the husband of the plaintiff No.1 Mohan Genba Gaikwad died on 15.01.2002. The name of the plaintiff No.2 is included in the suit property Gut No.1520/1. The mother of Mohan Gaikwad died on 15.12.2008. The Defendant No.2 challenged M.E. No.3088 and 3089 and she had filed R.T.S. Appeal before S.D.O. Phaltan No.127/2002 and 128/2002. On

30.04.03 both appeal decided and Mutation entries were cancelled. The defendant No.2 had filed R.C.S No.38/2003. At the time of filling suit Mohan was died despite of it the defendant No.2 filed suit against him. Thereafter, the defendant No.2 filed pursis and deleted his name from the suit. This suit was filed for partition and declaration. The defendant No.2 failed to take steps therefore on 25.06.2007 the suit is dismissed for default. The plaintiffs were filed written statement in that suit. Therefore, the defendant No.2 has no right and interest in the suit properties.

5. It is further averred by the plaintiffs that, as per contention of the defendant it revealed that the suit properties already partitioned. Thereafter, Babai executed sale deed infavour of defendant No.6 and 7. The defendant No.2 never raised any objection over said sale deed. There was no joint family of defendant No.1, 2 and Babai. It is clear seen that the defendant No.2 has no right and interest in the Gut No.1520/1. Since the year 1975 the defendant No.2 is not in the actual possession of the suit property. Therefore, she has no interest and right in the suit property. If it is proved that, the suit properties are ancestral properties and Defendant No.2 has entitled to share in the suit property. Then 4 aana share be preferentially allot in the share of the plaintiffs. The sale deed is binding upon the defendant No.2. On 19.6.2007 the suit was dismissed for default then cause of action arose to file present suit. The plaintiffs do not want to keep their share in common.

Therefore, plaintiffs wants to separate their share and constrained to file present suit. Lastly, plaintiffs prayed for suit may kindly be decreed with cost.

6. Suit summons served to all defendants. The summons were duly served upon the Defendants No.1,3,6 and 7 but they are not appeared within stipulated period. Hence, suit proceed ex-parte against them. The defendant No.2 appeared and filed her written statement at Exh.39 and contended that, and contested the suit claim. The Defendant No.2 denied execution of sale deed in favour of Plaintiff No.1 and her husband. The sale deeds are bogus without consideration and it is illegal. Therefore, no any rights and interest are created in the suit property Gut No.1520/1 of the plaintiffs.

7. The Hanmanta had only one heir i.e. Defendant No.2. The Defendant No.1 is not wife of Hanmanta. Therefore, she is not legal heir of Hanmanta. The name of defendant No.1 recorded in the records of rights, it was not legal. The Defendant No.1 has no title and interest in the suit properties. Therefore, she can not transfer suit property. No one can pass better tittle of which he is not owner. There was no legal necessity. The sale deeds are not legal therefore those are not biding upon her share. In the year 2002 there was need of sanction of rehabilitation officer. But sale deed are executed without prior permission of Rehabilitation Officer.

8. It is further contended that, the Defendant No.2 was in

common possession of the suit properties. The Defendant No.2 filed R.T.S. Appeal No. 127/02 and 128/02 both are allowed and M.E. No.3088 and 3089 are cancelled. The 2nd Appeal No.128/03 and 128/03 were dismissed on merit. The Defendant No.2 denied to take possession to the plaintiffs. Since 03/08/2002 the plaintiffs are not in the possession. As per section 27 of the Limitation Act after denied ownership of the plaintiffs the suit have to file within 3 years, but plaintiffs are failed. Therefore, suit is time barred. The plaintiffs have no locus standi to ask for partition and declaration. The defendant never filed R.C.S No.38/2003. therefore no question arise to dismiss the suit.

