



Presented on : 10/08/2015
Registered on: 10/08/2015
Decided on : 29/04/2026
Duration: 10Y/8M/19Dys

IN THE COURT OF AD-HOC DISTRICT JUDGE-1
KELAPUR, AT-KELAPUR, DISTRICT- YAVATMAL
(Presided over by Manish A. Kothari)

R.C.A.No.33/2015

Ex.101

1 Arvind Ramchandra Belkhede
(dead) through his legal heirs Appellants

1a Smt. Chhaya wd/o Arvind
Belkhede, age 75 years,
occupation nil,

1b Sachin Arvind Belkhede, age 52
years, occupation service

1c Sandip Arvind Belkhede, age 47
years, occupation cultivator

1d Samir Arvind Belkhede, age 45
years, occupation business

Applicants Nos.1a to 1d are r/o
Pandharkawada, Distt. Yavatmal

2 Bal Ramchandra Belkhede
(dead) through his legal heirs



2a Smt. Meenatai wd/o Balasaheb
@ Bal Belkhede, age 59 years,
occupation household, r/o.
Behind KES School,
Pandharkawada, Taluka Kelapur,
District Yavatmal

2b Sau. Sarika Praful Upadhye, age
34 years, occupation household,
r/o. Waghdhara, Post Mandar,
Taluka Wani, District Yavatmal

V/s.

1 Smt. Sulochana wd/o Respondents
Ramchandra Belkhede, (dead)

2 Shirish Ramchandra Belkhede
(dead) through his legal heirs

2a Smt. Sunita wd/o Shirish
Belkhede, age 47 years,
occupation household

2b Pratish Shirish Belkhede, age 27
years, occupation education

2c Ku. Renu Shirish Belkhede, age
18 years, occupation education
all r/o Pandharkawada, Taluka
Kelapur, District Yavatmal



- 3 Sadhana Bal @ Balwantrao Kulkarni, age 34 year, occupation household, r/o Patrakar Colony, near agriculture college, Maharaj Bag, Nagpur
- 4 Bhawana Prasanna Tirthgirkar, age 28 years, occupation household, r/o. Bhadrawati c/o Prasanna Tirthgirkar, Bank Of India, Bhadrawati, Taluka and District Chandrapur
- 5 Shaila Padmakar Hotey, age 43 years, occupation household, r/o sector No.2, Quarter No.16, Bhilai, Taluka and District Bhilai (M.P.)
- 6 Yavatmal District Central Co-operative Bank, Through its General Manager, r/o Yavatmal, Taluka and District Yavatmal

Advocates:-

For Appellants: **Shri. Sunil Chaudhary/R.K.Shaikh**

For Respondent: **Shri. M.M. Kale**

APPEAL UNDER SECTION 96 OF THE CODE OF
CIVIL PROCEDURE.



JUDGMENT

(Delivered on 29/04/2026)

Being aggrieved by the judgment dated 21st August, 2000 passed by the learned Civil Judge, Senior Judge, Yavatmal in R.C.S. No.132/1992 passed by Civil Judge (Sr.Dn.), Yavatmal the appellants have filed the appeal under section 96 of The Code Of Civil Procedure.

2. The present appellants are the legal heirs of original plaintiff Nos.1 and 2 whereas the respondents are original defendants and, therefore, for the sake of convenience they will be called as per their original nomenclature.

3. During the pendency of the appeal original appellant Nos. 1 and 2 died as well as respondent No.2. Therefore, their legal heirs were brought on record. Later on respondent No.1 is also dead, but no legal heirs were brought on record as already her legal heirs were on record.



4. The facts giving rise to the filing of the present appeal is that the original plaintiffs Arvind and Bal (now dead) have filed the suit for partition of house property, agriculture land and separate possession of share alongwith enquiry for the mesne profit against the defendant Nos.1 to 6. The father of the plaintiff deceased Ramchandra had performed 3 marriages. Original plaintiff Nos. 1 and 2 are the sons of first wife of Ramchandra from deceased Pramila. Defendant No.5 i.e. Shaila is the daughter born from the said wedlock. Thereafter deceased Ramchandra performed second marriage with Prabhawati who too died after 2 years from the marriage without having any children. Later on deceased Ramchandra performed third marriage and the original defendant No.1 Sulochana is his third wife and from the marriage they had defendant No.2 Shirish and defendant Nos. 3 Sulochana and 4 Bhawana as son and daughter. Defendant No.6 is the bank where deceased Ramchandra and deceased defendant No.1 Sulochana had jointly



kept deposit and movable worth Rs.1,50,000/-. As far as the relation of plaintiffs and defendants are concerned, there is no dispute.

