

MHYA190003292021 	Presented on 22/04/2021 Registered on 22/04/2021 Decided on 31/03/2026 Duration 04Y.11M.09D
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IN THE COURT OF JOINT CIVIL JUDGE JUNIOR DIVISION.
AT RALEGAON.
(Presided over by Ramchandra D Mane)

REGULAR CIVIL SUIT NO. 31/2021.
Exh.No. 70

- 1 Smt. Kantabai Laxman Ingle
Age 70 Years, Occupation – Farmer
R/o. Ward No. 9 Ralegaon Tal. Ralegaon,
Dist. Yavtmal.
- 2 Smt. Sindhubai Sudhakar Parate
Age 61 Years, Occupation – Farmer
R/o. Post. Wadhona Bazar Tal. Ralegaon,
Dist. Yavtmal.
- 3 Smt. Pratibha Nilesh Parate
Age 35 Years, Occupation – Farmer
R/o. Post. Wadhona Bazar Tal. Ralegaon,
Dist. Yavtmal.
- 4 Ku. Mohini Nilesh Parate
Age 06 Years, Occupation – Farmer
Through Next friend mother Namely
Pratibha Nilesh Parate
R/o. Post. Wadhona Bazar Tal. Ralegaon,
Dist. Yavtmal.

... Plaintiffs.

- 5 Aditya Nilesh Parate
Age 04 Years, Occupation – Farmer
Through Next friend mother Namely
Pratibha Nilesh Parate
R/o. Post. Wadhona Bazar Tal. Ralegaon,
Dist. Yavtmal.
- 6 Amol Sudhakar Parate
Age 34 Years, Occupation – Farmer
R/o. Post. Wadhona Bazar Tal. Ralegaon,
Dist. Yavtmal.
- 7 Nitin Sudhakar Parate
Age 30 Years, Occupation – Farmer
R/o. Post. Wadhona Bazar Tal. Ralegaon,
Dist. Yavtmal.

.... **Plaintiffs.**

VERSUS

- 1 Smt. Saroj Suresh Meshram
Age 45 Years, Occupation – Farmer
- 2 Sumit Suresh Meshram
Age 23 Years, Occupation – Farmer
- 3 Deva Suresh Meshram
Age 21 Years, Occupation – Farmer
- 4 Suchit Suresh Meshram
Age 19 Years, Occupation – Farmer
Defendants No. 1 to 4 R/o. Post. Shivaji Nagar
behind Government Hospital Ralegaon
Tal. Ralegaon, Dist. Yavtmal.

.... **Defendants.**

Appearances

Shri P L. Chauhan

Advocate for plaintiffs

Shri D. M. Pachkor

Advocate for Defendants no 1 to 4

J U D G M E N T
(Delivered on 31/03/2026)

This is a suit for Declaration, Partition and Separate Possession of the suit property. The following property is the subject matter of the suit. Agricultural land Gut No. 120/5 Total area 1 hector 21 R. situated at mouje Wadhona Bazar Tal. Ralegaon Dist. Yavatmal.

(The above Agricultural land is hereinafter referred as the suit property.)

The Plaintiff's case is as follows: -

2. Mother's name of the plaintiff no. 1 namely Kantabai Laxman Ingale was Shantabai Sonaba Meshram and father's name was Sonaba Meshram. Shantabai had two children namely Kantabai and Suresh from Marital life of Sonaba. Suresh died on 18.04.1997. All the defendants No. 1 to 4 are the legal heirs of the deceased Suresh Sonaba Meshram. The Plaintiffs further submitted that, the marital relationship of the plaintiffs mother Shantabai with Sonabaji Meshram deteriorated and they started living separately. Shantabai married a person namely Mahadev Parate and thus Shantabai had only son namely Sudhakar from the immoral relationship with Mahadev Parate. Plaintiff No. 2 is widow of Sudhakar Parate. Sindhubai and Sudhakar have Nilesh, Amol (Plaintiff No. 6) and Nitin (Plaintiff No. 7) from their married life. The eldest son namely Nilesh has passed away and the plaintiffs No. 3, 4 and 5 are the legal heirs of the deceased Nilesh. The Plaintiffs further submitted that the deceased Shantabai owned suit property out of which