9. It is further contended that, on 15.12.2008 Bhagirathibai mother of Mohan is died but the plaintiffs are not included her legal heirs in present suit. Therefore, suit is bad for non-joinder of necessary parties. The plaintiffs have not brought house and land properties of joint family in one common hotch-pot for partition. The four boundaries are incorrect. Hence, suit is barred by the provision of Order 7 Rule 3 of the Civil Procedure Code. No cause of action arose to file suit. Lastly, defendants No.2 prayed for dismissal of the suit with compensatory costs.

10. The Plaintiffs and defendants have examined their respective witnesses. Heard, Shri. Barge Advocate for plaintiffs, Adv. Shri. K.B. Shinde for defendant No. 2. Considering the rival pleading of the parties and material placed on record, following issues framed

at Exh.41. My findings recorded against each issue with the reasons stated below :-

Sr. No.	Issues	Findings
1.	Do plaintiff prove that Defendant No.1 has right to execute sale deed dated 03/08/2002 in their favour ?	Partly Affirmative.
2.	Does Defendant No.2 prove that she is only one legal heir of deceased Hanmanta Dinkar Mane?	Negative.
3.	Does Defendant No.2 prove that the sale deeds dated 03.08.2002 executed by defendant No.1 infavour plaintiffs are void?	Sale deed is legal and not binding upon the share of Defendant No.2.
4.	Whether plaintiffs are are entitled for partition?	Affirmative.
5.	Whether suit is bad for Non-joinder of necessary parties?	Negative.
6.	Is the suit is within limitation?	Negative.
7.	Are plaintiffs are entitled for declaration?	Partly affirmative. The

		plaintiffs have 1/2 share out of 4 aana share in the Gut No.1520/1 of the defendant No.1.
8.	What order?	Suit is partly Decreed.

Reasons

11. In support of suit claim, plaintiff No.1 Surekha Mohan Gaikwad examined herself as PW.1 at Exh.53, and Pradip Dattarya Kamble as PW.No.2 at Exh.56 evidence closed pursis at Exh.63. On the other hand, defendant No.2 Meena Bhagwan Jadhav examined herself as D.W.1 at Exh.67 and Dharmaji Mahadev Jadhav examined as D.W.2 at Exh.74. Thereafter, the defendant No.2 remained absent therefore her evidence is closed by passing order at Exh.1.

Following documents available on record -

- (i) 7/12 extract of suit properties from at Exh.05 to 09.
- (ii) Registered sale deed at Exh.57 and 58.
- (iii) M.E. No. 3169, 3103, 3088 and 3089 from at exh. 10 to 13.

As to Issue No.2

12. The defendant No.2 claimed that she is only one heir of deceased Hanmanta. She has denied that, the defendant No.1 is not legal heir of deceased Hanmanta. Therefore, she has not entitled to execute sale deed infavour of the plaintiff No. 1 and her husband. On perusal of cross-examination of the plaintiff, the Ld. Adv for the defendant No.2 put suggestion that, defendant No.1 is the second wife of Hanmanta. Further, Ld. Adv for the defendant No.2 put suggestion that, the Defendant No.1 and 2 are the legal heirs of the deceased Hanmanta. It means the defendant No.2 admitted defendant No.1 is the second wife of Hanmanta. After death of Hanmanta she is also legal heir of Hanmanta. It is admitted by the plaintiffs. As per Evidence Act admitted fact need not be proved.

13. As per Section 8 of the Hindu Succession Act, when a male Hindu dies intestate, his property devolves upon his heirs first priority is given to the class -I heirs- include mother, widow, sons and daughters. It is admitted by the Defendant No.2. Defendant No.1 is the wife of deceased Hanmanta. The defendant No.1 is the widow of Hanmanta and she is also class-I legal heir of Hanmanta. Therefore, the Defendant No.1 and 2 are the class-1 heir of the deceased Hanmanta. The defendant No.2 is failed to prove she is any one legal heir of Hanmanta. Hence, I give the answer as to issue No.2 in the Negative.

