



Presented on : 31.03.2022

Registered on : 06.04.2022

Decided on : 01.10.2025

Duration : Yrs. Ms. Ds.
03 06 00

CNR No. : MHSI01-000255 -2022

Exhibit No. 85

IN THE COURT OF DISTRICT JUDGE-1, SINDHUDURG,
AT OROS, DISTRICT - SINDHUDURG
(Presided over by V. S. Deshmukh)

REGULAR CIVIL APPEAL NO. 17 OF 2022

Vasant Purushottam Tayshetye (Deceased)
Through Legal Representatives-

1A Sudha Vasant Tayshete.

Aged 88 years, Occupation -Household,

1B Suhas Vasant Tayshete.

Aged 59 years, Occupation – Trade,

...Appellants.

1C Sharad Vasant Tayshete.

Aged 57 years, Occupation – Trade,

1D Dr. Vidyadhar Vasant Tayshete.

Aged 52 years, Profession- Doctor,

All R/o. B. K.G. Road, Kankavali,

Tal. Kankavali, Dist. Sindhudurg 416602.

Versus

1. Smt. Suryakant Narayan Tayshete.

Aged 59 years, Profession- Doctor,

R/o. B. K. G. Road, Kankavali,

Tal. Kankavali, Dist. Sindhudurg 416602.

...Respondents.

2. Shri. Ramchandra Purushottam Tayshete.

Aged 75 years, Occu. Service,
R/o. Pokale Associates Chartered Accountant,
802, Maker Chambers, 58th floor,
Nariman Point, Mumbai No.21.

3. Mrs. Mugdha Mohan Pawaskar.

Aged 78 years, Occupation Household,
R/o. A-19-22 Govindnagar,
Sodawala Lane, Boriwali (West),
Mumbai No.92.

4. Mr. Chittaranjan Bhaskar Tayshete.

Aged 75 years, Occupation Pensioner,
R/o. Saha- Nivas Housing Society,
G-ward, Municipal Officer's,
in front of Makarand Society,
Compound Senapati Bapat Marg,
Dadar, Mumbai No.28.

...Respondents.

5. Mr. Satish Bhaskar Tayshete.

Aged 62 years, Occupation Agriculture,
R/o. 682, Kismat Bldg. Paradize Cinema's
in front of Lady Jam-setji Road,
Mahim, Mumbai No.16.

6. Bhargav Bhaskar Tayshetye.

Age 68 years, Occupation- Service,
R/o. 682, Kismat Bldg. Paradize Cinema's
in front of Lady Jam-setji Road,
Mahim, Mumbai No.16.

7. Ajit Bhaskar Tayshetye.

Age 64 years. Occu. Service,
R/o. State Bank of India,
branch Deogad, Tal. Deogad.

8. Dr. Vishnu Narayan Tayshetye.

Since deceased through his heirs-

8A Savita Vishnu Tayshetye.

Age 88 years,
Occupation Household work,
R/o. At Tayshetye Hospital,
Shivaji Chowk, Tal. Kankavali,
Dist. Sindhudurg.

9. Pandurang Narayan Tayshetye.

Since deceased through his heirs-

9A Suman Pandurang Tayshetye.

Age 80 years,
Occupation- Household work,
R/o. Sawantwadi, Near Fish Market,
Sawantwadi, Tal. Sawantwadi,
District -Sindhudurg.

9B. Anil Pandurang Tayshetye.

Age 62 years, Occupation - Business,
R/o. Shivaji Chowk,
Near Tayshetye Hospital, Kankavali,
Tal. Kankavali, Dist. Sindhudurg.

9C. Amita Pandurang Tayshetye,

After marriage Amita Aashutosh Kulkarni.

Age 58 years, Occu. Household work,
R/o. at Flat No. 902, Vring Chitra,
Nakshtra Apartment, Near J. S. P. M.
College, Narve, Ambegaon, Pune, 411 041

...Respondents.

10. Smt. Supriya Suresh Tayshetye,

Age 58 years, Occu. Business,
R/o. Kankavali Bajarpeth, Kankavali,
Tal. Kankavali, Dist. Sindhudurg.

11. Suvarna Suresh Tayshetye,

Age 36 years, Occu. Household,
R/o. B. K. G. Road, Janavali,
Kankavali, Tal. Kankavali,
Dist. Sindhudurg.

