

MHST160006292024



**Regular Darkhast No.14/2024
(Vyankat Jedhe through LRs Vs.
Raghunath Jedhe through LRs)**

**Order below Exh.5
(Passed on 16.09.2025)**

This is an application filed by the decree holders for adding proposed non applicants No.10 to 23 in the present proceeding as the judgment debtors/non-applicants. They submitted that the original suit was filed by the predecessor of the JD Nos.1 to 14 i.e. deceased Raghunath Raghu Jedhe against his brother Vyankat Raghu Jedhe for the partition of the suit properties by metes and bounds. Said suit came to be decided vide judgment dated 30.09.1993 and Raghunath as well as Vyankat were declared to have half share each in the suit properties. The legal representatives of deceased Vyankat i.e. original defendant No.1 have not challenged said judgment and decree, till date. Deceased Vyankat died on 08.09.1994 and original plaintiff Raghunath died on 11.01.2002. Both of them have not acted upon in accordance with the judgment and decree in RCS No.131/1987.

2. The decree holders further submitted that after final decision in RCS No.131/1987, deceased Raghunath and Vyankat as well as their legal representatives have alienated some of the portion in the suit properties by separate registered sale deeds. The details in

respect of those sale deeds are mentioned in Annexure 'A'. However, the suit properties are yet to be partitioned in accordance with the decree. Therefore, the decree holders now filed the present execution proceeding for the same under Section 54 of the Code of Civil Procedure.

3. It has been further submitted by the decree holders that it is now necessary to have the purchasers of some of the portion of the suit properties on record. Those are in fact necessary to be incorporated in the present proceeding for the reason that they may be given and allotted the share purchased from their predecessors during the actual partition. Being this situation, the proposed non-applicants No.11 to 15 have recently started to carry out the construction in Gat No.110, which has been purchased by them from the branch of original plaintiff Raghunath. Therefore, the prohibitory orders are required to be obtained. For all these reasons, the applicants/decreed holders have prayed to allow the application.

4. Non-applicant No.11 has resisted the present application by filing his say at Exh.156. He also filed pursis at Exh.40 and submitted to consider his say at Exh.20. Other proposed non-applicants failed to file their say, even after issuance of notices to them. Therefore, no say order came to be passed against them. Proposed non-applicant No.11 in his say, submitted that the present proceeding has been filed for the partition in view of the judgment and decree in R.C.S. No.131/1987 dated 30.03.1993. The present decree holders are the legal representatives of Vyankat, who was original defendant in the suit. He admitted that there was

preliminary decree in that suit. Still, the present decree holders have filed R.C.S. No.86/2024. Even, they filed the application for temporary injunction therein, whereby they prayed to restrain the present non-applicants from carrying out any further construction in Gat No.110 on the count that said suit property is not yet partitioned. However, said injunction application came to be rejected with observation that there was earlier partition. The original defendant Vyankat in RCS No.131/1987 took defence of previous partition. After passing of the judgment & decree therein, both Vyankat and Raghunath got partitioned the suit properties on their own, just after laps of one month. Accordingly, the revenue record was mutated by separate Aanewari. Therefore, there was no question of filing of any execution proceeding in respect of the actual partition, which is already done. The families of Vyankat and Raghunath are separated, therefore now, the suit properties are not joint family properties.

5. It is further submitted by proposed party No.11 that he purchased 8 R portion in the suit property bearing Gat No.110 in the year 2012. The present decree holders have not raised any objection to that transaction since last 13 years. Subsequent to that sale, his name has been mutated in the revenue record. Even, others have purchased some portion out of Gat No.110 and they have constructed their houses there upon long back. The execution of the preliminary decree was in fact done by the Raghunath and Vyankat by mutual consent and therefore, revenue record was accordingly changed. Therefore, they alienated some of the suit properties. The present applicants have filed RCS No.86/2024 with malafide intention and

by suppressing material facts and thereby obtained the status quo order. Therefore, the proposed non-applicants filed application under Section 340 of the Code of Criminal Procedure against them. Due to which, the present application came to be filed, so as to take revenge.