As to Issue No.3

14. The Ld. Advocate for the defendant No.2 argued that sale deed are the void because at the time of execution of sale deeds not took permission under Section 12 of the Maharashtra Resettlement Of Project Affected Person Act, 1976. He relied on case law, **Jayvantrao Balvantrao Patil and Ors Vs Sandeep Ramchandra Sapkal and Ors**. The plaintiffs examined P.W. No.2 Pradeep is the bond writer. During cross-examination he admitted that, as per Rehabilitation Act there was restriction to transfer land situated at Village Nira Ujwa Kalwa and Taradgaon. In the re-examination he deposed that if land is less than 8 Acre then no need of permission. Thereafter, in re cross-examination admitted that every transfer required permission of the concern authority. On perusal of sale deed at Exh.54 and 58 the seller (defendant No.1) filed self declaration that, she had no land more than 8 Acre. She also stated in self declaration she has also knowledge of there is need of permission of Collector to transfer. It's copy is attached with sale deed. On perusal of 7/12 extract there is remark restriction to transfer u/s 12 of the Maharashtra Resettlement of Project Affected Person Act. The sale deed at Exh.57 and 58 are executed without permission in writing of the State Government.

15. The court can take judicial note of orders and official notification passed by the concern authority as per Evidence Act. The notification issued under Section 11 of the Maharashtra

Resettlement Of Project Affected Person Act for total 88 villages are included in that notification. The Taradgaon village also included in that notification. On perusal of 7/12 extract there is remark that under Section 12 of Rehabilitation Act restriction for transfer of restricted from 05.02.1986. On 28.06.2015 subsequently, Collector of Satara ordered that, in accordance with the government decision dated 01.09.2014 the government approved the removal of the remarks made as reserved rehabilitation in the records of other rights on 7/12 extracts. If any person out of total 88 villages having slab area 3 H.23 R they are excluded from said ban of transfer on 7/12 extract and it should be reduced. It means as per the order dated 28.06.2015 the remark for transfer is reduced. Thereafter, notification issued dated 11.02.2022 it is relating to notification issued in the year 1976, 1986 and 1999 under Maharashtra Resettlement Of Project Affected Person Act. It was related restriction to transfer. Theretofore, remark was recorded in 7/12 extract in others rights as per government decision it is reduced subject to condition "पुनर्वसन अधिनियमातील तरतुदींच्या अनुशंगाने राज्यशासनाचा भुसंपादनाचा अधिकार आबादित ठेवून फक्त शेती वापरासाठी हस्तांतरण व्यवहार अनूज्ञेय असेल." If any person out of total 88 village having land up to slab area 3 H.23 R are excluded land from the transfer and ban of 7/12 extract should be reduced. It means as per the order dated 28.06.2015 the remark for transfer is reduced and notification dated 11.02.2022 with condition. The seller gave self

declaration that the she has below land than slab area. The plaintiffs are bound to follow the notification dated 11.02.2022 alongwith condition mentioned. It means transfer will valid subject to above condition for agricultural purpose.

16. Notification dated 11.02.2022 is in suppression of previous notifications. Therefore, sale deed at Exh.57 and 58, are registered in the year 2002 and indicates the transfer of land for continuous agricultural cultivation. The character of the land remains agricultural. A bare reading of this notifications reveals that the state government subsequently reduced the "slab area" restrictions over the suit property by modifying the entry to allow transfers exclusively for agricultural purposes. The initial defect, if any, stands fully cured. Consequently, the Sale Deeds cannot be termed void.