5. Following are properties which are subject matter of suit and hereinafter will be called as '**suit properties**' described as under:-

a) House property-

Nazul plot No.4/3 and 5 admeasuring 8181 sq.ft in sheet No.16/C of Pandharkawada Town, Taluka Kelapur, District Yavatmal alongwith building thereon which is bounded as under:-

on the east : road

on the west: house of Joshi and Kisansingh
Siddhu

on the north: house of Rande

on the south: road



b) Agricultural land-

- i) Gat No.1 admeasuring 1.97 H.R land rental Rs.2.50
- ii) Gat No.20/1 admeasuring 9.68 H.R land rental Rs.19/-
- iii) Gat No.24 admeasuring 12.86 H.R land rental Rs.25/-

All the aforesaid 3 properties are situated at village Chikhaldoha, Taluka Maregaon, District Yavatmal.

C) Pharm house-

Pharm house comprises of 3 rooms with roof and country tiles with cattle shed area 60 x 15 and pharm house area 30 x 20 ft. situated at Gat No.1 village Chikhaldoha, Taluka Maregaon, District Yavatmal.

D) Movables-

Ten bullocks, 15 cows, 1 causal car, bank deposit worth Rs.1,50,000/- deposited in the name of deceased Ramchandra and defendant



No.1 Sulochana with defendant No.6.

6. Belkhede family had agricultural land at village Chikhaldoha, Taluka Wani now Maregaon and house property at Pandharkawada. In 1958 there was partition between deceased Ramchandra and his brother Prabhakar by registered document dated 08/10/1958. Thereafter the house property was partitioned by registered partition deed dated 07/05/1964 and thereby deceased Ramchandra had acquired his share in the ancestral property. After the marriage of deceased Ramchandra with defendant No.1, the defendant No.1 started illtreating plaintiffs, but plaintiffs continued their residence till 1975. Thereafter plaintiff got married and defendant No.1 started quarreling with their families and, therefore, plaintiffs started separate residence in 1975 and in 1975-76 deceased Ramchandra partition the agricultural land and about 30 acres land at Chikaldhoha were given in the share of the plaintiffs by oral partition and deceased



Ramchandra retained the property which is described in para 2-B as suit properties. The property described in para 2-A and 2-C of the suit property were retained by deceased Ramchandra and had not partition in the oral partition.

7. Thereafter the plaintiffs issued notice to deceased Ramchandra and the defendants on 26/11/1990 and claimed partition of the remaining properties. Deceased Ramchandra replied the said notice dated 03/12/1990 and denied the claim of the plaintiffs contenting that the plaintiffs have relinquished their interest and rights in the house property and the remaining properties. Again that notice was replied by the plaintiffs and denied the relinquishment of share and asked deceased Ramchandra for furnishing the copy of relinquishment deed. Deceased Ramchandra replied notice and denied to supply the copy of relinquishment deed. In the due course on 08/05/1992 Ramchandra died and thereafter defendant Nos. 1 and 2 flatly refused



the claim of the plaintiffs. When plaintiffs made contact with the defendant No.6 bank, at that time defendant No.2 informed that deceased Ramchandra had bequeath the properties in their favour by executing the Will. Therefore, looking to the approach of the defendants, the plaintiffs filed the suit for partition and separation of their share in the agricultural property and the house property and all the movable property alongwith enquiry for mesne profit.

8. Defendant Nos. 1 and 2 filed their written-statement at Ex.22 and they had admitted their relationship with the plaintiffs and the description of properties, but in their specific pleading they have contended that by notice dated 10/03/1977 both the plaintiffs had intimated deceased Ramchandra by claiming 1/5th possession that they have separated from the joint family and in the said partition 1/5th share i.e. 23 acres 20 gunthas each were given to the plaintiff No.1. Later on in exchange of their



rights in the house of property additional 7 acres land each were given to the plaintiff Nos. 1 and 2 alongwith cash and by accepting the same they had separated from the joint hindu family and now they are not part of the same. Thereafter 1977 deceased Ramchandra from his agricultural income from the share received in the partition constructed pharm house and later on in the presence of two panch had executed the will deed dated 25/06/1990 and bequeath all his properties in favour of the defendant Nos. 1 and 2. On 11/04/1981 plaintiff No.2 Bal had issued a receipt that in exchange of 7 acres land he had relinquished his share in house property and they will not be having any share in the suit properties. On 28/10/1977 plaintiffs by accepting Rs.5,000/- issued receipt and intimated that he had accepted 30 acres 20 gunthas land at mouza Chikhaldoha and, therefore, he has no share in the remaining property. On 10/03/1977 by oral partition plaintiff had received the share and, therefore, the suit should have been filed within 12 years in case



the said partition is not acceptable and within 3 years from the said date in respect of the movable properties. Therefore, considering the dates of the oral partition, the suit is not filed within limitation and prayed to dismiss the suit.

9. Defendant Nos. 3 and 4 filed their written-statement at Ex.29 and had taken the defence as taken by the defendant Nos. 1 and 2. They have also contended that in 1977 the properties were divided and the plaintiffs are not coparcener of the joint family property and, therefore, they are not entitled for claiming partition and the suit is barred by limitation.

