

[1/14]

Spl. Civil Suit No.1199/2012(J)

Presented on : 06/09/2012

Registered on : 27/09/2012

Decided on : 09/03/2018

Duration : 05Y 06M 03Ds.

**IN THE COURT OF THE JOINT CIVIL JUDGE,
SENIOR DIVISION, PUNE.
(PRESIDED OVER BY R. U. MALVANKAR)**

**SPL. CIVIL SUIT NO.1199/2012.
EXH. NO.62.**

[CNR NO.MHPU02-010094-2012]

Mrs. Jayashree Dilip Tambe

Age : 34 Yrs., Occu: Nil.

R/at – Post Hivare, Taluka Shirur,

District Pune – 412 208.

... Plaintiff.

V/s.

01] Mr. Vishnu Tukaram Rokade

Age : 70 Yrs., Occu: Agriculture.

02] Mr. Bhausahab Vishnu Rokade

Age about : 50 Yrs., Occu: Agriculture.

03] Mr. Balasaheb Vishnu Rokade

Age about : 42 Yrs., Occu: Photography.

Above all R/at – House No.59 and 60,

At Post Varude, Taluka Shirur,

District Pune – 412 208.

... Defendants.

**Claim : Suit for declaration and
partition.**

**Valuation for the purposes of
Court Fees and Jurisdiction :
Rs.22,000/-.**

Appearances :-

Plaintiff : Ld. Adv. Shri. S. S. Jagdale
Defendants : Ld. Adv. Shri. S. B. Bendre

JUDGMENT

(Delivered on the 9th day of March, 2018)

1] Suit is inter-alia for a declaration that the two registered sale deeds dated 03/02/2011 in favour defendant Nos.2 and 3 are illegal and for partition of the undivided 1/4th share of the plaintiff in the suit property by metes and bounds.

2] Plaintiff is the daughter of defendant No.1 and sister of defendant Nos.2 and 3. According to the plaintiff, one Tukaram Rokade was the common ancestor of the parties. The defendant No.1 is the son of Tukaram Rokade. Tukaram Rokade died intestate sometime around 1943. Thereafter, his property devolved upon his two sons viz. the present defendant No.1 and Bhika Tukaram Rokade. Said Bhika Tukaram Rokade died intestate sometime around the year 1967. Thus, the entire property thereafter, devolved upon the defendant No.1 in his capacity as the son of common ancestor Tukaram Rokade and brother of deceased Bhika Tukaram Rokade.

3] Plaintiff has contended that the subject matter of the suit viz. the agricultural landed properties [A] bearing Gat No.91 admeasuring Hector 00.20 Ares, Gat No.92 admeasuring Hector 01.07 Ares, Gat No.94 admeasuring Hector 00.60 Ares, Gat No.96

admeasuring Hecter 00.01 Ares, Gat No.200 admeasuring Hecter 00.89 Ares, Gat No.223 admeasuring Hecter 02.54 Ares situated at village Varude, Taluka Shirur, District Pune and **[B]** house properties bearing property No.59 admeasuring 32/13 feet [416 Sq.ft] and property No.60 admeasuring 15/12 feet [180 Sq.ft.] situated at village Varude, Taluka Shirur, District Pune are the ancestral properties of the parties and thus, the plaintiff claims an undivided 1/4th share in the said property. [The same are hereinafter referred to as the 'suit property' for the sake of convenience and brevity.]

4] Plaintiff has contended that the defendants are deriving income of the agricultural properties and are in use, occupation and possession of the house properties.

5] Plaintiff has contended that in such circumstances, the defendant No.1 has executed two bogus and illegal sale deeds both dated 3/2/2011 in favour of the defendant Nos.2 and 3 in respect of an area admeasuring Hecter 00-44.5 Ares from and out of Gat No.200 and an area admeasuring 1 Hecter 27 Are from and out of property Gat No.223 without obtaining any consent or no objection from the plaintiff. It is contended that the sale deeds could not have been so executed by depriving the plaintiff of her legitimate rights in the suit property. It is contended that the plaintiff had demanded partition of her 1/4th share in the suit property from the defendants and the defendants having failed to comply with the same she is constrained to file the present suit.

6] After service of the suit summons, the defendants appeared but they failed to file their written statement. Hence, the suit proceeded against all the defendants without written statement.

7] In the light of the pleadings, following points arise for the determination of the Court. Respective points and findings are as under.

