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IN THE COURT OF PRINCIPAL DISTRICT JUDGE, WASHIM.
[Presided over by Anil Subramaniam]

Regular Civil Appeal No. 07/2015
CNR No. MHWS010000852015

Exh. No. 48

1)	Pralhad Narsinghrao Wasamwar, Aged about 50 years, Occu. Labour, R/o. Railway Station road, Partur, Dist. Jalna.	... Appellant/original defendant Nos. 2 to 8.
2)	Baburao Keshaorao Wasamwar, Aged about 34 years, Occu. Labour,	
3)	Sanjay Keshaorao Wasamwar, Aged about 36 years, Occu. Labour, Both 2 and 3 R/o. Near Ravi Nagar, Besides Godawari Traders, Juna Kawatha, Nanded, Dist. Nanded.	
4)	Babu Satawaji Wasamwar, Aged about 40 years, Occu. Labour,	
5)	Pappu Satawaji Wasamwar, Aged about 35 years, Occu. Labour, Both 4 & 5 R/o. Phatak Galli, Tenare Wada, Nagareshwar Mandir road, Huli, Nanded, Dist. Nanded.	
6)	Deepak Devidas Wasamwar, Aged about 32 years, Occu. Labour,	
7)	Balaji Devidas Wasamwar, Aged about 29 years, Occu. Labour, Both 6 & 7 R/o. House of Sanjay Wasamwar, Near Ravi Nagar, Besides Godawari traders, Juna Kawatha, Nanded, Dist. Nanded.	
<u>VERSUS</u>		

**... Appellant/original
defendant Nos. 2 to 8.**

1)	Chhaya Gopal Rangbhal, Aged about 50 years, Occu. Household, R/o. Deopeth, Washim, Dist. Washim.	... Respondent/ original plaintiff.
2)	Tulsabai wd/o. Gangadhar Pendharkar (Dead),	Respondents/ Original Defendant Nos. 2 to 8.
	<u>LRs</u> - 2-A) Shriram s/o. Gangadhar Pendharkar, Aged about 62 years, Occu. Business, R/o. Near Chamunda Devi Temple, Washim, Dist. Washim. 2-B) Smt. Kamlabai wd/o. Subhash Pendharkar, Aged about 52 years, Occu. Housewife, 2-C) Sumit s/o. Subhash Pendharkar, Aged about 29 years, Occu. Labour, 2-D) Ku. Pooja D/o. Subhash Pendharkar, Aged about 27 years, Occu. Education, 2-B) to 2-D) R/o. Bhavani Nagar, Ravivar Bazar road, Washim, Dist. Washim, 2-E) Vinayak @ Dilip S/o. Gangadhar Pendharkar, Aged about 57 years, Occu. Business, R/o. Behind K. D. K. College, Nagpur, Dist. Nagpur.	
3)	Kishor S/o. Gangadhar Pendharkar, Aged about 56 years, Occu. Business, R/o. Hingoli Gate, Nanded, Dist. Nanded.	
4)	Sanjay S/o. Kashaorao Wasamwar, Aged about 36 years, Occu. Labour, R/o. Kautha, Tq. & Dist. Nanded.	
5)	Babu S/o. Satwaji Wasamwar, Aged about 40 years, Occu. Labour,	
6)	Pappu S/o. Satwaji Wasamwar, Aged about 35 years, Occu. Labour, Both 5 & 6 R/o. Navghat, Burad Galli, Nanded, Dist. Nanded.	
7)	Dipak S/o. Devidas Wasamwar,	

	Aged about 32 years, Occu. Labour,	
8)	Balaji S/o. Devidas Wasamwar, Aged about 29 years, Occu. Labour, Both 7 and 8 R/o. Near Habib Talkies, Nanded, Dist. Nanded.	
9)	Smt. Tulsabai wd/o. Gangadhar Pendharkar (Dead),	Respondent/Original Counter claim Defendant No. 3.
	<u>LRs</u> - 9-A) Shriram S/o. Gangadhar Pendharkar, Aged about 55 years, Occu. Business, R/o. Near Chamunda Devi Temple, Washi, Tq. Washi. 9-B) Smt. Kamalabai wd/o. Subhash Pendharkar, Aged about 45 years, Occu. Household, 9-C) Sumit S/o. Subhash Pendharkar, Aged about 22 years, Occu. Labour, 9-D) Ku. Pooja d/o. Subhash Pendharkar, Aged about 20 years, Occu. Education, 9-A) to 9-D) all R/o. Bhawani Nagar, Ravivar Bazar road, Washim, Dist. Washim. 9-E) Vinayak @ Dilip S/o. Gangadhar Pendharkar, Aged about 50 years, Occu. Business, R/o. Behind K.D.K. College, Nagpur, Dist. Nagpur.	

APPEAL UNDER SECTION 96 OF THE CIVIL PROCEDURE CODE

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Appearance:-

Mr. A. S. Beriya, Advocate for appellant.
 Mr. K. P. Belokar, Advocate for respondent No. 1.
 Ex-parte against respondent Nos. 2-A) and 2-B).
 Mr. C. S. Poddar, Advocate for respondent Nos. 3 to 8.
 Ex-parte against respondent Nos. 9-A) to 9-E).