0 Hecter 20 R land has acquired for the canal vide land acquisition property no. 18/47/07-08 mouje Wadhona Bazar. plaintiff further submitted that, Shantabai passed away on 21.08.2019. Deceased Shantabai did not dispose of the suit property before her death or distribute it among her heirs. Although Shantabai's son namely Sudhakar was born from an immoral relationship with Mahadev Parate, he also has legal share in suit property of deceased Shantabai and therefore Sudhakar's heirs i.e. plaintiffs no. 2 to 7 have been included in the present suit. The plaintiff further submitted that, no share has been distributed in the suit property yet and the owners of the suit property have not received their share separately but now the plaintiffs want to divide the suit property into shares and make a separate 7/12 extract, therefore the plaintiffs demanded the defendants their share and separate possession of suit property, but defendants opposed it on the ground that plaintiffs are not heir of Shantabai and only the defendants are the heirs of Shantabai and the defendants stated that the Civil Court Ralegaon has also issued heirship certificate and clearly refused to divide the shares. The plaintiffs further submitted that, it was found that the defendants had applied for an heirship certificate in the Civil Court as Civil Misc. Application No. 04/2020. The court has passed an order on 14.09.2020. The Court refused to recognize the defendant no. 1 Smt. Saroj as the heir of deceased Shantabai Sonbaji Meshram, therefore, the defendant no. 1 has filed an appeal bearing its no. 25/2020 in the Court of the District Judge, Yavatmal against the said order. The said appeal is pending. Since the ulterior motive of the defendants was revealed from all the above court proceeding. The plaintiffs decided to give notice through their learned advocate. The Plaintiffs decided to give the defendants an opportunity to file a claim in court for the division of the

share in the suit property. Accordingly, the plaintiffs through their learned advocate sent a notice to the defendants through R.P.A.D. on 09.03.2021 demanding the plaintiffs to separate the share of plaintiffs in the suit property. The defendants received the said notice but they did not take action on the plaintiffs demand. On the contrary a false notice was sent through their learned advocate on 19.03.2021. Therefore, the plaintiffs were left no option but to file the present suit. The plaintiffs further submitted that, the plaintiffs have an equal share in the suit property. The Plaintiff no. 1 is entitled to get 1/3 share in suit property, Plaintiffs no. 2 to 5 are entitled to get 1/3 share jointly in suit property and all defendants are entitled to get 1/3 share jointly in suit property. Therefore, the plaintiffs prayed Declaration, Partition, and Separate Possession of suit property.

3. On other hand, summons duly served to defendants no. 1 to 4 and they appeared through their learned advocate vide Exh. 11 and the defendants no. 1 to 4 submitted their written a statement vide Exh. 17 on 16.11.2021. The defendants in their written a statement denied all averments of the plaintiffs in toto and stated that, Suresh was born from the marriage of Shantabai and Sonba. Kantabai was born to Shantabai from Mahadev Parate. Kantabai is older than Sudhakar. Shantabai is a rustic person and she did not have any business. Therefore she did not have any money to buy the suit property. Therefore suit property is not self acquired property of Shantabai. The defendants further stated that, as the defendants are the legal heirs of Shantabai, the suit property belongs to the defendants in that regard the defendants filed Civil Mics. Application no.04/2020 in the court and it proved that the legal heirs of Shantabai are the defendants. Heirship Certificate also issued by the court. The said heirship Certificate is not challenged by the plaintiffs.

The defendants have sent a reply to the notice of plaintiffs on 19.03.2019. The defendants further submitted that, Shantabai owns and possesses the suit property. Shantabai had the only son namely Suresh and the Suresh married to the defendant no. 1 namely Saroj. The defendants no. 3 to 5 are legal heirs of Suresh and Saroj. The Plaintiffs have filed the false present suit to harass the defendants. Therefore the defendants prayed to dismiss the present suit.

Admitted Facts –

Suresh Died on 18.04.1997 and Shantabai died on 21.08.2019.

4. Considering submissions of both parties following issues along with the findings thereon and reasons thereof are as follows -

Sr. No.	Issues	Findings
1.	whether plaintiffs prove that suit property was self acquired property of late Shantabai?	Affirmative
2.	whether plaintiffs are entitled for share? if yes, what share?	Negative
3.	Whether plaintiffs are entitled for relief of partition and separate possession of suit property as claimed?	Negative
4.	What order and decree?	As per final Order.

