

MHYA180004892023



Presented on : 28.03.2023
Registered on : 28.03.2023
Decided on : 27.03.2026
Duration : 02Y 11M 27D

IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION,
GHATANJI

(Presided over by P. R. Patil)

Regular Civil Suit No.12/2023

Exh. 25

Smt. Anusaya Dattaji Bhoyar,
Aged about 65 years, Occupation- Agriculturist,
r/o. Yerandgaon, Tah - Ghatanji, Dist – Yavatmal.

.... **Plaintiff**

.....Versus.....

1. Smt. Tanabai Jaywantrao Tonpe,
Aged about 70 years, Occupation-Agriculturist,
2. Suresh Jaywantrao Tonpe,
Aged about 47 years, Occupation- Agriculturist,
1 & 2 r/o. Yerandgaon, Tah - Ghatanji, Dist – Yavatmal.
3. Sau. Shila Jiwan Ingole,
Aged about 44 years, Occupation- Agriculturist,
4. Sau. Suvarna Jiwan Ingole,
Aged about 40 years, Occupation- Agriculturist,
3 & 4 r/o. Shelu Karanji, Tah-Mahur, Dist-Nanded.

.... **Defendants**

SUIT FOR PARTITION AND SEPARATE POSSESSION.**Appearances :-**

Shri. N. M. Raut, Learned advocate for plaintiff.
Shri. P. P. Raut, Learned advocate for defendants.

JUDGMENT**(Delivered on 27th March, 2026)**

This is the suit for partition and separate possession.

The case of the plaintiff, in short, is as under :

2. Plaintiff was having two brothers namely, Maroti Ramaji Tonpe and Jaywantrao Ramaji Tonpe. Both Maroti and Jaywantrao are died. The defendants are the legal heirs of deceased Jaywantrao Tonpe. Deceased Maroti Tonpe was having no Class-I legal heirs.
3. Deceased Maroti Tonpe was acquired following described field property :

Description of Property :-

4. Field Gat No. 26/8, area 1.21 HR, Class-II situated at mouza Kinhi (Parwa), Ta. Ghatanji, Dist. Yavatmal which is having its boundaries as under:

EAST	Field of Shri. Mogre
WEST	Field of Shri. Mohije
NORTH	Field of Shri. Kamble
SOUTH	Field of Shri. Ingale.

The above mentioned field property will be hereinafter called as suit property.

5. After the death of Maroti Ramaji Tonpe, the plaintiff being the sister and Jaywantrao Tonpe being the brother became Class-II legal heirs of deceased Maroti Ramaji Tonpe. After the death of Maroti Tonpe the names of plaintiff and Jaywantrao have been mutated in the Revenue Record of suit field property bearing mutation entry no. 45/2006. The 7/12 extract of suit property also bears the name of plaintiff and Jaywantrao jointly. After the death of Jaywantrao, the name of defendants being his legal heirs have been mutated in the Revenue Record of suit field property. Today, the 7/12 extract of suit property bears the name of plaintiff and defendants jointly.

6. Deceased Jaywantrao used to gave the share from the income of suit property to the plaintiff. But, after the death of Jaywantrao defendant refused to gave the share from the income of suit property to the plaintiff. The defendants also told to the plaintiff that she is having no share in suit property. Therefore, the plaintiff demanded her half share in suit property to the defendants. But the defendants refused to give her half share in suit property. Therefore, the plaintiff had issued legal notice on 25.01.2023 to the defendants and demanded her share in suit property. But, the defendants have issued false reply notice through their learned advocate on 20.02.2023 and refused to gave her share in suit property. Hence, left with no alternative the plaintiff has filed this suit and prayed for partition and separate possession of suit property.

7. The defendants have resisted the claim of plaintiff by filing their written statement at Exh. 9. The defendants are admitted the relationship between the plaintiff and their deceased father

Jaywantrao Tonpe. They also admitted that deceased Maroti Tonpe is not having any Class-I legal heirs. They further admitted that the 7/12 extract of suit property is in the joint name of plaintiff and themselves.