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J U D G M E N T
(Dated 13/04/2026)

1. By the present appeal, the appellant/original defendant No. 1 is challenging the judgment and decree passed by Ld. 2nd Jt. Civil Judge (Jr. Dn.), Washim in RCS No. 238/2004 dated 15/11/2014.
2. It is herewith clarified that against the said judgment there is another appeal preferred namely 2/2015 which is also being decided simultaneous with this appeal. The scope and nature of both the appeals would be different and hence, different judgments are being passed. The result of this appeal will affect the decision of the other appeal and hence decided firstly.
3. The plaintiff respondent No. 1 hereinafter referred to as 'the plaintiff' filed suit against only Kishor respondent no3 herein initially (hereinafter referred to as occupier) contending that the plaintiff's husband namely Gopal purchased sites namely the suit property by different sale deeds in her name from the mother of the defendant namely Tulsabai and the properties purchased from the sale deeds are duly reflected in the plaint A. The four sale deeds of different portions are dated 20.11.1990, 09.01.1991, 03.10.1996 and 24.01.1997. The said properties are situated near Shivaji statue of Patni Chowk and there is road on the western side. All the four sides were consolidated and now it bears Common No. 84, City Survey Nos. 740 and 741. The name of the plaintiff appears in the Nazool record. The Portion marked by letters HFKJH was initially used as approach road and this was also purchased and approach is kept in the middle instead of the southern side. The plaint B shows that portion marked A, B, C, D, A is constructed in bricks and mud with tin roof and old construction. The defendant had requested the plaintiff to grant him the said site as gratuitous licensee as he could not be able to search for new site for residence and he

would be thrown on the road. Taking into consideration the urgent need and difficulties the plaintiff permitted the defendant to reside in the said site as her licensee and same was granted on the date of purchase of site that is 24.01.1997. The defendant is doing business of bamboo and hence requested grant of another site namely ECFGE as a licensee and same was also granted to him. Since 01.02.1997, he has made a temporary compound to the said property. The possession of the said two parts of property with the defendant are as licensee of the plaintiff and they are referred to as suit property. The brothers of the defendant (Kishor) are witnesses to the sale deeds executed by the mother of the defendant and there is no question of money lending transaction as claimed in the notice reply. Tulsabai had succeeded to the said property from her father Narsingrao and the said property is in her possession since long and she had pre-existing right of maintenance in the said property. After death of the father, she has succeeded and inherited this property being his heir and successor and hence, Tulsabai became absolute and exclusive owner of the property. The property is her Stridhan coming from her father. No other son or daughter has any right in the said property either by birth or any other means. None of the brothers of the defendant (Kishor) or other relatives have taken objection to the sale deed of plaintiffs. The brothers of defendant (Kishor) have put their signatures as attesting witnesses to the sale deeds. In spite of several requests, the defendant (Kishor) has not vacated the suit property. Notice came to be issued on 01.12.2001 revoking the license. In spite of receipt of the said notice, the defendant (Kishor) has not vacated the suit property nor handed over the possession and gave a false reply dated 18.12.2001. As there is non compliance of the notice, present suit is filed including possession and mean profit. Inadvertently in the notice, the

plaintiff has stated that the suit property has been purchased by Tulsabai by registered sale deed and the said statement is withdrawn. The suit property is succeeded and inherited by the mother of defendant from her late father. Defendant is liable to pay damages at the rate of Rs. 15,000/- per month from 17.12.2001. The damages are reasonable considering the location of the property. Hence, the suit for possession of the two portions of Plot B and damages of Rs. 54,000/-.

4. The said suit came to be amended and defendant Nos. 2 to 8 came to be added. These defendant Nos. 2 to 8 are alleged sons and daughters of four brothers and sisters of Tulsabai. Tulsabai was also added herein to the counter claim. The defendant Nos. 2 to 8 who were added filed their written statement vide Exh. No. 26 and contested the claim of the plaintiffs. They included Tulsabai also in their array of defendants.
5. It is specifically pleaded by defendant no 2 to 8 that the mutation entries does not make or unmake title. It is not disputed that defendant No. 1 is doing business of Bamboo in the portion of the premises. It is denied that the sale deeds are executed with valid authority and that if Tulsabai had no right, title or authority to execute the sale deeds and all the sale deeds are illegal, null and void, they are executed in favour of plaintiff. It is denied that Tulsabai was the sole owner of the property with any pre-existing right of maintenance and that she was holding the property under the category of Stridhan and that no one has any right in the said property.
6. By way of counter claim, it is contented that the said defendant Nos. 2 to 8 have $\frac{4}{5}^{\text{th}}$ share in the said property. The said property was owned by one Late Narsingrao. Wife of Narsingrao has expired. The defendants are legal heirs of late Narsingrao. Each of the children had one fifth share in the suit

property namely four brothers and sister Tulsabai. The names of the said brothers were removed without any notice from the Nazool record. Late Tulsabai seem to have done the same to manipulate the Nazool record. They got knowledge of the suit filed recently and got implicated themselves as party to the said suit. It is during this that it was revealed that Tulsabai has executed sale deed in favour of various persons and she had no authority to execute sale deed of the entire portion. She having only one fifth undivided share in the said property. All the sale deeds executed by defendant Tulsabai are null and void and not binding on the original defendant Nos. 2 to 8. The defendant No. 1 Kishore is residing in the suit plot on grant of permission by the LRs of deceased Narsingrao and the possession is permissive on behalf of legal heirs of deceased Narsingrao. His ailments are null and void. They are executed without authority and liable to be cancelled. They got knowledge of these ailments in the year 2005. They have no faith in Tulsabai and hence, they want separation of the property. Hence, claiming possession by partition and possession of fourth and fifth share of the suit property.