Sr. No.	Points	Findings
1	Does plaintiff prove that suit properties are the ancestral joint family property of the parties?	... Partly Yes.
2	Does plaintiff prove that she has undivided 1/4 th share in the suit properties?	... Partly Yes.
3	Does plaintiff prove that the two registered sale deeds dated 03/02/2011 are illegal and liable to be cancelled?	... Yes.
4	Whether plaintiff is entitled to seek partition of her share in the suit properties by metes and bounds?	... Partly Yes.
5	Whether plaintiff is entitled to seek the reliefs as prayed?	... Partly Yes.
6	What order and decree?	As per final order

REASONS

8] In support of the pleadings, the plaintiff Jayashree Dilip Tambe has examined herself at Exh.29. Apart therefrom, she has produced on record documentary evidence such as :

- a] Certified copy of 7/12 extract of Survey No.59/1 for the year 1929-30 to 1944-45 at Exh.30.
- b] Certified copy of 7/12 extract of Survey No.59/1 for the year 1955 to 1968-69 at Exh.31.
- c] Certified copy of 7/12 extracts of Survey No.90/3 for the year 1929-30 to 1954-55 at Exh.32 and Exh.33.
- d] Certified copy of 7/12 extract of Survey No.59/4 for the year 1945-46 to 1967-68 at Exh.34.
- e] Certified copy of 7/12 extract of Gat No.428 for the year 1969-70 to 1989-90 and corresponding Gat No.91 from the year 1990-91 to 1999-2000 at Exh.35.
- f] Certified copy of 7/12 extract of Gat No.429 for the year 1969-70 to 1989-90 and corresponding Gat No.92 from the year 1990-91 to 1999-2000 at Exh.36.
- g] Certified copy of 7/12 extract of Survey No.431 for the year 1969-70 to 1989-90 and corresponding Gat No.94 from the year 1990-91 to 1999-2000 at Exh.37.
- h] Certified copy of 7/12 extract of Survey No.538 for the year 1969-70 to 1989-90 and corresponding Gat No.200 from the year 1990-91 to 1999-2000 at Exh.38.

- i] Certified copy of 7/12 extract of Survey No.561 for the year 1969-70 to 1989-90 and corresponding Gat No.223 from the year 1990-91 to 1999-2000 at Exh.39.
- j] Sale deed dated 3/2/2011 by and between defendant No.1 as a vendor and defendant No.3 as a purchaser at Exh.47.
- k] Sale deed dated 3/2/2011 by and between defendant No.1 as a vendor and defendant No.2 as a purchaser at Exh.48.
- l] Mutation entry No.699 dated 1/3/2011 at Exh.49.
- m] Mutation entry No.700 dated 1/3/2011 at Exh.50.
- n] Khate extract of defendant No.2 at Exh.51.
- o] Khate extract of defendant No.3 at Exh.52.
- p] Khate extract of defendant No.1 at Exh.53.

As to point Nos.1 and 2 :

9] The plaintiff claims all the suit properties to be the ancestral joint family properties of the parties. The defendants have failed to deny the claim of the plaintiff by raising any specific defence

to the contrary. No written statement to that effect has been filed on record. Besides, the defendants have also failed to cross examine the plaintiff on that point to falsify her contentions. In general, there is no presumption that the property held by a person is the joint family property. However, in the case in hand, the plaintiff has produced on record the 7/12 extract from the period 1929-30 onwards at Exh.30 to Exh.39. These extracts reveal the name of the plaintiff forefather Tukaram Rokade and thereafter, the names of the present defendants. Plaintiff has also produced on record the Khate extracts in the names of the respective defendants according to which, Gat No.91, 92, 96 and 94 are shown in the name of the defendant No.1 and the property bearing Gat No.200 and 223 are shown in the name defendant Nos.2 and 3 in equal proportions. In such circumstances, the property appears to be in the family of the parties since the time of their forefathers. In the absence of any pleading to the contrary, the claim of the plaintiff to be the daughter of the defendant No.1 and sister of the defendant No.2 and 3 is required to be accepted. Besides, the plaintiff has also contended that the suit property has remained undivided and unpartitioned till date.

10] In any event, apart from making a mention of the two house properties bearing property No.59 and 60 of village varude, Taluka Shirur, District Pune, the plaintiff has failed to produce any documentary evidence to substantiate existence of

such properties further proving that they too belong to the joint family of the parties. Hence, there can be no conclusive inference as regards the two house properties.

11] In view of the discussion hereinabove, plaintiff can be held to have proved that the agricultural landed properties at village Varude, Taluka Shirur, District Pune are the ancestral properties of the parties.

