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THE COURT OF JT. CIVIL JUDGE SENIOR DIVISION, OSMANABAD

(Presided over by : V.R.Dasari)

Reg.Civil Suit No. 699/2014.

Exh.No.125

CNR NO. MHOSO2003135-2014

Venubai Shyam Giri,
 Age – 43 yrs, Occu. - Household,
 R/o. Supatgaon, Tq.Omerga,
 Dist. Osmanabad.

... Plaintiff.

Versus

1. Kisan Ganpat Puri, **(Died)** Lrs.,
2. Vijay Kisan Puri,
 Age 45 Yrs., Occu.Aгри.
 R/o Wadibamani, Tq.Dist.Osmanabad.
3. Mankarna Vijay Puri,
 Age 40 yrs., Occu.Aгри. & Household,
 R/o as above.
4. Ashabai Moti Giri,
 Age 38 yrs., Occu.Aгри.& Household,
 R/o Bedga, Tq.Omerga Dist.Osmanabad.
5. Tarabai @ Taramati Kisan Puri,
 Age 65 yrs., Occu.Household,
 R/o Supatgaon, Tq.Omerga,
 Dist.Osmanabad.
6. Parmeshwar Vijay Puri,
 Age 32 yrs., Occu. Service,
 R/o Wadibamani, Tq.& Dist.Osmanabad.

... Defendants.

Claim : 1) Suit for partition and separate possession.
 2) Declaration of Will deed null and void.

Adv. Shri.S.S. Lomate for the plaintiff.
Adv. Shri.R.K. Suryawanshi for the defendants No.1 to 5.
Adv. Shri.K.B. Tate for defendant No.6.

JUDGMENT

(Decided on : 29.06.2022)

1. This is a suit for partition and separate possession and for declaration of will deed as null and void.

2. The case of the plaintiff in short is that, the relation between plaintiff and defendants are that plaintiff Venubai and defendant No.4 Ashabai are daughters of Kisan and Tarabai. Defendant Vijay s/o. Kisan and Tarabai. Defendant Mankarna w/o. Vijay i.e. daughter-in-law of Kisan and Tarabai. Defendant No.5 Tarabai @ Taramati wife of Kisan and defendant No.6 – Parmeshwar s/o. Vijay i.e. grandson of Kisan and Tarabai.

3. The agricultural lands bearing Block No. 91 adm. 2 H.43 R and Block No.9 adm. 52 R., are situating at Wadi Bamani Tq. & Dist.Osmanabad. These properties are an ancestral and these are the suit properties. It's four boundaries are as under :

Land Gat No.91 adm.2 H.43 R :

Towards East	:	Land of Tuakaram Karale,
Towards West	:	Land of Shrimant Jadhav,
Towards South	:	Land of Baliram Narwade,
Towards North	:	Land of Dattu Patil.

Land Block No.9 adm. 52 R :

Towards East	:	Land of Baba Patil,
Towards West	:	Tal/Canal,

Towards South : *Canal,*
Towards North : Village Wadi-Bamani (Gaothan)/
Land of Balaji Patil.

There was no partition of these lands earlier. Further it is the case that suit property Block No.91 has been transferred by defendant No.1 Kisan in the name of defendant No.2 Vijay and 3 – Mankarna with an intention not to claim partition by plaintiff in future. Further a will deed has been executed without any reason for the suit property Block No.9 by defendant No.1 with an intention not to claim partition of it. Plaintiff has made request to give her share in the suit properties before the defendants on 24.10.2014 at Diwali Festival. Defendant No.1 flatly refused so plaintiff constrained to file this suit. The prayers of the plaintiff are to partition the suit properties by mets and bounds and separate her 1/4th share. Further the will deed registered No.3139/2014 be declared as null and void.

4. In this suit defendant No.1 to 5 appeared and filed written statement at Exh.23. They resisted the contention of plaintiff. The contentions of written statement are that, the partition has been effected before 07.10.1991. There was no cause of action occurred as mentioned by plaintiff. Plaintiff's father Kisan had been sold Block No.146 adm. 07 Acre 03 Gunthas and the amount had been expended for the purpose of marriage of Venubai- plaintiff in 1984-85. Further Ashabai's father i.e. Kisan had been sold Block No.350 adm. 01 Hector 94 R and the amount had been expended for the purpose of her marriage, divorce and for the purpose of her second marriage.

5. In 1991 defendant Kisan was suffering from jaundice so he executed a memorandum of partition on 07.10.1991 and thereby handed over half of the portion of Block No.91 to Vijay and remaining

half of the portion handed over to Mankarna. The remaining property i.e. Block No.9 adm. 53 R had been kept for himself further he had been transferred by way of executing will deed in the name of defendant No.6 – Parmeshwar. Hence prayed for dismissal of suit.

6. Defendant No.6 filed his written statement vide Exh.96 and resisted the contention of plaintiff. Further it is the contention that his grandfather Kisan Ganpat Puri out of love and affection executed registered will deed No.3194/2014 dated 01.07.2014 in his favour and bequeathed the entire portion of Block No.9. Thereby he became owner and possessor of it. Plaintiff filed suit is time barred. Hence prayed for dismissal of suit.