7. The plaintiff filed written statement to the counter claim vide Exh. No. 49 and denied all the contents stated therein. It is denied that they have any share in the property. It is contented that the economical condition of Tulsabai who was the only daughter was not sound. Hence, during the lifetime it was his intention to give the suit property to his daughter Tulsabai and it was expressed to all sons and wife and no objection was taken and they were happy and satisfied to give the property to Tulsabai. After death of Narasingrao, the brothers and mother gave express consent to record the plot in the name of Tulsabai only and accordingly LRs were brought on record and later on Tulsabai is recorded as the sole owner of the suit plot. The brothers and mother are not resident of Washim and the property is in

actual physical possession of Tulsabai. It was given to Tulsabai for improvement of her economically unsound position and was having pre-existing right of maintenance and it was given to her for maintenance by all the four brothers and mother. Notices of mutation were given to all and no objection was taken and such objection is taken after 25 years. No objection was taken as they had given support to Tulsabai and hence, they are liable to be stopped from challenging this. Even prior to the entry As absolute owner, Tulsabai had sold the property to defendants 4 to 11 and the same was acted upon. The said transaction is not challenged. The long standing possession of Tulsabai as absolute owner is converted into absolute ownership and no one can challenge it. It is only as a counter blast for suit for possession. Defendants 2 to 8 are residing at different places and have no real intention. And are only supporting defendant No. 1. All the defendants have considerable movable and immovable properties at their residential towns and the properties in their residential towns should also be put in the common hotchpot for fair validation. Hence, counter claim is not maintainable and liable to be dismissed. There is no reason for granting license to Kishore defendant No. 1 in the year 1975. The plaintiff has put up a shop with the permission of the Municipal Council and running since then and no objection has been taken till date. The plaintiff has made full inquiry, perused and searched the Nazool records and after finding long standing possession of Tulsabai and ownership entry in Nazool record, purchased the suit property for valuable consideration and is a bonafide purchaser. There is no transaction of money lending. The counter claim is barred by limitation. None of the sale deeds have been challenged till date. Hence, the counter claim should be dismissed.

8. Defendant no. 1 filed reply to the counter claim. He denied that the property

was illegally mutated by deleting the names of defendant Nos. 2 to 8. The defendant no. 1 is at the said suit premises since 30 to 31 years doing his bamboo business and has his separate electric connection, house built in concrete and cement and is residing therein as licensee of late Narsingrao. The sale deeds are liable to be set aside. The relationship is admitted.

9. Tulsabai filed her written statement vide Exh No. 53 to the counter claim. She contends that the said sale deeds have been executed on account of loan transaction and the plaintiff has taken forceful possession on some portion of the land. The plaintiff and her husband are politically sound and hence, no action has been taken. No property has been sold on ownership basis. The relationship is admitted. The share of the defendant Nos. 2 to 8 is also admitted. She does not know how the names came to be deleted and admits that none of the brothers released their rights of the suit property. Execution of sale deeds is admitted. The sale deeds are only as a security for the loans taken.
10. The original defendant No. 1 had also filed his written statement at Exh. 12 contending that the sale deeds executed by Tulsabai are nominal and taken under loan transaction. The plaint maps are denied. It is contented that late Narsingrao was the owner of the plot and after his death his wife, 4 sons and 1 daughter became the owner by heirship. Tulsabai had already sold out her share on 27.05.1982 to one Mohammed Rafiq. Tulsabai was not the owner of the said property. Late Narsingrao conducted the defendant in the suit property in the year 1975. In the year 1986, house was constructed by the defendant. The defendant has filed a map showing the exact location or possession of the said property. It is contented that vacant plot is in possession of defendant and vacant possession is absolute approach way

possessed by defendant. The defendant is paying taxes to the Nagar Parishad. There is no cause to us. No consideration has been passed by the said sale deed. Neither possession is handed over to the plaintiffs. No open plot was in existence and the sale of open plot or vacant plot is falsely mentioned in the sale deed as it was a nominal sale deed. Sale deed dated 27.11.1984 was purchased from joint family income and it was purchased by the defendant and other son being Karta of the family in name of mother. The sale deed executed by Tulsabai is not binding on the defendant. The legal heirs of Narasingrao became the owner of the property and they are necessary parties to the suit. The plaintiff has not valued the suit property as per its market value. The defendant is in lawful occupation as licensee of Late Narsingrao and hence, suit is liable to be dismissed.

11. In pursuance, there are certain developments which took place during the pendency of the suit and appeal between defendants some of the defendants came to be deleted.
12. Based on these, issues came to be framed vide Exh. No. 13 and were recasted subsequently. Plaintiff examined herself, she also examined her husband, examined the scribe, defendant No. 1 examined himself and also examined one Anil. The tax collector was examined by the defendant No. 1. Defendant no. 2 examined himself. After hearing both the sides, the Ld. Trial Court was pleased to decree the suit for possession against defendant No. 1 including damages and dismissed the counter claim. Hence, the two set of appeals as pointed out above.
13. The present appeal relates to the aspect of decree against defendant No. 1 for possession. Heard both sides extensively and also the other party. Considering these circumstances, and on perusal of the pleadings and

evidence on record and the impugned judgment including the grounds taken in the appeal memo, following points arise for my consideration and I answer the same as under for the reasons stated hereinafter.