REASONS

5. In order to prove the claim of plaintiffs they examined one witness. Plaintiff no. 1 namely Kantabai Laxman Ingle(PW1) has filed her

affidavit of examination in chief vide Exh.19 & plaintiff No. 1 namely Kantabai (PW1) has also filed her additional evidence through her affidavit of examination in chief vide Exh. 45. The plaintiffs have relied upon following documentary evidence. 1. Certified Copy of 7/12 extract of suit property vide Exh. 25 dated 20.10.2015 2) certified copy of Namuna 8-A extract of suit property vide Exh. 26 dated 20.10.2015. 3) Copy of death Certificate of deceased namely Shantabai Sonba Meshram issued by Gram Panchayat Wadhona Bazar vide Exh. 27. 4) Certified Copy of appeal filed by defendant no. 1 under section 96 of Code of Civil Procedure dated 14.09.2020 against the order passed in Civil M. A. 04/2020 vide Exh.28. 5) Office copy of notice sent by plaintiffs to defendants dated 09.03.2021 vide Exh.29. 6) Copy of postal receipt vide Exh. 30 to Exh. 33. 7) Copy of replay of notice sent by defendants to plaintiffs dated 19.03.2021 vide Exh. 34. 8) Copy of School leaving Certificate vide Exh. 35. 9) Copy of birth register vide Exh. 36. 10) Copy of extract of enrollment register which mentioned entry- exit etc. vide Exh. 46. 11) Certified copy of birth certificate of plaintiff no. 1 namely Kantabai vide Exh. 47. 12) Evidence closed pursis by plaintiffs vide Exh. 49 and vide Exh. 68. 13) The Plaintiffs have placed reliance on judgment of Hon'ble Bombay High Court in Ganpati Vinayak Achval Vs. N.R. 2014(6) Mh. L.J. 683.

6. The defendants have examined one witness. Defendant no. 1 Saroj Suresh Meshram (DW 1) has filed her affidavit of examination in chief vide Exh. 50. The defendants have relied upon following documentary evidence. 1. The defendants no. 1 to 4 have filed their written statement vide Exh. 17 dated 16.11.2021. 2. Copy of reply of notice sent by defendants to plaintiffs dated 19.03.2021 vide Exh. 55. 3. Original Copy of heirship certificate in Civil M.A. No. 04/2020 decided on 14.09.2020

vide Exh. 56. 4. True copy of Regular Civil Appeal No. 25/2020 decided on 06.06.2022. 5. Certified copy of Death Certificate of Sonba Sitaram Meshram vide Exh. 57. 6. Certified copy of 7/12 extract of suit property dated 24.08.2022 vide Exh. 58. 7. Certified copy of death certificate of deceased Shantabai Sonba Meshram vide Exh. 59. 8. Certified copy of death certificate of deceased namely Suresh Sonba Meshram vide Exh. 60. 9. Copy of marriage card of Nilesh Sudhakar Rao Parate and Pratibha Vithal Rao Bhosale vide Exh. 61. 10. Evidence closed pursis by defendants vide Exh. 62. 11. Written argument of defendants no. 1 to 4 vide Exh. 67.

AS TO ISSUE NO. 1

7. Plaintiff no. 1 Kantabai Laxman Ingle (PW 1) has filed her affidavit of examination in chief vide Exh. 19 and also filed additional evidence through affidavit of examination in chief vide Exh. 45. She deposed that, suit property was self acquired property of late Shantabai Sonba Meshram. Defendant no. 1 namely Saroj Suresh Meshram admitted in her cross examination vide Exh. 50 that suit property had self acquired property of Shantabai Sonba Meshram. Perused record it seems that plaintiffs did not file any documents on record which shows that the suit property is self acquired property of the Shantabai sonba Meshram. It is burden on plaintiffs to prove that the suit property is self acquired property of late Shantabai Sonba Meshram, but despite of sufficient opportunities the plaintiffs did not file any documentary evidence on record which shows that the suit property is self acquired of the late Shantabai Sonba Meshram. There is an admission of defendant no. 1 Saroj vide Exh. 50 that the suit property is self acquired property of late Shantabai Sonba Meshram. In such circumstances, it is necessary to discuss the provisions of Indian Evidence Act Chapter VI of said Act