17. Ld. Advocate for the defendant No.2 argued that sale deeds are the void because seller and purchaser not took permission under Section 12 of the Maharashtra Resettlement of Project Affected Person Act, 1976. He relied on case law **Jayvantrao Balvantrao Patil and Ors Vs Sandeep Ramchandra Sapkal and Ors**, wherein the Hon'ble High court held that, the sale deed executed after date of issuance of section 11 Notification which included area in question in affected/benefited zone without permission of competent authority is illegal and void ab initio. The facts of supra judgment and case in hand are different. Hence, with due respect

above case law is not applicable to the Defendant No.2. As above discussed sale deeds are not void. The sale deed is valid and not binding upon the share of Defendant No.2. Hence I give answer as to issue No. 3 Accordingly.

As to Issue No.1

18. The plaintiffs averred and deposed in her plaint and chief- affidavit, on 03.08.2002 the defendant No.1 had right and entitled to execute deed their favour relating suit property Gut No.1520/1. Both the sale deeds are on record. It is not case of the plaintiffs there was partition between defendant No.1 and defendant No.2 of the suit property Gut No.1520/1. The suit property is inherited by Hanmanta. As above discussed the defendant No.1 is also legal heir of deceased Hanmanta. The Defendant No.1 and 2 are the legal heirs of deceased Hanmanta. It means the Defendant No.1 and 2 are co-sharer in said suit property i.e. Gut No.1520/1.

19. As per Section 44 of the Transfer of property Act a co-owner is legally competent to transfer their undivided share in the joint property even is un-partitioned. The transferee acquires the same rights as the transferor, including joint possession or part enjoyment, subject to partition. As per Section 44 co-owner transfers his share of immovable property, the transferee acquires all the legal rights of the transfer. This includes to right joint possession, common enjoyment and right to enter partition. Therefore, the defendant No.1 had right to transfer her un-devided share from Gut

No.1520/1. However, this statutory authorization is strictly conditional upon his share. It does not empower to transfer entire land. A co-owner can not transfer extra share. The excess portion sold by Defendant No.1 constitute illegal. The defendant No.1 has only right to execute sale deed up to her share. The Defendant No.2 in her the cross-examination admitted that, Defendant No.1 is the her step mother.

20. On perusal of 7/12 extract of Gut No. 1520/1 the total area is 6 H 53 R. The name of the defendant No 1 is recorded for 4 aana share. The defendant No.2 is also legal heir of the deceased Hanmanta. Therefore, the defendant No.2 has share in the said land. The sale deed at Exh. 57 and 58 are relating to suit property Gut No. 1520 /1. The name of the plaintiff No.1 is listed as purchaser and name of the Defendant No.1 is listed seller. It is executed on 03.08.2002. It is annexed with 7×12 extract. The name of the Defendant No.1 is reflected for 4 aana share, but name of the defendant No.2 is not reflected. The defendant No.2 has 2 aana and defendant No.1 has 2 aana share in the Gut No.1520/1. The defendant No.1 had sold total 4 aana share. It is larger share than her share. Therefore, the defendant No.1 had right and entitled to execute sale deed only to the extent of her share. Therefore, the Defendant No.1 had only right to execute sale deed to the extent of 1/2 share from 4 aana share not whole share in the Gut No.1520/1. Therefore, the sale deed executed at exh.57 and 58 are not binding

upon the share of the defendant No.2. It is binding upon the share of the defendant No.1.

21. As above discussed the defendant No.1 had only entitled to execute sale deed to the extent of her share. The suit property was a joint property. In view of the statutory mandate under section 44 of the Transfer of property Act, she had only right to transfer her share. The defendant No.1 executed sale deed without consent of the defendant No.2. The defendant No.1 can not execute sale deed without consent of the Defendant No.2. The sale deed executed on 03.10.2002 by the Defendant No.1 in favour of plaintiff No.1 and her husband is only valid to the extent of her share. Hence, give answer as to Issue No. 1 partly affirmative.