14. Heard both sides. Perused pleadings and evidence on record, considered the submissions advanced. Following points arise for my consideration and I answer the same as under for the reasons stated hereinafter.

Sr. No.	Points	Findings
1]	Whether the defendant Nos. 2 to 8 establishes that the property is joint property ?	... In the affirmative.
2]	Whether defendant Nos. 2 to 8 establish that they have share in the said property ?	... In the affirmative.
3]	Whether defendant Nos. 2 to 8 proves that late Tulsabai could not have executed sale-deed in favour of plaintiff which affected shares of defendant Nos. 2 to 8 ?	... partly in affirmative.
4]	Whether defendant Nos. 2 to 8 are entitled for separate partition ? If yes, what share ?	... Does not survive
5]	Whether counter claim is within limitation ?	... Within limitation
6]	Whether the impugned judgment and decree requires any interference ?	... In the affirmative.
7]	What order ?	... As per final order.

REASONS

As to Point Nos. 1 & 2 :-

15. At inception it was argued by plaintiff that that Tulsabai purchased the property and relied upon a sale deed. But the pleading is specific of giving up of such claim of Tulsabai purchasing the suit property and hence not considered herein.

16. If we consider the pleadings of plaintiff in the plaint, it is clear that there is a clear-cut statement made that the property was owned by late Narsingrao and that Tulsabai got the said property from late Narsingrao. It is further alleged that Tulsabai had pre-existing right of maintenance. Secondly, it is tried to be put forth that it was her Striram (स्त्रीधन) coming from her father. Thirdly, it is pointed out that the brothers or sisters did not object on account of they having no right in the property. In addition thereto the plaintiff has also relied upon the so-called mutation entry in favour of late Tulsabai. The so-called affidavit executed by Tulsabai, which is available at Exhibit 147, states that the said property has been gifted by her father and that her mother and brothers have given no objection for the same. There is another alleged consent deed copy which is not exhibited. I shall not consider it as admissible at present for the reasons that shall be discussed when I consider this documents in detail . Suffice to say that It is alleged that the late brothers and existing brothers executed a document alleging that late Tulsabai is occupying the premises as owner and that there is namesake sale-deed in name of father Nasingrao and that she is the sole owner of the same.

17. The first ground for consideration is the Mutation entries in CTS extracts. The City Survey Extract, which is filed at Exhibit 110. The same shows that late Narsingrao was the owner of the said property by sale deed. It is alleged that his death took place in the year 1973 and there is a consent deed and Names of Tulsabai and the widow as well as other brothers are mutated. It is also necessary to point out that the names of the brothers are also said to be deleted by the mutation entry of same date .

18. Apparently, the plaintiff is alien to the family of the present defendants.

Even then evidence of the husband of plaintiff who is having knowledge of the facts of the case requires consideration in this regard. Said husband PW-2 in paragraph 13 of his examination of chief states that Tulsabai is the sole legal heir and hence, the property is in our occupation since many years. He further has deposed that she is the sole widowed daughter of the ancestral property and for maintenance she has right in the said property and being sole widowed daughter and in occupation since many years and that the brothers have given consent to the possession and occupation, Tulsabai has become the sole owner of the property. Thus right of the other brothers and widow is admitted by the plaintiff. It is further contented that Tulsabai, in para 17 of the examination in chief is the sole daughter of Narasingrao, and sole sister of the four brothers and she was very poor and the father and brothers were residing at Nanded and the property at Washim was of Tulsabai and it was desire that she should get it by ownership and same was disclosed on number of occasions to the wife prior to the death and the sons and wife had consented and happy about it. Paragraph 18 of the examination in chief of PW-2 states that after death of Narsingrao, all the four brothers and mother mutated the name of Tulsabai and also executed a written consent deed for that and since 20 to 25 years, she is occupying the property as sole owner thereof. It was with a good intention that she can take care of herself and her financial condition will improve and no one objected to the same. It is contented that there are many properties in Nanded which are not partitioned and false suit has been filed. Thus, the plaintiff comes with a very specific case that it was the wish and desire of Narsingrao to give the property to Tulsabai and accordingly, after his death wife and mother and brothers of Tulsabai consented and accordingly mutation was made.