10. Defendant No.5 though served, but failed to file appearance and therefore, matter proceeded ex-parte against defendant No.5.

11. Defendant No.6 filed its written-statement at Ex.16 and contended that bank is not



the necessary party and had enclosed the certificate in respect of the properties deposited with them.

12. On the basis of the rival contentions the learned trial court had framed the issues at Ex.30. Later on during the course of trial the plaintiffs examined Arvind (PW1) at Ex.55, Bal (PW2) at Ex 86 and closed the side by filing pursis Ex.94. Thereafter defendant examined Sulochana as (DW1) at Ex.114, Vinayak (DW2) as a petition writer at Ex.148, Vijay (DW3) as a witness on will at Ex.149, Jogendra (DW4) as witness at Ex.158.

13. Following points arises for my determination against which I have recorded my findings with reasons to follow as under:-

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether plaintiffs prove that the suit properties are joint family property in which they are having share?	In the negative



2)	Whether plaintiffs are entitled for partition and separation of share as claimed in the suit in respect of the suit properties?	In the negative
3)	Whether defendants proves that the plaintiffs have relinquished their share in the suit properties?	In the affirmative
4)	Whether the suit is barred by limitation?	In the affirmative
5)	Whether the judgment and decree passed by the learned trial Court is proper, legal and correct?	In the affirmative
6)	Whether any interference is required in the impugned judgment and decree?	In the negative
7)	What Order?	As per final order

R E A S O N S

Submission of parties:-

14. Heard learned counsel for the appellants Shri. Chaudhari and Shri. Kale for the respondents. Perused record. The counsel for the appellants Shri. Chaudhari submitted that there



were agricultural and house properties received by deceased Ramchandra in the partition with his brother and there was about 121 acres of agricultural land alongwith house at Pandharkawada and Chikhaldoha and one plot at Chikhaldhoha and some of the movable properties alongwith cash and deposits with the respondent No.6 and that were the suit properties for which the suit was filed. As per the defendants 23 acres land each were given to plaintiff Nos. 1 and 2 and in exchange of their rights released in respect of the house property at Pandharkawada 7 acres land each in addition to 23 acres were given to them. Not only that as per the defendants some cash was given which is duly acknowledge by the plaintiffs. But the documents relied by the defendants in order to prove the said relinquishment, the said documents are not registered and therefore, as per 17 and 49 of Indian Registration Act they are not admissible and cannot be read in evidence for want of registration. Even for the collateral purpose they



cannot be taken into consideration as by those documents there is severance of status between the plaintiffs and the defendants. Therefore, defendants issued notice in 1990 and claimed partition, but as Ramchandra the father of the plaintiffs failed to effect the partition and handover the separate share in the house property at Pandharkawada. There is reference of relinquishment deed in the judgment of the learned trial court, but the said reference is without the production of the document and, therefore, it has no meaning to consider that the plaintiffs have relinquished their share in exchange of 7 acres additional land as alleged by the defendants. Though some documents are relied by the defendants, but they were only executed by plaintiff No.2 Bal. There is no reference of the Pavati Ex.159 in the evidence of Sulochana (DW1). The said document was proved in the evidence of Joginder (DW4). In support of his submission that for want of registration of the documents relied by the defendants even cannot



be relied for collateral purpose has relied on case between K.B. Saha and sons Private Limited .Vs Development Consultant Limited (2008) 8 SCC 564. Further on the point of compulsory registration of relinquishment deed as per Section 17 and 49 of Indian Registration Act he relied on case between Yellapu Uma Maheshwari and another .Vs Buddha Jagdish Jagadheeswararao and others reported in (2015) 16 SCC 787 and case between Nilkanth Khandare .Vs Bhaorao Khandare and Smt. Vimal Zode reported in (2008) 4 Mh.L.J 215 by Hon'ble Bombay High Court, Bench At Nagpur. On the point of limitation, he submitted that after the issue of notice in the year, 1990 claiming partition and denial by their father Ramchandra, there is exclusion from the property and from that day the limitation for filing the suit start and as per Article 110 of Limitation Act, the suit should have been filed within 12 years from the date of the said knowledge or exclusion. Here after denial by Ramchandra and other respondents the suit was



filed in the year, 1992 and, therefore, the suit is well within limitation. The alleged will deed executed by Ramchandra is effective only in respect of the share received by the deceased Ramchandra. As the plaintiffs have proved their case and the suit is within limitation and for want of registration of alleged relinquishment deeds, the suit of the plaintiffs is tenable and the plaintiffs are entitled for the partition and separation of share and, therefore, the learned trial court had wrongly dismissed the suit. Therefore, prayed for allowing the appeal by setting aside the judgment by declaring the share of the plaintiffs in the suit properties.