12. **Sonali Suresh Tayshetye,**
Age 34 years, Occu. Household,
R/o. B. K. G. Road, Janavali,
Kankavali, Tal. Kankvali,
Dist. Sindhudurg.

13. **Vinayak Suresh Tayshetye,**
Age 32 years, Occu. Trade,
R/o. B. K. G. Road, Janavali,
Kankavali, Tal. Kankvali,
Dist. Sindhudurg.

...Respondents.

14. **Dr. Bhaskar Ramchandra Tayshetye (Dead)**

Advocates for the Parties –

For Appellant – Shri. V. P. Chindarkar.
For Respondents No.1, 8A – Shri. S. B. Dalavi.
For Respondents No.4 to 7 – Shri. Nilesh Thombare.
For Respondents No. 9A and 9B – Shri. S. N. Sawant.
For Respondent No. 10 – Shri. P. R. Pawaskar.
Respondents No. 2, 3, 9C, 11, 12 and 13 – Ex-parte.
Respondent No. 14- Dead.

JUDGMENT

(Delivered on 1st October, 2025)

1. The present appeal is filed under Order XLI Rule 1 r/w. Sec. 96 of Code of Civil Procedure, 1908, against the order and decree dated 17.02.2022 passed in Final Decree Application No.11/2003 by Joint Civil Judge, Junior Division, Kankavali.

(The parties are here-in-after referred to as they were referred before the learned Trial Court, for sake of convenience.)

2. The facts necessary to decide this appeal in short, are as under :-

Applicant (Respondent No.1) had filed Final Decree Application No.11/2003 before Joint Civil Judge, Junior Division, Kankavali on the basis of Preliminary Decree passed in Regular Civil Suit No. 77/2000 (Special Civil Suit No. 186/1993). After appearance of the parties and filing say by opponents the Learned Trial Court appointed Adv. Shri. A. P. Barve as Court Commissioner. On perusal of report of Court-commissioner and on hearing argument of both sides. Learned Trial Court passed final decree by its order dated 17.02.2022.

3. Being aggrieved by the said order and decree opponents No. 1A to 1D have preferred this appeal against the impugned judgment and decree on the following grounds:

1. The order of learned Trial Court is bad and improper.
2. The learned Trial Court has not applied its mind properly while deciding the final decree application.
3. The learned Trial Court failed to consider the fact that defendant has proved that opponent No.14 is dead, the application has abated against him.
4. The learned Trial Court failed to consider that Smt. Vaijayanti Bhaskar Tayashete alias Snehal Jayawant Bandekar is the daughter of deceased opponent No.14.
5. Decree passed against dead person is nullity and bad for non-joinder of necessary party.

6. Some of the house properties have been acquired for Mumbai Goa highway and it is not informed to the Court.
7. Application is bad for non-joinder of necessary parties as defendants No.16 to 31 in R. C. S.No. 77/2000 are not included.

4. In response to the notice respondents No.1 and 8A have appeared and filed Vakalatnama at Exh.30.

5. In response to the notice respondents No.4 to 7 have appeared and filed Vakalatnama at Exh.46.

6. In response to the notice respondents No.9A and 9B have appeared and filed Vakalatnama at Exh.37.

7. In response to the notice respondent No. 10 has appeared and filed Vakalatnama at Exh.32.

8. Despite service of notice respondents No.2,3, 9C,11, 12 and 13 remained absence. Hence appeal is proceeded ex-parte against them.

9. After taking into account the rival submissions, grounds of appeal, record and proceedings following points arise for consideration against which I have recorded my finding thereon as below:

Sr. No.	POINTS	FINDINGS
1.	Whether order and decree dated 17.02.2022 passed in Final Decree Application No.11/2003 by Joint Civil Judge, Junior Division, Kankavali is illegal and improper and needs to be interfered with and set aside ?	... No.
2.	What order?	...As per final order.