19. In the cross examination the said witness specifically admitted that Narsingrao was the original owner of the house and after his death the wife as well as brothers and sisters became the owners of the property. Very surprisingly he states that he does not know that defendants became the owners of the properties as legal heirs after death of Narsingrao. Thus he does not support the mutation entry himself.
20. One thing one has to consider that it is brought about in the cross examination that this witness who is husband of the plaintiff deals in various properties and has purchased number of properties including in the vicinity of the said suit property. The properties are not only purchased by him in his own name but are also purchased in the name of the wife i.e. the plaintiff as well as in the name of the children.
21. Pw 2 claims ignorance to the fact as to whether Tulsabai was residing in the suit property with the consent of the legal heirs. He does not know if defendant No. 1 had taken electric supply connection in 1987 after constructing the house in 1986 and that taxes are paid by defendant No. 1 since 1975. The sale transactions consideration is not shown in the income tax returns filed by this witness. It is herewith necessary to point out that, Tulsabai was alive and had also filed written statement as pointed above, which is contrary to the claim of the plaintiffs. Tulsabai also cross examined this witness. He refutes that the consideration was paid by way of hand loan. In fact by way of cross examination Tulsabai has supported the present defendant/appellant.
22. Thus, what appears to be apparently clear is that from the entire sequence of events and the admissions of the plaintiff and the witness examined namely the husband and from the evidence and from the pleadings and

evidence and more particularly evidence of PW-2 who has dealt with the property is that late Narsingrao purchased the property. After his death names of all the legal heirs were recorded in the mutation entry. Names of others except Tulsabai are seen to be deleted.

23. The case of ***Gangaram Sakharam Dhuri and ors. ..vs.. Gangubai Raghunath Ayare and ors., reported in 2007(5) Mh. L. J.*** relates to the aspect of mutation entry cannot take or replace the execution of properly stamped and registered written document. Same is squarely applicable to the facts of the present case. The judgment of ***Dada Bhagwan Shinde ..vs.. Tulsabai Shinde and ors., reported in 2008(5) ALL MR 776*** as regards the validity and legal waitage of mutation entry has been duly considered by me, but it cannot supersede the law of Transfer of Property and the plaintiff claiming ownership of Tulasabai solely has to rely on such document or circumstances. It is well settled principle of law that the aspect of mutation and its effect is very clear, mutations neither create any right nor can they destroy any right. The transfer of immovable property can either be under the provisions of the Transfer of Property Act or by succession or by statutory implication.
24. In such circumstances, if we consider the entire aspect of the case, it is not the case of the plaintiff at any moment of time that Late Narsingrao executed any document by which the property came solely to the plaintiff. In fact the recording of the names of the brothers and widow of Narasingrao indicates that the rights of the legal heirs were recognized. It is also not seen from the record or any other evidence on record that the property is ancestral property or joint family property of Late Narsingrao. There is nothing on record to indicate so. In such circumstances, it is

apparent that late Narasingrao was the owner of the property and on his death it came to his children and wife. At present the wife or widow has also expired and now what remains are 5 branches of heirs. Defendants are the 5 branches of heirs of children of Narsingrao. Once that gets established, it is for the plaintiff or Tulsabai to explain the transfer in their favour. It is also necessary to point out that the mutation entry which is said to be available since 1983 has not been challenged by the present defendants and has not been challenged by the present defendants.

25. The mutation entry and its date is of importance as on that date i.e. 8-12-1983 it also shows that there is mutation of a sale deal executed in favour of one Mohammed Rafiq dated 27.05.1982. Thus, the mutation of 08.12.1983 does not appear to be solely on the aspect of mutating the name of the legal heirs, but it seriously appears that it was on that day that name of Narasingrao came to be deleted. Names of Tulsabhai, widow and other children of Narasingrao came to be added. Name of Widow and other children of Tulsabai - wife, other children of Narasingrao came to be deleted. All this happened on one day and in addition thereto, name of Mohammed Rafiq came to be added.

26. No doubt there is some force in the contention of plaintiff with regard to the existing name of Tulsabai since long. The so called Stamp of affidavit of Tulsabai at Exh. No. 147 allegedly for the mutation is dated 1982. Thus, the entire sequence of events does not really match up. The so called date of the Sammatipatra which is seriously disputed is 23/04/1982. The so-called sale-deed in favour of Mohammed Rafiq is of 27/05/1982. It is necessary to mention herein that the so-called claim or right over the property held by Mohammed Rafiq is taken out of the hotchpot of this suit by way of consent

of the defendants. Thus, there is no challenge to the ownership right of Mohammed Rafiq.

27. The plaintiff's right over the said property has been refuted by defendant No. 1 way back in the year 2001. In spite of this, the suit is filed only for possession and also much belatedly in the year 2004. The occupation of the plaintiff is unexplained but the earlier occupation of the defendant No. 1 by the plaintiff is also unexplained. The plaintiff has taken pains to file the affidavit of late Tulsabai and so called copy of the Sammtaipatra of brothers and mother of Tulsabai. But very surprisingly there is no mention or documents as to what was the application preferred, who preferred it and what was the order of the competent authority with regard to the said mutation. Thus, one does not know what was the basis of this mutation in favour of Tulsabai. The plaintiff never got those documents in fore.
28. It is well settled position again to point out that a right in an immovable property can be transferred only by one of the modes as stated in the Transfer of Property Act and or by relinquishment. It can be only by a registered document as apparently the value of the property is much more than what is minimum required for not being registered.
29. In such circumstances, the document namely the so called consent deed even if it is accepted does not create or extinguish any right, title or interest in the said property. The so-called Sammatipatra is a private document and it had to be proved by proper means. No efforts have been taken by the plaintiff to get the original of the same on record or to confront the document to anyone of the defendants. Thus, one can consider all these documents to be not proved by the plaintiffs.