7. My learned Predecessor has framed Issues below **Exh.26**. The issues are reproduced along with my findings and reasons thereon are as follows :

Sr. No.	ISSUES	FINDINGS
1.	Does plaintiff prove that she is having share in suit property ?	In the affirmative.
2.	Does defendants No.1 and 2 prove that already partition has been taken place on 7.10.1991 in their family ?	In the negative.
3.	Do defendants No.1 and 2 prove that defendant No.1 transferred the suit property in favour of defendant No.3 and 4 for legal necessity ?	In the negative.
4.	Whether plaintiff is entitled for partition and separate possession ?	In the affirmative. 1/ 4 th share to Venubai, Vijay, Ashabai & Tarabai @ Taramati
5.	Does plaintiff prove that Will Deed bearing No.3139/14 is null and void ?	In the affirmative.
6.	Whether plaintiff is entitled to relief of declaration as prayed ?	In the affirmative.

7. What order and decree ?

As per final
order.

REASONS

8. In order to prove his case plaintiff filed evidence on affidavit vide Exh.29 &, P.W.2 – Dhanraj Gajendra Puri at Exh.81. Plaintiff filed documentary evidence i.e. 7/12 extracts at Exh.5 & 6, 111/1, 111/2, 118 to 120, copy of order of S.D.O. in respect of M.E.No.1570 at Exh.105 to 110, copy of appellate authority i.e. Additional Collector at Exh.111, M.E.No.306 dated 19.6.1973 at Exh.117, copy of consolidation extract at Exh. 123 etc.

9. Defendant filed his evidence by filing affidavit of Mankarna Puri as D.W.1 at Exh.84, D.W.2 – Parmeshwar Puri at Exh.104 (Deft.No.6), D.W.3 – Shivaji Kadam at Exh.112. Defendant filed documentary evidence i.e. Mutation entry No.1570 at Exh.122, 7/12 extract at Exh.121, will deed at Exh.113. Defendant filed evidence close pursis at Exh.114.

10. Heard the argument of both the sides. Advocate for Plaintiff advanced argument as per contents of Exh.1 and evidence. Advocate for Defendants advanced argument as per contents of written statement and defence.

AS TO ISSUE NO. 1 , 4 , 5 & 6 :

11. The evidence is that suit properties have not been partitioned by father - Kisan Puri during his lifetime. The defence is that suit properties have been partitioned on 25.03.2014 by way of memorandum of partition. The contents of memorandum had been scribed on a stamp paper of Rs. 100/-. Suit property Block No. 91 partitioned equally in the name of Vijay and Mankarna. The remaining property Block No.9 had been kept upon himself by Kisan. The mutation

entry No. 1570 had been sanctioned on 18.04.2014. This mutation entry has been challenged by plaintiff and Ashabai before Sub-Divisional Officer, Osmanabad. The complaint No. 2014/ROR/A-50 was registered on 08.08.2014 and decided on 24.03.2021. The decision was in favour of complainants. Further the order of S.D.O. challenged by Vijay and Mankarna before Additional Collector, Osmanabad. The RTS appeal registered under No.2021/RTS/92 on 19.07.2021 and decided on 16.12.2021 in favour of plaintiff and Ashabai. It means the RTS appeal also dismissed.

12. It has been argued by advocate for defendant No.1 to 5 that, Section 6 of The Hindu Succession Act, 1956 does not applicable to plaintiff. Section 29 (a) of the Hindu Succession Act, which was Maharashtra Amendment, made a specific provision and gave right to unmarried daughters after the said Act came into force w.e.f. 22nd June, 1994. Though now all the daughters have been made co-parceners; yet we are required to see that Section 29-A of the Hindu Succession Act, i.e. Maharashtra Amendment.

13. Bombay High Court, Bench at Aurangabad has been observed that, section 6 of Hindu Succession Act prevails over Section 29-A inserted by Maharashtra Amendment; wasn't necessary for Parliament to repeal Section 29-A.

Article 254 of the Constitution gets attracted only when both Central and State legislations have been enacted on any of the matters in the said list and there is conflict between two legislations. The basic principle is that the Central legislation will prevail as Article 254(1) of the Constitution given supremacy to the law made by the Parliament.

As per section 6 of The Hindu Succession Act, 1956 :

“Devolution of interest in coparcenary property. -

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, -

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son.

The Hon'ble Supreme Court passed the order in Civil Appeal No.Diary No.32601 of 2018 in **Vineeta Sharma Vs. Rakesh Sharma and ors. dated 11.08.2020** is as under :

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 09.09.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father co-parcener should be living as on 09.09.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased

coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(iv) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

The daughters cannot be deprived of their right of equality conferred upon them by Section 6.