8. But the defendants have denied that the plaintiff is having her share in the suit property. It is the contention of defendants that the suit property was acquired by deceased Maroti Tonpe as per order of Tahsildar, Kelapur passed on 31.03.1971. The suit property was in joint cultivating possession of Maroti and Jaywantrao. After the death of Maroti, the suit property came into the possession of Jaywantrao and the defendants being the legal heirs of deceased Jaywantrao, they are in the possession of suit property. The plaintiff on the basis of false mutation entries is claiming her share in the suit property.

9. It is the further contention of defendants that the deceased Maroti was residing with deceased Jaywantrao and his family till his lifetime. Deceased Jaywantrao was taken care of Maroti and also provided him all necessary expenditures. The suit property being acquired under the Ceiling Act, deceased Maroti was the absolute owner of suit property. Deceased Maroti had given the suit property to the deceased Jaywantrao as per oral gift deed in the presence of Pawan Panjabrao Bhurghate, Anil Madhavrao Ingale, Pawan Maroti Nagarkar, Vijay Bapurao Satghare, Pandurang Bapurao Junghare and Sunil Daulatrao Bhure. Deceased Jaywantrao was in possession of suit property from the date of execution of oral gift deed executed by deceased Maroti. The property being acquired under the Ceiling Act, deceased Jaywantrao could not mutated his sole name in the Revenue Record of suit property. Deceased Jaywantrao became the sole owner

of suit property as per oral gift of deceased Maroti. After the death of Jaywantrao the defendants being his legal heirs became the absolute owner of suit property. The plaintiff is having no right to claim partition and separate possession in suit property. The plaintiff has filed this false and bogus suit on the basis of false mutation entry taken in the Revenue Record of the suit property. Hence, they prayed for dismissal of suit.

Evidence on record :

10. In order to prove her claim, the plaintiff has examined herself as PW 1 by filing her affidavit in lieu of examination in chief at Exh. 13 and closed her evidence by filing evidence closing pursis at Exh. 19. The plaintiff is relying on following documentary evidence.

Description of Documents :

Sr. No.	Description of document	Exhibit No.
1	7/12 extract of suit property	14
2	Mutation entry bearing no. 45/	15
3	Notice issued by plaintiff	16
4	Non cognizable receipt bearing no. 64/2020	17
5	Reply notice issued by defendants	18

11. The defendants have examined defendant no. 2 Suresh Tonpe as DW 1 by filing his affidavit in lieu of examination in chief at Exh. 20 and also examined another witnesses namely, Anil Madhavrao Ingale as DW 2 at Exh. 23 and closed their evidence by filing evidence closing pursis at Exh. 24. The defendants have not relied on any documentary evidence.

12. Heard the learned advocates for plaintiff and defendants at length. Perused the record.

13. The learned advocate for plaintiff has argued that the plaintiff has proved her claim by adducing cogent ocular and documentary evidence. He further argued that the plaintiff has succeed to prove that she being the Class-II legal heirs of deceased Maroti Tonpe, she is entitled for the partition and separate possession of suit property. He further argued that the oral gift deed is not valid under Hindu Law. Hence, he prayed for passing the judgment and decree in favour of plaintiff.

14. On the contrary, the learned advocate for defendants has argued that the deceased Maroti Tonpe had executed oral gift deed in favour of deceased Jaywantrao Tonpe and therefore, he became the absolute owner of suit property. He further argued that the plaintiff is having no right or share in the suit property. Hence, He prayed for dismissal of suit.

15. On rival submissions of the parties, my learned predecessor has framed issues at Exh.10. I have reproduced those issues along with my findings thereon as follows :

S.N.	Issues	Findings
1	Whether the plaintiff proves that she is having her share in suit property ? If yes, at what extent ?	Yes. Half share.
2	Whether the plaintiff is entitled for the decree of partition and separate possession ?	Yes.

3	Whether the suit property is entitled for the partition and separate possession being Class-II property ?	Yes.
4	What is the order and decree ?	Suit is decreed with costs.

REASONS

As to issue no. 1 and 2 :

16. These issues being interlinked with each other I taken them together for discussion in order to avoid repetition of facts and evidence.