30. If this document is said to be not proved, it is apparent that the heirship right of Tulsabai solely on the basis of the other heirs giving up right does not stand established. The burden is on the plaintiff to show these aspects. Merely by relying upon the alleged mutations does not save the plaintiff from the burden to establish title of Tulsabai. It would also be not proper to say that because name of Tulsabai existed on the land records for number of years, the ownership right is acquired by Tulsabai. There is nothing on record to show that late Tulsabai exercised that she was the owner of the property in presence of the present defendants or anyone preceding her.
31. In such circumstances, the entire sequence of events really creates a very difficult doubt about the ownership of Tulsabai solely over the said property. This is more so in view of the so-called different contentions taken by the plaintiff with regard to how Tulsabai acquired the rights of the property. Thus, what is important is whether there is any manner in which Tulsabai created a right in herself or created adverse right to the knowledge of these defendants. At the outset all along in the present proceedings at least there is no such contentions taken or raised. Tulsabai as well as defendant No. 1 in fact accept the title of defendants who have claimed partition. In such circumstances, one can say that Tulsabai has only succeeded to her share of the property.
32. The second aspect that arises is applicability of Section 14 of the Hindu Succession Act. Section 14 contemplates that if any property is possessed by the female Hindu, acquired before or after the commencement of this Act, it shall be held by her as full owner thereof and not as held by her as full owner thereof and not as limited owner. The exception given therein is not applicable for consideration for this case. Much was harped on the fact that

property was given by maintenance. Apparently there is nothing on record to show that the widow was living off the said property or was having any such right of maintenance. She had her family of her own namely the husband and children and it is seen that they had certain properties of their own. There is nothing to show that the property was given to maintain herself. Section 14 of the Hindu Succession Act has to be considered when the property is acquired and there is some limited interest or right in the property.

33. The applicability of Section 14 has been considered in ***Kusumgauri ..vs.. Umiben and ors., reported in AIR 1975 GUJARAT 126*** and it is held that the widow whose husband expired before 1997 has no right in the said property and the right of survivorship converts into full right and including maintenance and residence. Same is not applicable as this is case of inheritance and not maintenance. The judgment of ***Ram Vishal ..vs.. Jagan Nath, reported in AIR Online 2002 SC 380*** has no application to the present case as it relates to succession and not limited inherence or limited right. Same is the case of ***Girraj Prasad ..vs.. Nandu reported in AIR 1987 Rajsthan 184 and T. K. Chandraiah ..vs.. Chandraiah and ors., reported in AIR 1992 KARNATAKA 153***. The aspect of maintenance and being maintained by father in absence of husband is not the case. In this circumstances, the said ruling is not applicable. The judgment of ***Shivdev Kaur (D) By LRs and ors. ..vs.. R. S. Grewal, reported in AIR 2013 SUPREME COURT 1620***. The aspect of maintenance and being maintained by father in absence of husband is not the case. In this circumstances, the said ruling is not applicable. The judgment of ***Pandurang ..vs.. Ramchandra, reported in AIR 1981 SC 2235*** is not applicable. As no question of adverse inference in the present case can arise as there is

admitted evidence of the parties in that regard. The judgment of *Jose ..vs.. Ramkrishnan Nair and ors., reported in 2004 (1) BCJ 63 (OHC)* is not applicable in the case where the entire property should be acquired or should be inherited by her. Section 8 and Section 14 of the Hindu Succession Act have to be distinguished. The judgment of *Gumpha ..vs.. Jaibai, reported in 1994 SCC (2) 511* is also on similar grounds. Succession and Section 14 do not go hand in hand. The judgment of *Vidhyadhar ..vs.. Manikrao, reported in 1999 AIR(SC) 1441* is peculiar to the facts of the case with regard to the executor of the deed not examining himself and hence, adverse inference is not applicable to the facts of the case as the Sammatipatra is not proved. The Ld. Trial Court has relied upon the judgment of *Jose ..vs.. Ramkrishnan Nair and ors., reported in 2004 (1) BCJ 63 (OHC)* to hold that the ownership of that is limited ownership converted into full ownership. I hold that that the Ld. Trial Court has not considered the aspect of heirship and holding of property accordingly. Section 14 does not override the aspect of succession by heirship but it converts the property wherein there is limited interest or acquisition of the property.

34. The explanation to Section 14 of the Hindu Succession Act contemplates that the acquisition of a property can be by way of inheritance or partition or in lieu of maintenance or arrears of maintenance by way of inheritance or partition or in lieu of maintenance or arrears of maintenance. It does not contemplate that if a woman succeeds to a share in the property, and she is occupying the property as an heir, the entire property becomes her property to the exclusion of other heirs. Whatever share she has in the said property would be only hers and it would not be without any restriction. She will be full owner of the property which comes to her share. I believe that this

distinction has to be made when we consider the heirship and role of Section 14 of the Hindu Succession Act. The provision of Section 14 does not convert the share of the female acquired by her by succession to full ownership qua the other legal heirs who also have succeeded to the said property. Thus, a limited interest of the share of a woman could be converted into her full interest for that share but it will not imply that the share acquired or heirship acquired by other, hence, gets lost because of a female being in occupation of the property as an heir of the property. I believe this distinction has to be made in that regard. Inheritance if sought to be excluded will give recognition to the other modes of interstate succession under the Hindu Succession Act. But if Section 14 is said to override the provisions of interstate succession, it would be really important. That the entire provisions of interstate succession would be a nullity.