14. The defence is that suit property bearing Block No.9 adm. 52 R. has been bequeathed by Kisan Puri under a will deed Exh. 113. Further it is the defence that, defendant No.6 Parmeshwar had also accompanied while executing the will deed and its registration. Further it has come in the defence that he was not knowing the fact of said will deed, it was found in the trunk which was usually using by Kisan. Further it was noticed after the death of Kisan. Here the controversy statements made by Parmeshwar. Firstly in his affidavit deposed that, he was accompanying while executing will deed, further made statement that the fact of will deed found in the trunk of Kisan after his death. There are controversy statements about the health of Kisan. Once

deposed that Kisan was suffering from diseases due to old age since 2011 and Kisan was healthy at the time of executing will deed. There is no legal requirement to register a will. But here will deed is a registered document. When it was registered it means it was knowing to Vijay, Mankarna and Parmeshwar. But it has brought the defence that, Will deed was found in the trunk of Kisan. These facts are proving that will deed was intentionally get prepared because the suit property bearing Block No.9 was only in the name of Kisan. The will is requiring medical certificate disclosing that the testator was mentally fit for executing will, but the medical certificate Exh.113/3 does not disclose a mental fitness certificate and date of issuance of certificate is blank. The registered will can inspect by testator in the office of Sub-Registrar and after the death of the person, his family member or the executor can get a copy of the Will after due verification of their identity. Here the registered Will was kept or found in trunk of Kisan. These all things are proving that the Will was intentionally get prepared. Therefore, I comes to conclusion that the testator had not bequeathed the suit property bearing Block No.9 to Parmeshwar.

15. In this way the plaintiff Venubai and defendant No.3 Ashabai both of them are entitled 1/4th share each in the suit properties. Hence, I answered **issue No.1, 4, 5 & 6** in the **affirmative** and accordingly.

AS TO POINT NO.2 & 3 :

16. It is the defence that the partition of suit properties have been taken place before 07.10.1991. Defendants filed a document of consent (संमतीपत्रक) dated 07.10.1991 which is at Exh.Article 'A'. It was scribed on a stamp paper of Rs.10/-. Further it is an un-registered

document. Therefore, it cannot be read in evidence. Defendants filed the extract of Mutation Entry No. 1570 at Exh.122, in which it has been mentioned that M.E.No.1570 sanctioned on 18.04.2014, the memorandum of partition was executed on a stamp paper of Rs. 100/- and it was scribed on 25.03.2014, the stamp paper No. KT/52/39, no such document has been placed on record by the defendants. Further the M.E.No.1570 has been rejected by S.D.O. and further it was confirmed in RTS Appeal by Additional Collector. Therefore, the said M.E. stands cancelled. Further the 7/12 extracts are intact in the name of Kisan. It means no such partition has been taken place. In this way, the defendants failed to prove that, the partition of suit properties have taken place. Since the M.E.No.1570 has been cancelled by S.D.O. and further it was confirmed in RTS Appeal by Additional Collector. Further the Will deed also disproved. Hence, I answered **issue No.2 & 3** in the **negative**.

AS TO POINT NO. 7

17. From the above findings of all issues it is proved that plaintiff and defendant No.4 Ashabai both of them and defendant No.2 – Vijay and defendant No.5- Tarabai @ Taramati are entitled to 1/4th share each in the suit properties bearing Block No.91 and 9. Further defendant No.2 and 3 failed to prove that the partition of suit properties had been taken place before 07.10.1991, as per memorandum of partition dated 25.03.2014 and further defendant No.6 failed to prove that suit property bearing Block No.9 has been bequeathed to Parmeshwar by Kisan through a Will. Therefore, in answering to **issue No.7**, I am passing the following order.

ORDER

1. The suit is hereby decreed with costs.
2. Plaintiff Venubai w/o Shyam Giri and defendant No.4 Ashabai w/o Moti Giri and defendant No.2 Vijay and defendant No.5 Tarabai @ Taramati are entitled 1/4th share each in the suit properties bearing Block No.91 and 9 more particularly mentioned in the Para.3 above.
3. The partition of the agricultural lands bearing Block Nos.91 and 9 being effected equitably by the Collector, Osmanabad or any gazetted subordinate of the Collector deputed by him on his behalf in accordance with the above declaration and in accordance with the provisions of law, if any for the time being in force relating to the partition or the separate possession of the shares of the said lands and the parties be delivered possession of the lands of their shares therein.
4. The Will registered No.3/3139/2014 dated 01.07.2014 is hereby declared as null and void.
5. Decree be sent to the Collector for partitioning the suit properties u/sec. 54 of the Code of Civil Procedure.
6. Preliminary Decree be drawn up accordingly.

Date : 29.06.2022.

(V.R.Dasari)
Jt. Civil Judge Sr.Dn., Osmanabad.

CERTIFICATE

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

Name of Stenographer	–	Satish R.Ghadge
Court	–	Jt. Civil Court Senior Division, Osmanabad.
Date	–	29.06.2022
Order signed by the Presiding Officer on	–	29.06.2022
Order uploaded on	–	29.06.2022