6. The proposed non applicant further contended that the decree holders have remedy to file separate suit, if according to them they are trespassers and encroachers. Decree holders Chandrakant, Suresh and Anusaya already gifted 3 R portion out of Gat No.109/9 to the Commissioner of Animal Husbandry Department, Pune and it has constructed its office therein. It is numbered as Gram Panchayat Property Number, as well. They have also alienated 5 R portion out of Gat No.110 in favour of Ajinkya Jadhav and he accordingly constructed his house therein, which is also allotted separate Gram Panchayat property number. One Ravindra Bhilare also constructed lavish resort in the suit property. So also, Sharda Mahadev Jedhe already completed construction of retaining wall. Moreover, Namdeo Raghunath Bhilare has executed registered sale deeds in favour of Shekhar Krushnarao Gaikwad and Ravindra Mansingh Bhilare. So also, said Ravindra further executed sale deed in favour of Ravikant Parbati Kamble. Whereas, Mahadeo Raghunath Jedhe executed sale deed in favour of present proposed non applicant. The respective purchasers have also carried out house constructions therein. The present applicants did not raise any objection to earlier alienations and constructions. Thus, all these transactions and silence of the applicants clearly show the factum of earlier partition.

7. It is further contended by the proposed non applicant that in the year 2023, the present applicant filed an application

before the Ld. Tahsildar, Wai for sale of 12R portion in Gat No.110 and he also filed an affidavit in support of that application, wherein he clearly mentioned that he obtained said portion in partition. It again shows the earlier partition between the parties. The parties and subsequent purchasers are in separate possession of the portion, which they acquired & purchased in the suit property. They have constructed their houses, offices etc. by taking electricity connection and other amenities from the public bodies. The present applicants are not concerned with the portion purchased by the proposed non applicants. The families of Raghunath and Vyankat are already separated. The relinquishment deed executed by sisters of present applicants does not show that it was consented by other coparceners. Under such circumstances, it is clear that present execution proceeding has been filed only with an ill intention to tease the present proposed non-applicants. It is not within limitation. For all these reasons, he prayed to reject the application by imposing compensatory cost of Rs.25,000/-.

8. On the basis of rival contentions of both sides, following points arise for my determination. To which, I record my findings as under –

Sr. No.	Points for Determination	Findings
1)	Whether the proposed non applicants No.10 to 23 are required to be included as a party to the present proceeding ?	No.
2)	What Order ?	As per final order.

REASONS

9. Perused the application and say along with entire record. Heard both the sides, at length.

As to Point No.1 -

10. The legal representatives of deceased Raghunath (original plaintiff) are shown as the judgment debtors. Said R.C.S. No.131/1987 was decreed and both the brothers namely plaintiff Raghunath and defendant No.1 Vyankat were declared to have half share each in the suit property. Subsequently, a preliminary decree was prepared. As the suit properties were agricultural landed properties, as per clause (3) in the preliminary decree, a precept was ordered to be sent to the Ld. Collector for effecting actual partition.

11. The applicant decree holders submitted that there is no any prescribed period of limitation for filing the application for final decree proceeding. In support of their contention, they have relied upon following authorities -

(i) **Bikoba Deora Gaikwad Vs. Hirabai Marutirao Ghorgare, AIR 2009 SC-454** wherein it is observed that “a final decree proceeding may be initiated at any point of time, no limitation is provided therefor. However, what can be executed to the final decree and not a preliminary decree unless and until a final decree is a part of the preliminary decree”

(ii) **Ramrathibai Sivnath Pardeshi Vs. Surajpal S/O Bhulai Chaudhari AIR 1995 Bombay 445** , wherein it is held by the Hon’ble

Bombay High Court that “*if the decree is regarded as preliminary, it would follow that an application made by a party to the decree under Order 20 Rule 18 (1) asking that the papers should be sent to the Collector for effecting a partition as directed in it is of the nature of a mere proceeding in the suit rather than an application to execute the decree, and that there is no period of limitation for making it*”.