35. Thus in this case there is no statutory inheritance of entire property by Late Tulsabai. Not only the plaintiff has failed to prove the right of maintenance in the property of the father, but also has miserably failed to establish her requirement for the same.
36. There is no legal giving up of rights to Tulsabi by the brother and widow, there is no document of transfer in favour of Tulsabai and there is no statutory provision to make Late Tulsabi owner of entire property.
37. Thus, I do not hold that just because Late Tulsabai was holding the property for long, she can be said to be owner of the said property. Thus, I answer Point Nos. 1 and 2 in affirmative holding that the defendants have right in the property and that Late Tulsabai cannot be said to be the sole owner of the said property.

As to point No. 3:

38. Once Tulsabai is shown to have executed sale deeds beyond her share, naturally the said sale deeds so far as they are binding on the so far as it relates they would not be binding on the defendant Nos. 2 to 8. Mere execution of sale deeds or subsistence of sale deeds for a period of time will not entitle the plaintiffs and distinct advantage.
39. In the case of *Nallan @ Keerimuthan ..vs.. Vellaiyankudumban and ors., reported in AIR 2001 MADRAS 6*, the aspect of alienation by a Hindu Woman has been considered and it is held that the person succeeding has no requirement of challenging the alienation by the widow. Same is applicable to the present case. In the case of *Narayan ..vs.. Trimbakrao Gopalrao Bagde and ors., reported in AIR 1998 BOMBAY 94*, it is alleged that there is no limitation for suit based on title which is a stray sentence relied upon. Apparently, once there adverse right displayed to the knowledge of the plaintiff, such limitation starts as in the present case.
40. One has to also consider the fact that the PW-2 who has effected the said sale deeds, and he is not a layman or a rustic villager. From the cross examination and evidence on record, it is seen that he has executed number of documents and has also dealt with number of properties. Thus, one can presume that he is well aware as to what circumstances and details are to looked into generally. He has to look into before purchase of the property. In his cross examination, he has admitted that the only circumstance that he has seen is the long standing mutation entry. The only circumstance that he has considered is the long standing mutation entry of Tulsabai. That would not be sufficient compliance.
41. In the case of *Bajrang @ Hanuman Tatyaba Kakade and anr. ..vs.. Babubai and ors., reported in 1997(2) Mh. L. J.*, the aspect of bonafide purchaser

has been considered and squarely dealt with in this case by making appropriate provisions applicable. In the case of ***Sadiq Hussein and ors. ..vs.. Co-operative Central Bank, Yeotmal and ors., reported in AIR 1952 NAGPUR 106***, the aspect of bonafide purchaser and mere inspection of mutation entries does not absolve him has been considered applicable to the facts of the present case

42. Another concept or objection that arises is that as regards defendant Nos. 2 to 8 not entering into the witness box. It is well settled principle of law that the defendants can and have certainly every right to rely upon the admissions given by the other side to establish their case. In this case in fact it was the burden of the plaintiffs or Tulsabai by to establish their exclusive sole ownership. The judgment of ***Pandurang ..vs.. Ramchandra, reported in AIR 1981 SC 2235*** is not applicable. The judgment of ***Vidhyadhar ..vs.. Manikrao, reported in 1999 AIR(SC) 1441*** is peculiar to the facts of the case with regard to the executor of the deed not examining himself and hence, adverse inference is not applicable to the facts of the case as the Sammatipatra is not proved. As no question of adverse inference in the present case can arise as there is admitted evidence of the parties in that regard.
43. Hence, considering these aspects subject to the findings hereinbefore the said sale deed will not affect the share of defendant Nos. 2 to 8. In such circumstances, Tulsabai could not have executed sale deeds beyond her share. Although it is pleaded by the plaintiff in his written statement that there are other properties, apparently, nothing is available on record to show that there are other properties present.
44. It is also necessary here again to point out that the defendant No. 1 has taken a chance along with Tulsabai that the sale deeds are nominal sale

deeds taken as an security purpose for loan taker. Although, it appears to be a very innocent defence, the said defence is devoid of details. Neither defendant No. 1 or late Tulsabai pointed out what was the loan taken for each of the sale deeds whether it was repaid, how was it to be repaid, what was the period of loan or any such details to qualify it to be a loan transaction. It is also necessary to point out that the receipt of consideration is not disputed by both Tulsabai and defendant No. 1. Thus, the sale deeds would be binding on Tulsabai and defendant No. 1 being heir of late Tulsabai. I do not consider there to be any sufficient evidence on record to disprove the sale deeds.

45. An attempt was made to point out the sale deeds to be incorrect by virtue of the boundaries of the sale deeds. The plaintiff has very specifically annexed a plan to the plaint itself, which shows different portions purchased by different sale deeds. If the plan of defendant No. 1 is seen, although it is shown to be on the reverse direction, it nearly tallies with the plan of the plaintiff with the plan of the plaintiff. It is also necessary to point out that these elites incorporate small portions of land with boundaries being mentioned as occupiers of the properties. Such boundaries and occupiers can differ from time to time and hence, there could be some effect seen of boundaries not tallying with respect to the occupants. In such circumstances, it is necessary to point out that the sale deeds are established by plaintiff to be duly executed but it shall be subject to the share of late Tulsabai.