REASONS

10. Heard learned Adv. V. P. Chindarkar for appellants/ opponents.

His points of argument are as under :

- i. Opponent No. 14 is dead and therefore the F. D. application has abated against him.
- ii. Opponent No. 14 is survived by daughter Smt. Vaijayanti Bhaskar Tayashete, whose name after marriage is Snehal Jaywant Bandekar.
- iii. Daughter of opponent No.14 viz. Smt. Vaijayanti Bhaskar Tayshetye, whose name after marriage is Snehal Jaywant Bandekar is necessary party to the application. However she is not made party.
- iv. The decree passed against dead person is nullity and final decree application is bad for non-joinder of necessary party.
- v. Pending final decree application some houses are acquired for Mumbai-Goa highway and the compensation is not informed to the Court.
- vi. The map drawn by the Court commissioner is not proved as per Law.
- vii. Defendants No. 16 to 31 in R. C. S. No. 77/2000 were not made parties and hence the F. D. application is bad for non-joinder of necessary parties.

- viii. The impugned order is not passed as contemplated by Order 21 Rule 18 of the Code of Civil Procedure, 1908.
- ix. The Final Decree is not engrossed. Hence it is not executable and valid.

He relied upon following case-laws:

- i. **Santanu Kumar Dey vs. Sanat Kumar Dey C. O. No.3257 of 2019 order dtd. 10.09.2019.**
- ii. **Renu Devi vs. Mahendra Singh AIR 2003 Supreme Court 1608.**
- iii. **Shankar Balwant Lokhande vs. Chandrakant Shakar Lokhande 1995SCC (3) 413,**
- iv. **Shub Karan Bubna vs. Sita Saran Bubna 2009(9) SCC 689,**
- v. **Dr. Chiraji Lal vs. Hari Das 2005(5) All MR 770 (S. C.)**

11. Heard learned Adv. Nilesh Thombare and Adv. S. B. Dalavi for respondents. Their points of argument are as under :

- i. There is nothing in law requiring defendant in partition suit to pay court-fee in order to have his share separately allotted.
- ii. Opponent No.14 died after conclusion of evidence. Hence there is no abatement by reason of death of opponent No.14.
- iii. Defendant No. 16 to 31 in R. C. S. No. 77/2000 are the co-owners and they are not joint family members. Hence they are not necessary parties.

They have relied on following case laws:

- i. **Brenda Barbara Francis vs. Adrian Miranda IA. No. 1/2023 in RFA No.353 of 2016.**
- ii. **Gauri Shanker vs. Kishan Lal 1964 ALJ 1013**

AS TO POINTS NO. 1 AND 2 :-

12. As the points are interlinked they are being jointly discussed to avoid repetition.

It is not in dispute that the applicant and the opponents comprised Hindu Undivided Family. Deceased Pandurang Narayan Tayashetye i.e. opponent No.9 instituted R. C. S. No. 77/2000 against the appellant and others for partition of the suit properties. There is no dispute about the genealogy given by deceased Pandurang Narayan Tayshetye in the plaint of R. C. S. No.77/2000. The suit was decreed on 10.04.2003 and preliminary decree was drawn. Thereafter Final Decree Application No. 11/2003 was filed by defendant No.10 Suryakant Narayan Tayashete, in R. C. S. No. 77/2000. Thereafter the learned Trial Court appointed Adv. A. P. Barve as Court-Commissioner for partition of the suit house properties.

13. Thereafter Court-commissioner Ld. Adv. A. P. Barve on 07.11.2005, 08.11.2005, 10.11.2005, 12.11.2005 carried out commission work after service of notices upon both the parties. On perusal of his report at Exh.62 it is evident that the parties were served with the notices and the intimation about the date of the commission work had been given to them. On the first day of the commission work i.e. 07.11.2005 Sudha Vasant Tayashete, Sharad Vasant Tayashete, Suhas Vasant Tayashete, Vidyadhar Vasant Tayashete, Suryakant Narayan Tayashete, Ramchandra Purushottam Tayashete, Vishnu Narayan Tayashete, Pandurang Narayan Tayashete, Supriya Suresh Tayashete , Chittaranjan Bhaskar Tayashete and panchas were present. On that day the application raising objection to proceed with

the commission work was raised on the ground of non incorporation of legal heirs of opponent No.1 viz. Vasant Purushottam Tayashete. However, as there was no stay from the learned Trial Court, Court-commissioner Adv. A. P. Barve proceeded with the commission work. It is apparent from the Court-commissioner's report that he took the measurements of suit house No.122, 123, 120 and the commission work was adjourned to 08.11.2005.