deals with the exclusion of oral by documentary evidence. Section 91 of Indian Evidence Act stated that, "When the terms of a contract, grant or disposition of property have been reduced to writing, the document itself must be produced to prove its contents. If something is written down then plaintiff can not prove its terms by oral evidence. Plaintiffs must produced the document itself. The plaintiffs ought to produces the documents which shows that the suit property is self acquired property of late Shantabai Sonba Meshram, but Plaintiff did not file any document which shows that the suit property is self acquired property of late Shantabai Sonba Meshram. The defendants vide Exh 17 in their written statement stated that "Shantabai is a rustic person and she did not have any business therefore she did not have any money to buy the suit property therefore, suit property is not self acquired property of Shantabai." As for section 114 (g) of Indian Evidence Act "That evidence which could be and is not produced would if produced be unfavorable to the person who withholds it." Considering the written statement of defendants vide Exh. 17 and evidence of defendants vide Exh. 50 it is necessary to discuss the section 58 of Indian Evidence Act. As per Section 58 of said Act- facts admitted need not be proved- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which before the hearing they agree to admit by any writing under their hands or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings, Provided that the Court may in its discretion, require the fact admitted to be proved otherwise than by such admissions. In present case, Admission of the defendant no. 1 in her cross examination vide Exh. 50 is nothing but substantive evidence & it can be relied upon without further proof. The said admission is considered the best evidence against

the party making it. It seems that the admission of defendant no. 1 is clear unambiguous and voluntary. Hence the plaintiffs have proved that the suit property is self acquired property of late Shantabai. Accordingly I answer Issue no. 1 as Affirmative.

AS TO ISSUE NO 2 AND 3

8. The plaintiffs have filed this suit for declaration, partition and separate possession. The plaintiff no. 1 deposed vide Exh 19 and 45 that she is daughter of late Shantabai. To support her claim the plaintiffs have relied on school leaving certificate & birth certificate. In present case the plaintiff no. 1 has examined herself vide Exh. 19 and 45. Despite of sufficient opportunities the plaintiffs did not examine other relevant witnesses if any. The plaintiffs have relied on the document of school leaving certificate. As per section 35 of Indian Evidence Act entries in Public or official records made in performance of duty are relevant. The school leaving certificate has limited purpose. It is relevant only to prove the age or date of birth. School leaving certificate can be used to show that the plaintiff is daughter of deceased but it is not conclusive proof. In present case despite of sufficient opportunities the plaintiff did not examine issuing authority of school leaving certificate. It also does not disclose source of information in respect of the content of document I.e school leaving certificate. The plaintiffs also relied on birth certificate of plaintiff no. 1. A birth Certificate is an official record issued under Registration of Births & Deaths Act 1969. As per section 74 of Indian Evidence Act birth register is a public document. Birth Certificate is not conclusive proof. To decide maternity of plaintiff no. 1 plaintiffs must examine other witnesses like neighbors, relatives, friends etc, The plaintiff failed to do so. Perused heirship certificate issued under Bombay Regulation Act by the competent authority wherein the names of legal

heirs of deceased Shantabai Sonba Meshram are duly recorded. Notably the name of the plaintiffs in the present case does not find place in the said heirship certificate. Despite of sufficient opportunities and knowledge the plaintiffs have not raised any objection to the said heirship certificate in accordance with law. The heirship certificate issued in favour of defendant under Bombay Regulation Act carries presumptive evidentiary value unless set aside by a competent court. In the absence of any challenge to the said certificate the same continues to hold the field. The plaintiff have failed to take the appropriate legal steps to challenge the heirship certificate and have directly approached this court seeking declaration, partition and separate possession which is not sustainable in law. From the above discussion, the plaintiffs have failed to prove that they are legal heirs of deceased Shantabai and consequently they have no right, title or interest in the suit property. Therefore, plaintiffs are not entitled for share in suit property and also plaintiffs are not entitled for relief of declaration, partition and separate possession of suit property as prayed. Hence the present suit deserves to be dismissed. Therefore, I answer issue no. 2 to 3 as Negative & for issue no 4 I pass following order.

Order

1. The Present suit is hereby dismissed.
2. No order as to costs.
3. Decree be drawn accordingly.

Pronounced and dictated in open court.

Date – 31.03.2026

(Ramchandra D. Mane)

Place – Ralegaon

Jt. Civil Judge J.D. Ralegaon