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		06	10	17

**IN THE COURT OF JT. CIVIL JUDGE JUNIOR DIVISION, AT-
MANGRULPIR, TAL.MANGRULPIR, DIST. WASHIM.**

(Presided over by Shri. K. C. Kalal)

**Regular Civil Suit No. 55/2019
Exh. No.51**

- 1) **Mohd. Yusuf Mohd. Ayyub,**
Age- 65 years, Occ- Agri,
R/o Rajni Chowk Washim,
Tal., Dist. Washim.
- 2) **Noor Bano Mohd. Ibraheem,**
Age- 60 years, Occ- Household,
R/o Mangalwara, Karanja Lad,
Tal.Karanja, Dist. Washim.
- 3) **Bilquees Bano Jani Khan,**
Age- 55 years, Occ- Household,
R/o Mhaslapain,
Tal. Risod, Dist. Washim.
- 4) **Parveen Sultana Javed Ahemad,**
Age- 45 years, Occ- Household,
R/o. Kalamnuri, Noori Mohalla,
Tal.Kalamnuri, Dist.Hingoli.

...Plaintiffs

-Versus-

- 1) **Mohd. Ismail Mohd. Ayyub,**
Age- 63 years, Occ- Agri,
R/o Asegaon,
Tal. Mangrulpir, Dist. Washim.
- 2) **Mohd. Asif Mohd. Ayyud (dead),**
through his legal heirs.

2-a) **Shaista Nasreen Mohd. Asif,**
Age- 50 years, Occ- Nil,

2-b) **Mohd. Kasif Mohd. Asif,**
Age- 30 years, Occ- Nil,

2-c) **Mohd. Tausif Mohd. Asif,**
Age- 28 years, Occ- Nil,

2-d) **Mohd. Habeeb Mohd. Asif,**
Age- 27 years, Occ- Nil,

2-e) **Tabassum Mohd. Asif,**
Age- 26 years, Occ- Nil,

2-f) **Amreen Mohd. Asif,**
Age- 25 years, Occ- Nil,

2-g) **Shabana Mohd. Asif,**
Age- 24 years, Occ- Nil,

2-h) **Neha Mohd. Asif,**
Age- 23 years, Occ- Nil,

2-i) **Mahvish Mohd. Ayyub,**
Age- 22 years, Occ- Nil,

2-j) **Farheem Mohd. Ayyub,**
Age- 21 years, Occ- Nil,

Defendant Nos. 2-a to 2-j R/o. Rajni Chowk Washim,
Tal., Dist. Washim.

...Defendants

Claim : "Suit for partition and separate possession."

Appearances :-

Advocate for plaintiffs	:-	Abdul Hakim
Advocate for defendant No.1	:-	S. N. Sarkale
Advocate for defendant Nos.2-a to 2-j	:-	Ex-parte

J U D G M E N T

(Delivered on 08/05/2026)

1. The subject matter of the suit is the immoveable property described as under:-

House property:-

a) Situated at Asegaon, Tq.Mangrulpir, Dist. Washim, recorded in Gram Panchayat Office at Asegaon bearing property No.215, admeasuring 49 x 33 ft. having rooms, bathroom, latrin having 20 tin sheets over it old construction of mud.

bounded towards:

East : House of Noor Khan Patel.

West : House of Jabbar.

North : House of Shama.

South : Open site known as Khari.

b) Agricultural landed property:

1) Situated at Pimpalgaon, Tq. Mangrulpir, Dist. bearing Bhumapan No.63,admeasuring 1.22 R. L.R.9.00, Share full, with all kinds of standing trees therein.

Bounded Towards:

East: field No. 64

West: field of Komti

North: Chincholi Road,

South: field No. 56,66

2) Situated at mouza Kasola, Tq. Mangrulpir, Dist. Washim, bearing Gat no.342, admeasuring 2.36 R, LR. Rs. 1/- with all kinds of standing therein.

Bounded towards:

East: Gt.No.343.

West: .338 Gt.No.

North: Gat No. 341

South: Gat No. 337.

That the above said property in para 1(a)(b) hereinafter be called as “suit properties”.

BRIEF RELEVANT FACTS OF THE PLAINTIFF’S CASE

2. The plaintiffs have instituted the present suit for partition and separate possession in respect of the suit house property situated at Asegaon and agricultural lands situated at Pimpalgaon and Kasola, Taluka Mangrulpir, District Washim.