17. PW 1 Anusaya has reiterated the contents in the plaint in her deposition at Exh. 13. She deposed that she was having two brothers namely, deceased Maroti Tonpe and deceased Jaywantrao Tonpe. The defendants are the legal heirs of deceased Jaywantrao Tonpe. Deceased Maroti Tonpe is not having any Class-I legal heirs. She further deposed that deceased Maroti Tonpe was acquired the suit property bearing field Gat No. 26/8, area 1.21 HR, Class-II situated at mouza Kinh (Parwa), Ta. Ghatanji, Dist. Yavatmal. She being the sister and the defendants being the legal heirs of Jaywantrao Tonpe, they became the Class-II legal heirs of deceased Maroti Ramaji Tonpe.

18. She further deposed that after the death of Maroti Tonpe, her name and name of Jaywantrao have been jointly mutated in the Revenue Record of suit property. The 7/12 extract also standing in their joint name. After the death of Jaywantrao Tonpe the names of defendants have also been mutated in the Revenue Record of suit property. She further deposed that she being the Class-II legal heirs of

deceased Maroti Tonpe, she is entitled for the half share of suit property.

19. In support of her claim the PW 1 Anusaya has also filed the copy of 7/12 extract of suit property at Exh. 14 and mutation entry of suit property at Exh. 16. On the perusal of 7/12 extract of suit property at Exh. 14, it is seen that it is standing of the joint names of plaintiff and defendants. On the perusal of mutation entry at Exh. 15, it is seen that after the death of Maroti Tonpe the names of Jaywantrao Tonpe and the plaintiff have been mutated in the Revenue Record of suit property being the Class-II legal heirs of deceased Maroti Tonpe.

20. In order to prove their defence, DW 1 Suresh Tonpe deposed at Exh. 20 that deceased Maroti Tonpe is not having any Class-I legal heirs. He further deposed that deceased Maroti Tonpe was acquired the suit property from the Government under Ceiling Act in the year, 1971. The suit property was in cultivating possession of Maroti Tonpe till his lifetime and thereafter, it came into the possession of his father namely, Jaywantrao Tonpe. He further deposed that the plaintiff is having no rights or share in the suit property. He further deposed that Maroti Tonpe had executed oral gift of suit property in favour of his father Jaywantrao Tonpe in the presence of Pawan Panjabrao Bhurghate, Anil Madhavrao Ingale, Pawan Maroti Nagarkar, Vijay Bapurao Satghare, Pandurang Bapurao Junghare and Sunil Daulatrao Bhure. He further deposes that his father had taken care of Maroti Tonpe till his lifetime and also provided him the necessary expenses and therefore, out of love and

affection, Maroti Tonpe had executed oral gift in favour of his father. He further deposed that after the death of their father, the defendants became the absolute owner of suit property and plaintiff is having no right and share in the suit property.

21. The defendants in support of their of defence have also examined Anil Ingale as DW 2 at Exh. 23. DW 2 Anil Ingale has deposed that deceased Maroti Tonpe is having no Class-I legal heirs. He further deposed that Jaywantrao Tonpe has taken care of Maroti Tonpe and therefore, Maroti Tonpe had executed oral gift of suit property in favour of Jaywantrao in his presence. He further deposed that after the death of Maroti Tonpe. Jaywantrao was in possession of suit property.

22. The PW 1 Anusaya in her cross-examination admitted that after the death of Maroti, Jaywantrao was in the possession of suit property. She further admitted that after the death of Jaywantrao, defendants are in possession of suit property. But, she denied the suggestion that deceased Maroti in his lifetime executed oral gift in favour of deceased Jaywantrao.

23. The DW 1 Suresh in his cross-examination admitted the relationship between the plaintiff and themselves. He further admitted that his father had never objected the mutation entry of suit property in his lifetime. He further admitted that they have also not challenged the mutation entry of suit property till date. He further admitted that the mutation entry could not be taken in the name of deceased Jaywantrao as per oral gift. The DW 2 Anil admitted in his cross-

examination that the relationship between him and defendant no. 2 is cordial and they used to assist each other in business.