15. On the other hand, the counsel for the respondents/defendants Shri. Kale submitted that in the year, 1990 the plaintiffs issued notice and claim partition and the notice was replied and therefore, as per the plaintiffs they have the cause of action in the year, 1992. By filing the written-statement the defendants have denied the claim of



the plaintiffs. Initially plaintiffs issued notice dated 25/07/1975 and claimed partition which was replied by the deceased Ramchandra and intimated that due to pendency of ceiling case partition cannot be effected and after conclusion of the said case, he will effect the partition. Again notice dated 10/03/1977 Ex.88 and Ex.124 were issued by plaintiff Nos. 1 and 2 independently and claimed partition and in pursuance of the said notice, the agricultural land admeasuring 121 and some gunthas were partition and 1/5th share each was given to plaintiff Nos. 1 and 2 and remaining shares were retained by Ramchandra, Sulochana and their sons Shirish. The house at Chikhaldoha was given to plaintiff No.2 Bal whereas plot at Chikhaldoha was given to plaintiff No.1 which is duly acknowledge by them during their cross examination. While issuing notice, both plaintiffs have intimated that they are separating from joint family and from the date of issue of the notice they are no longer part of joint family. Accordingly, in 1978 the partition was effected



and the shares were given to plaintiffs, but the share of Ramchandra, Sulochana and Shirish were kept joint and to that effect, they have to joint family. At that time, the partition in respect of the house which is situated at Pandharkawada was not possible and, therefore, in exchange of that, 7 acres each in addition to 23 acres were given to plaintiff Nos. 1 and 2. This has been acknowledge by the plaintiffs and, therefore, by accepting that share they had indirectly released their share and claim over the house property. Alongwith the properties cash was given to plaintiff Nos. 1 and 2 and to that effect there is admission in the cross-examination as well as the documentary evidence. He further submitted that, in case there is one property then, the document to that effect for relinquishing the share has to be executed and that needs to be registered. But in the present case, as there were number of properties and all were scattered in Pandharkawada and Chikhaldoha and, therefore, by way of mutual understanding and agreement, the properties



were given in the share of plaintiffs and some of them retained by the defendants and, therefore, to that effect as there was mutual agreement and for that reason specific document by way of relinquishment deed was not executed, but the effect of the same can be seen from the cross-examination and various correspondence entered with the plaintiffs and the defendants. He further submitted that the parties are governed by the Hindu Law and as para 340 of the Hindu Law by Mulla at page No.465 under the caption VII-Effect Of Partition, effect of partition is to dissolve the coparcenary and by notice Ex.88 and 124 the plaintiff Nos. 1 and 2 clearly shown and asserted regarding the dissolution of joint family and separation and on the said assertion the joint family is dissolved and they are no longer the coparcener of the joint family. With reference to the evidence of Joginder (DW4) he submitted that as per the case between Henkunwar Bai .Vs. Summersingh and others arising out of Civil Appeal No.8827/2011 by the Hon'ble Supreme Court Of



India in Civil Appellate Jurisdiction has held that witness should not know about the contents of the documents as they are witnessing the execution of the documents only. He submitted that the will is not challenged by the plaintiffs and therefore, the properties which were received by the deceased Ramchandra in the said partition had executed the will and bequeath his share in favour of Sulochana and Shirish to which the plaintiffs have no right and interest. As per Hindu Succession Act it was the absolute property of the deceased Ramchandra even though it was joint property with Sulochana and Shirish, but he had right to execute document in respect of the said properties. The separation of property and claiming of partition by issuing notices Ex.88 and 124 and on the basis of that the partition was effected and therefore, from that date, the suit should have been filed within 12 years as per Article 110 of the Limitation Act. The suit is not filed within 12 years i.e. by 1990 and, therefore, the suit was barred by limitation and the learned



trial court has rightly held the same and dismissed the suit of the plaintiffs. The learned trial court after appreciating the documents and the evidence on record has dismissed the suit of the plaintiffs which need not required any interference and prayed for dismissing the appeal.

As to point Nos.1 to 3:-

16. In the present case, the properties which were the subject matter of the suit i.e. the agricultural land admeasuring 121 acres, house property at Pandharkawada and Chikhaldoha and plot at Chikhaldoha were received by deceased Ramchandra in a partition that has taken place with his brother. Those documents are on record at Ex.61 and Ex.62. As far as description and identification of properties are concerned, they are not disputed. The relation between the plaintiffs and the defendants with that of the deceased Ramchandra is also not disputed.

17. Till 1975 plaintiffs were residing



together with their father Ramchandra and defendant No.1 Sulochana in ancestral house at Pandharkawada. Thereafter after the marriage of Arvind there were disputes and, therefore, first time in 1975 the plaintiff No.1 had issued notice dated 25/07/1975 which is at Ex.123 and the said notice was replied by deceased Ramchandra at Ex.83. On perusal of notice Ex.123 first time by asserting 1/5th share in the properties received by deceased Ramchandra in the partition taken place with his brother Prabhakar, the plaintiff Arvind had 1/5th share and asked deceased Ramchandra to effect the same within 8 days. The said notice was issued by Chikhaldoha. Ramchandra replied the notice Ex.83 in which he agreed to effect the partition and to give separate share to him.