As to Issue No.5

22. It is contended in the written statement of the defendant No.2 that suit is barred by non-joinder of necessary parties. The plaintiff pleaded in the plaint that husband of the plaintiff no.1 died in the year 2003. His mother died in 2008. The present suit is filed in the year 2015 for partition. But, plaintiffs have not included legal heirs of the mother Bhagirathi in the present suit. In the cross-examination plaintiffs also admitted that her mother in law has legal heirs but they are not included in the present suit. The present suit is for partition filed by the purchaser against seller. This suit is not relating to ancestral property. In the present suit the purchaser yet not got his share. After getting his share the legal heirs may can

claim their share in the Gut No.1520/1. Hence, suit is not barred by non-joinder of necessary party. Hence, I give the answer as to issue No.5 in the Negative.

As to Issue No.6.

23. It is contention of the defendant No.2 that the suit is time bared. The plaintiff asked partition and separate possession on the basis of sale deed. On perusal of the sale deed there is recitals that possession handed over to the plaintiffs on the same day of execution of sale deed. It means plaintiffs are in possession. It is not proved that the purchaser is excluded from the possession after sale deed. It seen that, the defendants and plaintiffs are in joint possession of the suit Gut No.1520/1. It is seen that the there is joint possession and has been no exclusion of possession of the plaintiffs. The cause of action to seek partition continues so long as the joint possession status is remained and no clear ouster is proved. Therefore, suit is within limitation. Hence, I give the answer as to Issue No.7 in the Negative.

As to Issue No.4 and 7.

24. In view of the findings as to Issue No.1,2 and 3, it is already discussed above in detail that the defendant No.1 is legal heir of deceased Hanmanta. She also entitled in the suit properties. The defendant No.1 executed sale deed of Gut No.1520/1 infavour of plaintiff no.1 and her husband are valid to the extent of her share. Those sale deeds are not binding upon the share of the defendant No.2. In the 7/12 extract of Gut No.1520/1 out of 4 aana share is

mentioned, but the defendant No.2 also half share in the Gut No.1520/1. Therefore, defendant No.1 had 1/2 share out of 4 aana share and defendant No.2 has a 1/2 share out of 4 aana share in the Gut No. 1520/1. Therefore, plaintiffs have joint 1/2 share out of 4 aana in the Gut No.1520/1 being purchaser. The plaintiffs are stepped into the shoes of the defendant No.1. to that extent the plaintiffs have entitled share of the defendant No.1. On the contrary, defendant No.2 failed to prove sale deed dated 03.8.2002 are void. The defendant No. 1 and 2 are 1/2 share in the share of deceased Mohan mentioned in the suit properties. The defendant or plaintiffs have not produced house property extract. Therefore no relief in respect of house property. Therefore, I reached to the conclusion that plaintiffs have entitled for the relief of partition and separate possession of 1/2 share out of 4 aana share in the Gut No.1520/1 in the suit property. Accordingly, I recorded my finding as to Issue No.4 and 8 in the affirmative and proceed to pass the following order.

ORDER

1. Suit is partly decreed with costs.
2. It is hereby declared the plaintiffs have jointly 1/2 share out of 4 anna share in the suit property Gut No.1520/1 being purchaser. The defendant No.2 has 1/2 share out of 4 anna share in the suit property Gut No.1520/1 description more particularly in the Para No.1 of the plaint.

3. It is further declared that the defendant No.1 and 2 are 1/2 share in the suit properties more particularly described in the para No.1 of the plaint. The plaintiffs being purchaser in view of sale deeds dated 03.08.2002 shall be entitled to share only to the extent of the share of defendant No.1.
4. Precept under section 54 of the Civil Procedure Code be sent to the Collector, Satara for effecting actual partition as per shares determined above.
5. Plaintiffs be put in to actual possession their respective share determined above.
6. Copy of this order be sent to the sub-registrar, Phaltan for information and necessary action as per the provision of section 31 (2) of the Specific Relief Act.
7. Decree be drawn up accordingly.

(Judgement pronounced in open Court.)

Place : Phaltan
Date : 31.07.2026

(P. S. Mule)
5th Jt. Civil Judge Junior Division
Phaltan.