3. According to the plaintiffs, the suit properties originally belonged to their father late Mohd. Ayyub Mohd. Kasam, who died on 07.03.2003. During his lifetime, he was in possession and enjoyment of the suit properties. After his death, the properties devolved upon his legal heirs, namely the plaintiffs and defendants. The mother of the parties, Hajarabee, also expired on 29.01.2019.

4. The plaintiffs and defendant No.1 are sons and daughters of the deceased, while deceased Mohd. Asif (brother) has left behind his legal heirs, who are arrayed as defendant Nos.2(a) to 2(j). All parties are Sunni Hanafi Muslims and are entitled to inherit the suit properties as per Mohammedan Law, under which male heirs are entitled to double the share of female heirs.

5. It is the contention of the plaintiffs that after the death of their parents, the parties continued to remain in joint possession of the suit properties. However, in March 2019, the plaintiffs demanded partition and separate possession of their respective shares, but

defendant No.1 refused to give their lawful shares and avoided partition on one pretext or another, and also threatened the plaintiffs.

6. Therefore, having no alternative remedy, the plaintiffs have approached this Court seeking a decree for partition and separate possession of their respective shares in the suit properties along with mesne profits and costs.

DEFENCE OF DEFENDANT NO.1 IN BRIEF IS AN UNDER

7. Defendant No.1 has filed his written statement at Exh.36 and has partly admitted the case of the plaintiffs. He has admitted the relationship between the parties as well as the ownership of the suit properties by late Mohd. Ayyub Mohd. Kasam.

8. However, Defendant No.1 has contended that during the lifetime of their parents, an oral partition had already taken place, whereby the properties were distributed among the parties. According to him, the house property at Asegaon was allotted to him, while the house property situated at Washim was allotted to plaintiff No.1 and deceased Mohd. Asif. He further contended that agricultural lands were also divided, with Pimpalgaon land given to him and Kasola land allotted to plaintiff No.1 and the legal heirs of Mohd. Asif, who are in possession and cultivation of the same.

9. It is further contended that the plaintiffs have deliberately suppressed the existence of an important house property situated at Washim, which is of substantial value, and therefore the suit is bad for non-inclusion of all joint properties. According to him, the plaintiffs have not approached the Court with clean hands.

10. Defendant No.1 has also contended that the plaintiffs have no subsisting right to claim partition as the properties were already divided and are in separate possession of respective parties. He has further alleged that plaintiff No.1 is quarrelsome in nature and has filed the present suit in collusion with defendant Nos.2(a) to 2(j) to harass him.

11. He has also raised a plea that the suit is barred by limitation and not maintainable in law. On these grounds, Defendant No.1 has prayed for dismissal of the suit with costs and has further sought compensation of Rs.50,000/- for being unnecessarily dragged into litigation.

12. Defendant Nos.2-a to 2-j, though duly served summons, failed to appear. Hence, the suit proceeded ex parte against them.

13. Heard, advocate Abdul Hakim for plaintiffs and advocate S. N. Sarkale for defendant No.1. Upon considering rival pleadings of the parties, issues were framed at Exh.37. The issues and findings thereon for the reasons stated there under are as follows -

<u>Sr. No.</u>	<u>ISSUES OF SUIT</u>	<u>Findings</u>
1	Whether the plaintiffs prove that the suit properties were inherited from their father late Mohammad Ayub?	In the affirmative
2	Whether the plaintiffs prove that they have share/right in the suit properties as claimed in the plaint?	In the affirmative
3	Whether Defendant No.1 proves that an oral partition had already taken place between the parents of the plaintiffs and Defendant No.1?	In the negative

4	Whether the suit is bad for non-joinder of necessary parties and/or non-inclusion of all joint properties?	In the negative
5	What order and decree?	As per final order

REASONS

AS TO ISSUE NOS.1 to 4 :

14. Plaintiff No.1 had filed evidence affidavit at Exh.17. However, on 03.02.2024, the said affidavit was not pressed by the plaintiffs. Thereafter, plaintiff No.2 Noor Bano Mohd. Ibraheem entered the witness box and filed her evidence affidavit at Exh.40. Her evidence is in consonance with the pleadings in the plaint.

15. The plaintiffs have produced documentary evidence. Exh.23 is the assessment extract of property No.215 situated at Asegaon, which shows the names of Mohd. Ayyub Mohd. Kasam and Hajarabee Mohd. Ayyub. Exh.25 is the 7/12 extract of Gat No.342 situated at Kasola. Exh.26 is the 7/12 extract of Gat No.63 situated at Pimpalgaon. These revenue extracts show the names of the plaintiffs and defendants. Exh.27 is mutation entry No.340, which shows that after the death of Mohd. Ayyub, the names of his legal heirs were recorded. Exh.29 is the death certificate of Mohd. Ayyub showing his death on 07.03.2003. Exh.30 is the death certificate of Hajarabee showing her death on 29.01.2019. Exh.34 is the death certificate of Mohd. Asif showing his death on 05.01.2016.