18. Thereafter again plaintiff No.2 Bal had issued notice Ex.88 and claimed 1/5th share in the agricultural land at Chikhaldoha admeasuring 121 acres 12 gunthas, house property at Pandharkawada Akhada Ward, open plot at



Chikhaldoha and one house property and movable properties. By this notice plaintiff No.2 Bal had intimated Ramchandra that by dissolving the joint family his share be given and by this notice he has dissolved the joint family and has separated himself from the said joint family. Likewise, plaintiff No.1 Arvind had issued notice Ex.124 and by claiming the same 1/5th share in the properties as claimed by the Bal has also intimated regarding the dissolution of joint family and informed that he is separated from the joint family. That means by issuing notice Ex.88 and Ex.124, plaintiff Nos. 1 and 2 had clearly mentioned and intimated the deceased Ramchandra that the joint family is dissolved and they are separated from the so called the joint family.

19. In this regard the cross-examination of Arvind (PW1) and Bal (PW2) are very material. Arvind (PW1) admitted issuing notice on 25/07/1975 and reply of his father at Ex.83.



Again he has admitted the notice dated 10/03/1977 Ex.124 and admitted claiming 1/5th share in the joint family property. He also admitted that he is residing at Chikhaldoha in the house property since 1978. He also admitted executing receipt Ex.85 on 28/10/1977 and receipt of Rs.5,000/- from his father. He also admitted that by issuing notice in the year, 1977 he intimated his father that he is separated. He also admitted that both the plaintiffs were given 30 acres land each by their father. He also admitted that plaintiff No.2 Bal is residing in house at Chikhaldoha in 1977. He also admitted that he has constructed house at Chikhaldoha on the plot of his father in 1978 and plaintiff No.2 is residing in another house of his father. He also admitted that except plot and house, his father has no other property at Chikhaldoha. He also admitted that after giving 30 acres lands each to plaintiff No.1 and plaintiff No.2 the remaining land came in the share of his father, defendant No.1 Sulochana and defendant No.2 Shirish.



20. Arvind (PW1) also admitted that his father had constructed a farmhouse on survey No.1 at Chikhaldoha. This witness also admitted that his father was doing the cotton business and maintaining the account and from the income of the cotton business, he had constructed the farmhouse. He also admitted that other movable properties were purchased by his father from his own income in the year, 1977. He admitted that his father had replied Ex.64 to his notice and denied their share and informed that 7 acres access land was given to them in exchange of the share in the house property. In spite of dissolving the joint family by notice Ex.124 he asserted that in anticipation and hope he had issued the notice in the year 1990 for claiming share in the joint family property. In further cross-examination he admitted that till 1977 he was residing jointly with his father and thereafter residing separately at Chikhaldoha.

21. Now see the admissions came in the



evidence of Bal (PW2). He too has admitted claiming partition in the year 1975 and then again in the year 1977 by notice Ex.88. He admitted that by that notice he informed his father that from the date of receipt of the notice joint family property should be treated as partition and in the said notice he claimed 1/5th share in the joint family property. He also admitted that after the notice Ex.88 his father had given him 30 acres land and since 1977 he is cultivating 30 acres land separately. He also admitted some documents Ex.89 by which he received some amount from his father. Not only that share was given and he was cultivating separately, but in 1977-78 he sold the cotton produce to his father firm M/s. R.T. Belkhede. He also admitted that till 1990 he has not taken any steps for claiming share in joint family property.

22. From the cross-examination of Arvind (PW1) and Bal (PW2) it is clear that first notice of partition was issued on 25/07/1975 and



thereafter again on 10/03/1977 notice Ex.88 and Ex.124 and later on, on the basis of those notices they have intimated regarding the dissolution of joint family and their separation from the joint family as a coparcener. That means on issue of notice Ex.88 and Ex.124 both plaintiffs have declared their separation from the joint family property as they are no longer part of the same. From the evidence, it is clear that in the year 1977-78 they got about 30 acres agricultural land each at Chikhaldoha. Plaintiff No.2 Bal had received house property at Chikhaldoha whereas plaintiff No.1 Arvind had received open plot on which later on he made construction in the year, 1978 and started separate residence.

23. Deceased Ramchandra was having the ancestral property admeasuring 121 acres and 12 gunthas at Chikhaldoha is not disputed by the plaintiffs. They have also admitted after separation of their share the remaining share was with the deceased Ramchandra, Sulochana and



Shirish. Both the plaintiffs having received 30 acres land each at Chikhaldoha. This 30 acres land was not the 1/5th share from 121 acres, but they had received 23 land each and 7 acres land each in exchange of their releasing their rights in the house property situated at Pandharkawada.

24. Admittedly, there are no documents on record showing the actual partition that has taken place between Ramchanda and his two sons plaintiff No.1 and plaintiff No.2. The defendants and more specifically during the life time deceased Ramchandra had interpreted the document Ex.159 as the relinquishment of right by both the plaintiffs in exchange of releasing their right in the house property. That property was executed on 11/04/1981 whereas in pursuance of the notice dated 10/03/1977 the father Ramchandra had effected partition.