14. On 08.11.2005 panchas, Surayakant Narayan Tayashete, Pandurang Narayan Tayashete, Supriya Suresh Tayashete, Savita Vishnu Tayashete, Chittaranjan Bhaskar Tayashete were present. However opponents No. 1A to 1E remained absent on 08.11.2005, 10.11.2005 and 12.11.2005. Court-commissioner Ld. Adv. A. P. Barve took measurements of suit houses No.124, 125, 126, 135A, 135B, 136, 87. The commissioner's report further reveals that the Court-commissioner Ld. Adv. A. P. Barve took suggestions from Suryakant Narayan Tayashete, Chittaranjan Bhaskar Tayashete, Pandurang Narayan Tayashete, Vishnu Narayan Tayashete and Supriya Suresh Tayashete. Opponents No. 1A to 1D chose to remain absent. Considering the suggestions Ld. Adv. A. P. Barve suggested the partition of the suit house properties. From the report and the schedule given with the plaint in R. C. S. No.77/2000 it is revealed that Court-commissioner Ld. Adv. A. P. Barve suggested to allot House No.200, whole house No.135A admeasuring 3423 sq. ft., whole house No. 136 admeasuring

869sq. ft., building admeasuring 2250 sq. ft. near house No.125, area admeasuring 17x9 sq. ft. out of House No.123 to opponents No.1A to 1D, 2, 3 and 4.

15. The appellant has challenged the impugned order on the following grounds-

- i. **As opponent No.14 is dead, the application has abated against him.**
- ii. **Smt. Vijayanti Bhaskar Tayashete alias Snehal Jayawant Bandekar is the daughter of deceased opponent No.14. The application is bad for non-joinder of necessary party as she is not made party.**
- iii. **Some of the house properties have been acquired for Mumbai Goa highway and it is not informed to the Court.**
- iv. **Application is bad for non-joinder of necessary parties as defendants No.16 to 31 in R. C. S. No. 77/2000 are not included.**

16. It is undisputed that opponent No.14 viz. Dr. Bhaskar Ramchandra Tayashete is dead. Appellant has simply contended that opponent No.14 is dead. However the appeal is silent as to the death of opponent No.14. On perusal of record and proceedings I have come across preliminary decree in R. C. S. No.77/2000 at Exh.5. It shows that opponent No.14 viz. Dr. Bhaskar Ramchandra Tayashete was alive when the preliminary decree was drawn. As per Order 22 Rule 6 of the C. P. C. 1908 *‘there shall be no abatement by reason of the death of either party between the conclusion of the hearing and pronouncement of the judgment.’* It

appears from the record and proceeding that opponent No.14 died after passing of preliminary decree. Therefore in view of Order 22 Rule 6 of the CPC, 1908 there is no abatement by reason of death of opponent No.14 Dr. Bhaskar Ramchandra Tayashete.

17. It is contended that Vaijayanti Bhaskar Tayashete alias Snehal Jayawant Bandekar is daughter of deceased Dr. Bhaskar Ramchandra Tayashete. She is not made party and hence the final decree application is bad for non-joinder of necessary parties. It is no longer res-integra that **Section 6 of the Hindu Succession Act, 1956** confers status of co-parcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. In **Vineeta Sharma vs. Rakesh Sharma AIR 2020 Supreme Court 3717** the Hon'ble Supreme Court has further clarified that, "*since the right in coparcenary is by birth, it is not necessary that father co-parcener should be living as on 09.09.2005.*" Thus daughter of opponent No.14 viz. Vaijayanti Bhaskar Tayashete alias Snehal Jayawant Bandekar has become co-parcener in the same manner as the sons of deceased opponent No.14. However it is significant to note that preliminary decree determined the shares of sons of common ancestor Ramchandra Tayashete *inter-se*. Preliminary decree crystalised the per capita shares of defendants No. 9, 10 and plaintiff as Narayan Tayashete, son of common ancestor Ramchandra Tayashete, died in the year 1983. As opponent No. 14 was alive till

conclusion of Regular Civil Suit No.77/2000, the Trial Court determined his share. During pendency of Final Decree Application No. 11/2003 defendant No.15(opponent No.4) died. The impugned final decree allotted 1/3rd share of deceased defendant No.15 (Opponent No.14) to opponents No. 4 to 7. The impugned final decree has not determined the per capita shares of legal heirs of deceased defendant No.15 (opponent No.14). Hence the impugned final decree has not in any manner resulted into denial of the right of daughter of deceased defendant No.15 (opponent No.14). Moreover daughter of deceased defendant No.15 (opponent No.14) has not challenged either the preliminary decree or the impugned final decree. Hence the objection raised by the appellant is without merits.