16. From the above documents, it is clearly established that the suit properties originally belonged to late Mohd. Ayyub Mohd. Kasam. After his death, the names of his legal heirs came to be

recorded in the revenue record. Thus, the plaintiffs have proved that the suit properties were inherited from their father late Mohd. Ayyub.

17. Defendant No.1 himself has admitted in his cross-examination that the suit properties were of his father Mohd. Ayyub. He has further admitted that after the death of his father, the suit properties came in the names of plaintiffs and defendants. He has also admitted that plaintiffs and defendants are sharers in the suit properties. He further admitted that after the death of his mother in the year 2019, the plaintiffs demanded their shares and he did not give their shares. These admissions are material and go to the root of the matter.

18. Defendant No.1 has taken a defence of oral partition. The burden to prove oral partition was on defendant No.1. However, except his bare words, no cogent documentary or independent oral evidence is produced by him. No mutation entry, partition deed, consent document or any record showing separate allotment of properties is produced. Therefore, the plea of oral partition is not proved.

19. Defendant No.1 has also contended that the suit is bad as one house property situated at Washim has not been included. However, in his cross-examination he has admitted that except the suit properties, no other property stood in the name of his father. In view of this admission, the defence regarding non-inclusion of Washim property does not survive. Hence, the suit is not bad for non-joinder or non-inclusion of necessary property.

20. It is not in dispute that the parties are Sunni Hanafi Muslims. Under Mohammedan Law, male heirs take double share than female heirs. Late Mohd. Ayyub left behind three sons and three daughters. Therefore, the estate is to be divided into nine equal units, each son getting two units and each daughter getting one unit. Mohd. Asif, who died subsequently, would be represented by his legal heirs, defendant Nos.2-a to 2-j.

21. Therefore, plaintiff No.1, being son, is entitled to 2/9th share. Plaintiff Nos.2 to 4, being daughters, are each entitled to 1/9th share in the suit properties. Defendant No.1 is entitled to 2/9th share and defendant Nos.2-a to 2-j collectively represent the share of deceased Mohd. Asif. Hence, issue Nos.1 and 2 are answered in affirmative and issue Nos.3 and 4 are answered in Negative.

AS TO ISSUE NO.5 :

22. In view of the above discussion, the plaintiffs are entitled to decree for partition and separate possession. Hence, I proceed to pass the following order.

ORDER

- 1) The suit is hereby decreed.
- 2) It is hereby declared that the plaintiffs have the following shares in the suit properties described in para No.1 of the plaint. Plaintiff No.1 Mohd. Yusuf Mohd. Ayyub – **2/9th share**, Plaintiff No.2 Noor Bano Mohd. Ibraheem – **1/9th share**, Plaintiff No.3 Bilquees Bano Jani Khan – **1/9th share**, Plaintiff No.4 Praveen Sultana Javed Ahmed – **1/9th share**.

- 3) Defendant No.1 Mohd. Ismail Mohd. Ayyub is entitled to **2/9th share**.
- 4) Defendant Nos.2-a to 2-j, being legal heirs of deceased Mohd. Asif Mohd. Ayyub, are collectively i.e. **2/9th share** entitled to the share of deceased Mohd. Asif.
- 5) Preliminary decree for partition and separate possession be drawn accordingly.
- 6) Inquiry into mesne profits, if any, be conducted under Order XX Rule 12 of the Code of Civil Procedure.
- 7) Parties shall bear their own costs.
- 8) Decree be drawn up accordingly.

(Dictated and pronounced in open court.)

(Khwaja.C. Kalal)

Date : 08/05/2026

Jt. Civil Judge Jr. Division, Mangrulpir,
Tal. Mangrulpir, Dist. Washim.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment/ Order are same word to word as per the original order.

Name of Court	:-	Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpir, Dist. Washim.
Presiding Officer	:-	Khwaja C. Kalal
Judgment uploaded by	:-	Shri. S. S. Rathod (Jr. Clerk)
Date of Judgment	:-	08/05/2026
Judgment/Order signed by the presiding officer on	:-	08/05/2026
Judgment/Order uploaded on	:-	08/05/2026