25. Reference of releasing share by the plaintiffs can be seen from the series of



correspondence Ex.63, Ex.64, Ex.65, Ex.66, Ex.67, Ex.68, Ex.69, Ex.82 and receipt Ex.85, 89 and Ex.159 on record. From the series of correspondence between plaintiffs and defendants, one can gathered that instead of 1/5th share i.e. 23 acres land each, plaintiff No.1 and plaintiff No.2 have received 30 acres land each alongwith open plot and house property and cash. From this evidence, it can be gathered that in 1977 only the status of the joint family was dissolved and plaintiff Nos 1 and 2 started residing separately and cultivating their respective share from the defendant Nos. 1 and 2 and Ramchandra.

26. In this regard, the reference of para 340 of the Hindu Law from the book of Mulla page No.465 under the caption VII Effect Of Partition is made which is re-produced as under:-

“340. Devolution of share acquired on partition:-

The effect of a partition is to dissolve the



coparcenary, with the result that the separating members thenceforth hold there respective shares as the separate property, and the share of each member will pass on his death to his heirs. But, if a member while separating from his other coparcener continues joint with his own male issue, the share allotted to him on partition will in his hands retain the character of a coparcenary property as regards the male issue.”

27. From plain reading of this para, it is clear that once the partition is effected as admitted by the plaintiff Nos. 1 and 2 during their cross-examination and they have intimated regarding their separation by issuing notice Ex.88 and 124 once the joint family is dissolved, the coparcenary is also dissolved and henceforth the respective share are their separate property which will be inherited by their heir after their death. This can be seen from the documents placed on record and the admission of plaintiff Nos. 1 and 2



that in 1977 only they got their share in both agricultural land and house property and since then there is no existence of joint family property or coparcenary.

28. It is important to see that in the pleading as well as in their evidence, the plaintiffs had not denied regarding the receipt of 30 acres land and landed property from their father. Not only that they have also not denied the receipt of movable property i.e. cash in leave of the said agreement from their father. That means on dissolution of the joint family and the coparcenary the share of plaintiff Nos. 1 and 2 are determine whereas the share of deceased Ramchandra was kept alongwith defendant No.1 Sulochana and defendant No.2 Shirish forming the separate joint family property.

29. After getting their shares, the plaintiff Nos. 1 and 2 started cultivating their respective shares in agricultural land and started cohabiting



in the house property at Chikhaldoha. Immediately in the year, 1990 they issued notice to Ramchandra and again claimed partition in the properties of Ramchandra and share in the house property at Pandharkawada. Here it is important to mention that once the coparcenary and the joint family was disrupted in the year 1977, again by claiming the properties which are shown as the suit properties as joint family property, whether the plaintiffs can claim share.

30. Here after dissolution of coparcenary and the joint family their exist no joint family property between the plaintiffs and their father Ramchandra and defendants No.1 and 2. At that time, there exist only joint family between deceased Ramchandra, defendant No.1 Sulochana and defendant No.2 Shirish. In the said joint family plaintiff Nos. 1 and 2 have no share or interest. In spite of having this fact, in 1990 again both the plaintiffs started knocking the doors of Ramchandra for claiming share in the joint family.



As per para 340 of the Hindu Law by Mulla once there is disruption of coparcenary and dissolution of joint family the respective share becomes the separate share of the person which can be inherited by their shares. In this case, the deceased Ramchandra had executed one will deed which is at Ex.150 and the said execution of the will deed is never challenged by the plaintiff Nos. 1 and 2. Therefore, by will deed Ex.150 deceased Ramchandra had bequeath his share in the property in favour of defendant Nos. 1 and 2. That means the share which was received by deceased Ramchandra in the partition that has taken place between him and the plaintiff Nos. 1 and 2 in the year, 1977 was his separate property which he transferred to the defendant Nos. 1 and 2 by executing the will deed Ex.150.

31. On the point of relinquishment of their share in the house property at Pandharkawada, it can be gathered from the series of the correspondence and notices between the plaintiffs



and defendants, they had in exchange of relinquishing their share in the house property had received additional 7 acres agricultural land in addition to their share of 23 acres land. No doubt, no specific document of relinquishment deed was executed between plaintiffs and defendants, but the intention of the parties can be very well gathered from the documents and the series of correspondence which prima faice shows in lieu of their share in the house property at Pandharkawada they accepted 7 acres land additionally. The same can be seen from the Pavati Ex.159 which clearly gives the endorsement of the transaction that has been taken place in the year, 1977 and the said document was written in the year 1981 in respect of the past transactions that had taken place with plaintiffs and the defendants.