18. Defendants No. 16 to 31 in R. C. S. No. 77/2000 are not the members of Hindu Undivided Family of applicant and the opponents. They are not the part of genealogy given in plaint of R. C. S. No. 77/2000. Shares of defendants No. 16 to 31 are not declared in the decree in R. C. S. No.77/2000. They were formal parties. Hence they are not necessary parties for Final Decree Application.

19. It is the appellant's objection that some of the suit houses are acquired for Mumbai-Goa highway and its compensation is not informed to the Court. However, no document is produced on record to show that which

suit houses are acquired and the amount of compensation paid for the same. Moreover, appellant has not raised the objection before the Trial Court. It means during pendency of Final Decree Application no acquisition was made by the Government. As there is no document on record showing the acquisition and amount of compensation, the objection raised by the appellant needs to be overruled.

20. Court-commissioner Ld. Adv. A. P. Barve gave his report to the Court on 18.11.2005. The impugned order is passed on 17.02.2022. It shows that after submitting the report by Court-commissioner Ld. Adv. A. P. Barve, the impugned order is passed after about 17 years. For 17 years appellant remained silent. From the impugned order of the Ld. Trial Court it can be seen that the Ld. Trial Court observed that till the date of passing of the impugned order on 17.02.2022 neither parties have given say to the report of the Court-commissioner. Therefore, the Ld. Trial Court was constrained to pass the impugned order holding that both the parties agreed with the report. Appellant has challenged the impugned order on one of the grounds that the observation of the Ld. Trial Court that as both the parties have not filed say to the report, it means it is admitted to both the parties is not correct and legal. However, there is no material on record to hold that the report given by the Court-commissioner is not correct and legal.

21. Ld. Adv. Chindarkar for appellant has raised new ground to challenge the impugned order. According to him, the Final Decree is not engrossed and hence it is non-executable. He has relied upon the following case-laws-

- i. **Santanu Kumar Dey vs. Sanat Kumar Dey C. O. No.3257 of 2019 order dtd. 10.09.2019.**
- ii. **Renu Devi vs. Mahendra Singh AIR 2003 Supreme Court 1608.**
- iii. **Shankar Balwant Lokhande vs. Chandrakant Shakar Lokhande 1995SCC (3) 413,**
- iv. **Shub Karan Bubna vs. Sita Saran Bubna 2009(9) SCC 689,**
- v. **Dr. Chiraji Lal vs. Hari Das 2005(5) All MR 770 (S. C.)**

22. The decree affecting partition shall be engrossed on requisite stamp papers. On going through the case-law it is prominently revealed that non-engrossing of the decree of partition does not make it invalid, illegal. Certainly it makes the decree unenforceable merely because the decree is not engrossed, does not affect its legality and validity. At the most it is an unenforceable decree. Further it is a curable defect and does not have bearing upon the legality and validity of the decree. So also, it is not the ground of appeal. For all these reasons the impugned order cannot be held to be invalid.

23. The aforesaid discussion sums up that the impugned order in Final Decree Application No.11/2003 does not suffer from any illegality.

(Judgment)

Reg. Civil Appeal No. 17 of 2022

The Ld. Trial Court has not committed error while passing the impugned order. Hence I answer point No. 1 in ‘**negative**’ and in answer to point No.2

I pass following order.-

ORDER

1. Appeal stands dismissed with costs.
2. The order and order of the learned Jt. Civil Judge, Junior Division, Kankavali in Final Decree Application No. 11/2003 dated 17.02.2022 is hereby confirmed.
3. Decree be drawn up accordingly.

(Dictated and pronounced in open Court).

**SINDHUDURG-OROS.
DATE – 01.10.2025.**

**(V. S. DESHMUKH)
DISTRICT JUDGE-1,
SINDHUDURG-OROS.**