12. The applicant decree holders also argued that there is no actual partition of the suit properties and therefore, the third party purchasers of undivided share in the suit property cannot enforce their possession, unless they get it partitioned. In support of this, they placed their reliance on following authorities -

(iii) **Ramdas Vs. Sitabai and others, 2009(2) Mah. L. R. 894 (SC)**, wherein the Hon’ble Supreme Court with regard to the right of purchaser of undivided share in the joint family property held that “undivided share of a co-sharer may be subject matter of sale, but possession cannot be handed over to the vendee, unless property is partitioned by metes and bounds amicably through mutual settlement or by a decree of the Court.”

(iv) **Vineeta Sharma Vs. Rakesh Sharma & ors. 2020 CJ (SC) 467**, the Hon’ble Apex Court held that “The expression used in explanation to Section 6 (5) ‘partition effected by a decree of a Court’ would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a Court affects partition. A preliminary decree declares share, but does not effect the actual partition, that is effected by passing of a final decrease. Thus, statutory

provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by the Court.” *“In view of rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a Court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a Court, it may be accepted. A plea of partition based on oral evidence cannot be accepted and to be rejected outrightly.”*

(v) **A Krishna Shenoji Vs. Ganga Devi G. and ors. 2023 Live law SC 778** where in it is held that *“Section 10 of the C.P.C. has got no application in that case as that was suit for partition in which every interested party is deemed to be a plaintiff, law does not bar passing of numerous preliminary decrees”*

(vi) **Ganduri Kotheshramma Vs. Chakiri Yanady AIR 2012 SC 169** wherein it is held by Hon’ble Apex Court that *“unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines share does not bring about the final partition”*

13. In view of the authorities cited by the applicants as above, it is clear that the present execution proceeding is within limitation. In fact, said point was already dealt with while passing

order dtd.21.06.2024 passed below Exh.1. The law does not prescribe any particular period of limitation for filing application for final decree. In fact, the application for initiating final decree proceeding in a partition suit and sending precept to the Collector under Section 54 of the C.P.C. is nothing, but an administrative act.

14. On the other hand, the proposed non-applicants relied upon following authorities.

(i) **Digambar Adhar Patil Vs. Deoram Giridhar Patil (AIR 1995 SC 1725)** wherein the Hon'ble Supreme Court of India observed that *“The entries in the Record of Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence. Under the Hindu Law, it is not necessary that the partition should be effected by a registered partition deed. Even, a family arrangement is enough to effectuate the partition between co-parceners and to confer right to a separate share and enjoyment thereof.”*

(ii) **Roshan Sing Vs Zile Sing 1988 CJ (SC) 498**, wherein it is observed by the Hon'ble Apex Court that “a partition may be effected orally, if it is subsequently reduced into a form of a document and if that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it is not registered, Section 49 of the Registration Act will prevent its being admitted in evidence. Evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act 1872. Partition list which are mere records of a previously completed partition between the parties will be admitted in evidence even

thought they are unregistered, to prove the fact of partition. It can be accepted at once that mere list of property do not form an instrument of partition and so would not require registration, but what has to be determined that whether these documents are mere lists or in themselves purports to create, declare, assign, limit or extinguish any right title or interest in the property.”

(iii) **Kripa Devi and ors. Vs. Poonam Devi and ors 2013 CJ (Patna) 32**, Wherein it is observed that a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty is necessary to constitute a partition. Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenary with right of survivor-ship and such separated member holds from the time of disruption of joint family as tenant-in-common. Such partition has an impact on devolution of share of such member.

15. In the light of decisions in aforementioned authorities and the settled legal preposition, it is clear that the plea of oral partition is admissible. However, in the present case, there is a decree of the Court between the predecessors of applicants & non applicants decree holders namely Raghunath and Vyankat, wherein the actual partition was ordered to be effected by the Ld. Collector. It is not in dispute that after passing of the judgment and decree in RCS No.131/1987, the actual partition was not effected by the revenue authorities. Therefore, the plea of subsequent oral partition in the present matter is of no use, at present.