32. In this regard, the case laws relied by the plaintiffs needs to be seen. As far as, the case between K.B. Shah and sons and Nilkanth



Khandare are concerned, they are in respect of the compulsory registration of relinquishment deed as per section 17 and 49 of Registration Act. On perusal of the case between Nilkanth Khandare and Bhaorao Khandare and others there was objection for exhibiting the relinquishment deed for want of payment of stamp duty and registration as per Registration Act. In the case cited the parties have taken the objection for exhibiting the documents and, therefore, the Hon'ble Apex Court has discussed in para No.7 of the said judgment that “*the said document cannot be permitted to be shown to the witness and the objection in this regard needs to be decided as early as possible and before further evidence of defendant No.1*”. As far as this observation is concerned, in the present case objection was never ever by the plaintiffs for exhibiting Ex.159 and other documents which are taken as the documents by which the plaintiffs have relinquished their right, claim and share in the suit property.



33. In the case cited there was a relinquishment deed and, therefore, the provision of Section 17 and 49 of the Registration Act and section 34 and 37 of the Bombay Stamp Act were attracted. In the present case, there is no such document, titling the relinquishment deed, but the defendants and deceased Ramchandra are drawing the inference on the basis of the series of correspondence that were done between the parties and in absence of document, the plaintiffs had exchanged their share and had got additional 7 acres lands against their claim in the house property at Pandharkawada. Certainly, here the argument of counsel for the defendants/respondents finds support as there were number of properties which were subject matter of the partition and not the single property and therefore, there were number of properties which were the subject matter of the partition, the parties to the said partition has to choose between the properties which they wants to take as a share and the properties which they want to give up in



place of the property which they wants to leave for the share of other persons who are the parties to the said partition. Therefore, in such circumstances the argument of counsel for the respondents finds force that there was no relinquishment deed on record and the intention of the parties can be gathered from the nature of documents executed and the actual partition.

34. In this regard the case law relied by the plaintiffs/appellants between Yellapu Uma Maheshwari and others (Supra) in which the Hon'ble Apex Court while discussing the nature of Ex.B21 and B22 which were the deed of memorandum witnessing earlier partition and the agreement discussed in para No.9 that “*Ex.B21 and Ex.B22 are not evidencing the past transaction, but they prima facie disclose the partition of the property and relinquishment of rights by one of the parties*”

35. Again in para 17 of the said judgment



the Hon'ble Apex Court has stated "*It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the document and that the admissibility of a document is entirely dependent upon the recital contained in that document, but not so on the basis of the pleadings setup by the party who seeks to introduced the document in question*".

36. Further in para No.18 of the said judgment the Hon'ble Apex Court has further discussed the used and purpose of a document for collateral purpose has stated that "*That the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of purpose of various shares. In a suit partition, an unregistered document can be relied upon collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e.*



division of joint properties by metes and bounds”.

37. From perusal of the case law relied by the plaintiffs it is clear that in case the document which is showing the past transaction can be read in evidence for the collateral purpose. It is also clear from the case cited, it is not the nomenclature of the document, but the nature and substance of the transaction and the recitals therein can needs to be seen. In view of the said observation in view of the series of correspondence and the notices and the receipt Ex.159 which are showing the transactions taken place in the past and not for the intimidate effect to the properties. Receipt Ex.159 clearly shows regarding the partition that has taken place in the year 1977 and that has been duly endorsed and acknowledged by issuing the receipt Ex.159. Certainly, from the admission of both the plaintiffs during their cross-examination they are cultivating the agricultural land independently in since 1977 and residing separately in the house



property and plots given by the deceased Ramchandra. That means from the cross-examination of both the plaintiffs the severance of their status from the joint family and division of joint property by metes and bounds and their possession over their respective shares is apparent. Therefore, in such circumstances document receipt Ex.159 which is endorsing the past transaction can be very well read in evidence for collateral purpose.

38. Likewise, while relying on the case law of K.B. Shaha and sons Pvt. Ltd. (supra) by the plaintiffs the Hon'ble Apex Court in para No.21 of the said judgment had highlighted some principles which are re-produced as under:-

“21. From the principles laid down in the various decision of this court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if



unregistered is not admissible in to evidence under section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence collateral purpose as provided in the proviso to section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
- 4 A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.
- 5 If a document is inadmissible in evidence for want of registration, none of its term can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”



39. Thus, from the aforesaid discussion the plaintiffs who had issued notice in the year, 1990 and later on till 1992 have to prove that the properties which were with deceased Ramchandra shown as the suit properties are the properties of joint family. In view of the aforesaid discussion and the principles laid down by the Hindu Law para No.340 and various judgments relied upon by both the side, it is clear that in 1977 only there was severance of status on the partition of property and from that day only plaintiffs and defendants were in possession of the respective properties and were cultivating the same and, therefore, as the status of the coparcenary and the joint family was dissolved in the year, 1977 only there was no question for the plaintiffs for asking partition again in the year, 1990 till 1992 claiming the properties as joint family property. In 1977 only the Ramchandra got the share in partition was his separate property and no longer the part of the joint family property with plaintiff Nos. 1 and 2. Moreover, in view of the receipt Ex.159



and in view of the admissions during the cross-examination that plaintiff Nos. 1 and 2 are in possession of 30 acres land each alongwith the house properties received from their father and some cash clearly shows they had in exchange of their share in the house property had taken seven acres additional agricultural land for waving their rights in the house property at Pandharkawada and, therefore, the document Ex.159 though it is titled as receipt, it can be very well taken into consideration which has recorded the past transactions that has taken place between plaintiffs and defendants more specifically the partition of the property and the separation of share and, therefore, said document can be read in evidence for the collateral purpose to endorse the fact that the plaintiffs had received additional seven acres land in lieu of their share in the house property land Pandharkawada.