24. On the perusal the pleadings and the evidence on record it is seen that it is not disputed that the suit property was acquired by deceased Maroti Tonpe under Ceiling Act in 1971. It is the defence that deceased Maroti Tonpe had executed oral gift of suit property in favour of deceased Jaywantrao. The definition of gift deed is provided under Section 123 of the Transfer of Property Act, 1882. I reproduced the said section as under:

“ Section 123 of Transfer of Property Act: For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of donor and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer must be effected either by registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.”

25. The subject matter of the above suit is immovable property. As per Section 123 of Transfer of Property Act, it is mandates that the gift of immovable property must be made through a registered instrument signed by the donor and attested by at least two witnesses. Under Hindu Law the oral gift of immovable property is generally invalid.

26. On the persual of evidence on record, it is seen that after

the death of Maroti, the joint names of plaintiff and Jaywantrao have mutated in the Revenue Record of suit property. It is also seen that the alleged over gift is not acted upon as no any mutation entry is taken in the name of Jaywantrao as per alleged oral gift. The DW 1 Suresh also admitted that neither his father nor them have challenged the mutation entries in the name of plaintiff. He further admitted that no mutation entry on the basis of alleged oral gift is taken in the name of his father. Therefore, the defendants failed to prove that deceased Maroti had executed oral gift in favour of deceased Jaywantrao.

27. As it is already discussed that the relationship between the plaintiff and defendants are not in disputed. It is also not disputed that the plaintiff is Class-II legal heirs of deceased Maroti. Therefore, after the death of Maroti she became the coparcener to the suit property along with defendants. Hence, the plaintiff is entitled for half share in the suit property. Thus, I answered issue no. 1 and 2 in affirmative.

As to issue no. 3:

28. The defendants also objected for the partition and separate possession of suit property as the suit property is Class-II property. The learned advocate for defendants contended that the partition of suit property cannot be taken without previous permission of Collector. Though, there is substance in the argument of learned advocate for defendants, but there is no hurdle to pass the decree of partition and separate possession of the property belongs to Class-II. The question regarding the partition and separate possession of suit property at this stage does not arise. This Court can pass the

preliminary decree regarding partition and separate possession of suit property and the decree will be executed as per Section 54 of Code of Civil Procedure. Hence, I answered issue no. 3 in affirmative.

As to issue no.4:

29. The plaintiff succeed to prove that she is having her half share in suit property bearing suit field Gat No. 26/8, area 1.21 HR, Class-II situated at mouza Kinhi (Parwa), Ta. Ghatanji, Dist. Yavatmal. Further, as the defendants compelled plaintiff to file this suit and proceed for more than two years, hence, it is binding on them to pay the costs of the suit. In result, I pass the following order :

ORDER

- 1) Suit is decreed with costs.
- 2) It is declared that the plaintiff is having her 1/2(half) share in suit field Gat No. 26/8, area 1.21 HR, Class-II situated at mouza Kinhi (Parwa), Ta. Ghatanji, Dist. Yavatmal
- 3) It is declared that the defendants are having their 1/2(half) share collectively in suit field Gat No. 26/8, area 1.21 HR, Class-II situated at mouza Kinhi (Parwa), Ta. Ghatanji, Dist. Yavatmal
- 4) The parties are entitled to partition and separate possession of their above declared shares in the suit property bearing field Gat No. 26/8, area 1.21 HR, Class-II situated at mouza Kinhi (Parwa), Ta. Ghatanji, Dist. Yavatmal
- 5) Precept vide section 54 of the Code of Civil Procedure

shall be send to the Collector, Yavatmal for effecting the partition of suit field property bearing Gat No. 26/8, area 1.21 HR, Class-II situated at mouza Kinhi (Parwa), Ta. Ghatanji, Dist. Yavatmal

6) Draw preliminary decree accordingly.

(Judgment dictated and pronounced in the open court)

Ghatanji.
Date-27.03.2026

(P. R. Patil)
Civil Judge, Junior Division & JMFC,
Ghatanji, Dist. Yavatmal.

Argument heard on	23.02.2026
Order passed on	27.03.2026
Transcription ready on	27.03.2026
Order checked and singed on	27.03.2026

CERTIFICATE

I affirm that the contents of this P.D.F. file of judgment are word to word correct, as per original judgment.

Name of Stenographer- A. M. Suryawanshi (Gr.-III)