16. Considering the submissions of both the sides, it appears that no any execution proceeding was earlier filed in the Court for the execution of judgment and decree dtd.30.09.1993. In the present proceeding, the applicants have prayed for the main relief of sending precept to the Ld. Collector, Satara for effecting actual partition of the suit properties. It is well settled that after passing the decree of agricultural landed properties and on determination of shares of the parties, the Court becomes *functus officio* and it has to send the decree along with precept to the Ld. Collector for effecting actual partition under Section 54 of the Civil Procedure Code. In such a proceeding, the Executing Court has limited role to play. It cannot go behind the decree. The applicants are not disputing the determination of half shares of deceased Raghunath and Vyankat. However, according to them, there are several third-party purchasers in the suit property and therefore, the portion purchased by them is required to be placed in the share of their vendors. In such circumstances, it is clear that those third-party stranger purchasers are representing their vendors. The vendors, in fact are the legal representatives of the parties to original suit and in such a capacity they have already specific share. Importantly, none of the parties are praying to alter the original decree. It is also pertinent to note here that the applicant decree holders filed application (Exh.49) and thereby prayed that they want to proceed with this application (Exh.5) only against proposed non applicant No.11. Though it is rejected vide order dtd.22.10.2021, but it shows the intention of present applicants that they are interested only in the inclusion of proposed N.A. No.11.

17. It is not in dispute that the legal representatives of deceased Raghunath and Vyankat, both have alienated some of the portions in the suit properties in favour of third persons. As those third persons are not from the families of decree holders, their inclusion in the present execution proceeding will not be just and proper. Especially when, the shares of original predecessors of their vendors are determined by the Court by way of a preliminary decree.

18. Now, the original plaintiff and the defendant are dead. As per settled legal proposition, the preliminary decree for partition can be amended for number of times, if there are changes in the shares of the parties on the count of any event. On death or birth of any member in the coparcenary joint family property, the shares of the other coparceners are kept on increasing and diminishing. However, it is not the contention of applicant decree holders that the shares of original plaintiff Raghunath and defendant Vyankant are changed. As their shares have already been determined by a decree of the Court, their legal representatives will automatically have their respective shares in the suit properties at the time of actual partition by the concerned Revenue Officer. In that proceeding, he has to take into consideration the status of the parties and the suit properties, as well. Even, the status of third party stranger purchasers and any development carried out by them can be considered by him during actual partition. If the concerned Revenue Officer comes across any complexity while effecting the actual partition, he may inform the same to the Executing Court. In that eventuality, the Court has to consider such complexity. If the present application is allowed, it

may amount to second round of litigation in respect of the matter, wherein shares of the original plaintiff and defendant are already defined. Moreover, the present applicants filed R.C.S.No.86/2024 against the non-applicants and the stranger purchasers in respect of the same suit properties, which is still pending. In such circumstances, considering the main relief of sending the precept to the Ld. Collector, Satara for effecting actual partition of the suit properties, the proposed parties are not necessary to be incorporated in the present proceeding. Resultantly, point No.1 is answered in negative.

As to Point No.2 -

19. In view of the above discussion, the present application is liable to be rejected. Hence, in answer to point No.2, the following order is passed.

ORDER

- 1 The application (Exh.5) is hereby rejected.
- 2 No order as to the costs.

Dictated and pronounced in the open Court.

Place : Wai
Date : 16.09.2025.

(R.M. Bhende)
2nd Jt. Civil Judge Junior Division,
Wai, Dist. Satara.

CERTIFICATE

“ I certify that this Order uploaded is a true and correct copy of original signed Order”.

Order dictated on : 16.09.2025

Order checked and signed on : 16.09.2025

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Stenographer (Grade-III)

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