40. It is for the plaintiff to prove that on the date of filing of the suit the suit properties



were the joint family properties. But, from the evidence on record and the admission of plaintiffs and various correspondence, it is clear that the properties which are claimed in partition by the plaintiffs were in fact received by deceased Ramchandra in the partition taken place in the year, 1977 and accordingly as per para 340 of the Hindu Law by Mulla, it becomes his separate properties. Already the status of the family as joint was severed. By filing the suit, the plaintiffs have claimed share in the share which was received by the deceased Ramchandra. As far as execution of will deed by deceased Ramchandra is not challenged by the plaintiffs and, therefore, once the properties were received by the deceased Ramchandra in the said partition, he becomes the absolute owner of those properties having right to dispose of as per his own choice and accordingly, he had executed the Will deed. In case deceased Ramchandra had not executed any testamentary document, in that circumstance, the present plaintiffs will be having right, share and interest



in the properties left by him. But in the present case, as deceased Ramchandra has already disposed of the property by testamentary document i.e. Will and therefore, the plaintiffs are not having the share as the heirs of deceased Ramchandra.

41. Already the plaintiffs failed to prove the suit property as joint family property and, therefore, they are having share in the property and, therefore, they are entitled for partition and separate possession and therefore, I recorded my finding to point Nos. 1 and 2 in the negative. In view of the aforesaid discussion, by exchange of correspondence and notices and Pavati Ex.159 which can be taken as collateral document as it records the transaction that has taken place in the past and, therefore, considering the same it can be gathered that by way of admission and execution of Pavati Ex.159, the plaintiffs had relinquished their share in exchange of additional 7 acres of land. Thereby defendants prove the



relinquishment of the rights by the plaintiffs and therefore, I recorded my finding to point No.3 in the affirmative.

As to point No.4:-

42. Both appellants and the respondents while arguing on the point of limitation had relied on Article 110 of Limitation Act. Therefore, for the sake of convenience Article 110 of the Limitation Act is re-produced as under:-

110	By a person excluded from a joint family property to enforce a right to share therein.	Twelve years	When the exclusion becomes known to the plaintiff.
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43. Therefore, on perusal of the said Article 110 of the Limitation Act, the limitation will start when the exclusion becomes known to the plaintiffs and the period of limitation is 12 years. Admittedly, after the issue of notice Ex.88 and 124 deceased Ramchandra had effected



partition and handed over the agricultural and landed property to plaintiff Nos. 1 and 2 and at that time only the house property situated at Pandharkawada was retained by him. At that time only, the plaintiffs should have raised their objection, but it appears that no such objection has been raised by the plaintiffs, but they have plainly accepted 7 acres land in lieu of the same and at that time they had the knowledge regarding the exclusion in the year 1977 and from that day only the limitation starts for claiming the possession or share in the house property. But, no suit was filed within 12 years from the date of exclusion i.e. from 1977 the suit should have been filed by 1989. Therefore, as the plaintiffs failed to exercise their right in claiming partition and possession within 12 years from the date of knowledge of such exclusion now the suit for partition in respect of the suit properties is barred by limitation. Therefore, the learned trial court has rightly held that the suit of the plaintiffs is barred by limitation and, therefore, I recorded my



finding to point No.4 in the affirmative.

As to point Nos. 5,6 and 7:-

44. As the learned trial court had appreciated the evidence and the documents placed on record by both sides and after taking into consideration the evidence adduced on record and thereby hold that the suit is barred by limitation. Therefore, there is no need to interfere finding recorded by the learned trial court as the judgment is proper, legal and correct. Therefore, I record my finding to point No.5 in the affirmative, point No.6 in the negative and in answer to point No.7 I pass the following order:-

ORDER

1. Appeal is **dismissed**.
2. Judgment and decree passed by the learned Civil Judge (Sr.Dn.), Yavatmal in Special Civil Suit No.132/1992, dated 21/08/2000 is maintained and confirmed.
3. Parties to bear their own costs.

MHYA080003042015



4. Decree be drawn up accordingly.
5. R. & P. of the suit be sent to learned Civil Judge (Sr.Dn.), Yavatmal

DATE: 29.04.2026
KELAPUR

(M.A.Kothari)
Ad-hoc District Judge-1,
Kelapur