46. The said plans in fact disprove the contention of the plaintiff of clear occupation. The Defendant (Kishor) is seen in occupation much prior to the sale deeds and also has structures therein. They do not find any mention in the sale deeds surprisingly and this has not been explained by the plaintiffs.

47. Hence, I answer point No. 3 partly in affirmative that the sale deeds would be valid to the share of Tulsabai.

As to Point No. 5

48. The Ld. Trial Court has considered Article 109 of the Limitation Act. In my view, Article 109 of the Limitation Act has no application as it relates to the Mitakshara property and not to the sole property of a person. There is distinction between ancestral property, joint property, as well as individually owned property. As the property is purchased by late Narsingrao, under no stretch of imagination, one can contemplate it to be an ancestral property and application of law of Mitakshara. Moreover, the alienation is not by father, but by sister and hence Article 109 has no application thereon.

49. In the case of *Narayan ..vs.. Trimbakrao Gopalrao Bagde and ors., reported in AIR 1998 BOMBAY 94*, it is alleged that there is no limitation for suit based on title which is a stray sentence relied upon. Apparently, once there adverse right displayed to the knowledge of the plaintiff, such limitation starts as in the present case.

50. The aspect of limitation is the inherent jurisdiction of the court. Section 110 contemplates that period of limitation shall be 12 years when a person is excluded from a joint family property to enforce a right to share therein and it shall be starting from when the exclusion becomes known to the plaintiff. In this case it was contented that there was exclusion when the names of defendants were deleted and when the sale deeds were executed and when the names of plaintiff were mutated.

51. For some extent one can consider it to be probable, but something more had to be shown by the plaintiff to show otherwise. In fact, even as of date, Tulshabai or Kishor or the heirs of Kishor do not and have not denied the

claim of the defendants. There is nothing on record to indicate that such exclusion was to the knowledge of these defendants and the period of limitation started. I am unable to apply the rule of constructive notice in this regard. It is now well settled that if a person is not party to a document, then there can be no notice to him and further such document does not bind the said person. In such circumstances, I hold that the cause would be when the plaintiff filed the suit and it came to the knowledge of the defendants. Thus, the counter claim can be said within limitation as it was then that the threat arose. The occupancy of the plaintiff over part of the property and occupancy of the Shaikh over the other part of the property being in nature of stepping into the shoes of Tulsabai cannot be said to be adverse to that of the present defendants and in such circumstances, it cannot be said to be adverse.

52. In the case of *Narayan ..vs.. Trimbakrao Gopalrao Bagde and ors., reported in AIR 1998 BOMBAY 94*, it is alleged that there is no limitation for suit based on title which is a stray sentence relied upon. Apparently, once there adverse right displayed to the knowledge of the plaintiff, such limitation starts as in the present case Hence, answer point No. 5 accordingly.

As to Point Nos. 4 & 6 -

53. Having considered the above aspect, the developments in the suit as contemplated, I hold that these defendants have partly succeeded in their counter claim, but for the reason of ascertainment of the share and the ascertainment of the various transfers during the pendency of the suit and appeal and of earlier transfers and effect of such compromises which were not before or not considered by the Ld. Trial court at all and will effectively affect the shares, I am inclined to remand the suit back to the Ld. trial Court

for only such further purpose, who shall consider these aspects. Thus point No. 4 does not survive and point No. 6 is answered partly and hence, I partly allow Appeal No. 7 of 2015 as under.

ORDER

1. Appeal RCA No. 07/2015 is partly allowed.
2. The judgment and decree passed by Ld. 2nd Jt. Civil Judge (Jr. Dn.), Washim in RCS No. 238/2004 dated 15/11/2014 of dismissal of the counter claim is hereby set aside.
3. It is hereby declared that the Defendants 2 to 8 have succeeded to the share of Narsingrao. Considering that they are heirs to the four sons or the sons themselves, each one of them, they are entitled totally to 4/5th share.
4. The Learned trial Court is called upon to consider the effect of the Compromises and transactions entered between the defendants' interse with regard to the portions or part of the properties and pass a decree with regard to the existing or subsisting share, if any, of the defendant Nos. 2 to 8. This may require additional evidence. Considering the same parties are at liberty to lead additional evidence with regard to the transactions , if any affecting the shares of the parties.
5. The sale deeds being valid , the plaintiff shall be entitled for share of Late Tulsabai, if existing if any.
6. Both the parties to appear before the Ld. Trial Court on 08.05.2026.
7. Parties to bear their own costs.
8. Inform to Ld. Trial Court, accordingly.

9. No order as to costs.

10. Decree be drawn up accordingly.

11. Reg. Civil Appeal No. 07/2015 stands disposed off.

(Dictated and pronounced in open Court).

Date:- 13/04/2026.

(Anil Subramaniam)
Principal District Judge,
Washim.

CERTIFICATE

I affirm that the contents of this PDF file word to word are same as per original judgment/order.

Name of Stenographer	:	A. W. Ajmire, Steno (Grade II)
Court Name	:	Principal District & Sessions Judge, Washim.
Date of order/Judgment	:	13/04/2026
Judgment Dictated on	:	13/04/2026
Order/Judgment signed by		
Presiding Officer on	:	13/04/2026
Order/Judgment uploaded on	:	13/04/2026