12] In the circumstances, after the amendment to Section 6 of the Hindu Succession Act, 1956 the rights and liability of the daughters of Hindus are at par with their male counter parts. It reads as under :

Section – 6 : 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,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and, ---

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation - For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no Court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect ---

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation -- For the purposes of clause (1), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation --- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by the decree of a Court ".

13] As such, the plaintiff is having equal rights in the suit property with the defendants. Thereby plaintiff is held entitled to claim 1/4th undivided share, right, title or interest in the agricultural landed properties forming part of the suit property. Hence, answer to point Nos.1 and 2 are partly in the affirmative to the extent of the agricultural landed properties.

As to point No.3 :

14] Plaintiff has challenged the legality and validity of the two sale deeds both dated 3/2/2011 executed by the defendant No.1 father in favour of the defendant Nos.2 and 3 who are the sons. According to the plaintiff, these sale deeds have been brought into existence by the defendants inter se in order to deprive the plaintiff of her legitimate rights in those properties. It is her contention that at no point of time the plaintiff was taken

into confidence by the parties to those sale deeds. The certified copies of these sales deeds are on record at Exh.47 and Exh.48 respectively. Upon perusal of these sale deeds, it appears that the plaintiff is not party to any of those sale deeds though the subject matter of these sale deeds is the ancestral property of the parties. Vide both these sale deeds, the entire property bearing Gat Nos.200 and 223 appear to have been sold and transferred to the defendant Nos.2 and 3 by the defendant No.1. Thereby the plaintiff has been deprived of her share in those two properties. As such, the sale deeds so executed behind the back of the plaintiff are wholly unjust and therefore, since the defendants have also failed to justify their action by leading cogent evidence to that effect, both the sale deeds are required to be held as illegal. As such, the plaintiff's prayer seeking cancellation of these two sale deeds is required to be granted. Hence, the answer to point No.3 is in the affirmative.

As to point Nos.4 to 6 :

15] As the plaintiff has successfully established her undivided 1/4th share in the ancestral joint family property viz. the agricultural landed properties, her share is required to be partitioned by metes and bounds in keeping with her desire to separate her share in the suit property. In view thereof, the agricultural landed properties are liable to be partitioned by metes and bounds. Hence, answer to issue No.4 partly in the affirmative. Considering the suit claim being partly proved as

above, the prayers of the plaintiff are required to be granted only partly thereby declaring her 1/4th undivided share in the suit property and declaring the cancellation of the aforementioned sale deeds apart from granting the prayer for partition. Hence, answer to point No.5 is granted partly in the affirmative. To that extent, the suit is liable to be decreed with costs. Hence, the order.

ORDER

- 1] Suit is partly decreed with costs.
- 2] It is declared that the plaintiff has 1/4th undivided share in the suit properties viz. agricultural landed properties bearing Gat No.91 admeasuring Hector 00.20 Ares, Gat No.92 admeasuring Hector 01.07 Ares, Gat No.94 admeasuring Hector 00.60 Ares, Gat No.96 admeasuring Hector 00.01 Ares, Gat No.200 admeasuring Hector 00.89 Ares, Gat No.223 admeasuring Hector 02.54 Ares situated at village Varude, Taluka Shirur, District Pune.
- 3] It is declared that both the registered sale deeds dated 03/02/2011 are illegal and be cancelled.
- 4] A copy of the decree be sent to the office of the Sub-Registrar of Assurances, Talegaon-Dhamdhere, District-Pune for compliance of Section 31(2) of the Specific Relief Act, 1963.

5] The Collector or any other Gazetted Subordinate of him duly appointed by him in this behalf shall carry out partition of suit property viz. agricultural landed properties bearing Gat No.91 admeasuring Hector 00.20 Ares, Gat No.92 admeasuring Hector 01.07 Ares, Gat No.94 admeasuring Hector 00.60 Ares, Gat No.96 admeasuring Hector 00.01 Ares, Gat No.200 admeasuring Hector 00.89 Ares, Gat No.223 admeasuring Hector 02.54 Ares situated at village Varude, Taluka Shirur, District Pune in accordance with the above declaration and Section 54 of the Code of Civil Procedure, 1908.

Preliminary decree be drawn up accordingly.

[Dictated and pronounced in open court]

Date : 09/03/2018
Place : Pune

Sd/-xxx
(R. U. Malvankar)
2nd Addl. Judge, Small Causes Court
and Jt.CJSD, Pune

[14/14]

Spl. Civil Suit No.1199/2012(J)

Certificate

I affirms that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of the Steno : G. M. Patil (H.G.)
Court Name : R. U. Malvankar,
2nd Additional Judge,
Small Causes Court and
Jt. CJSD, Pune.
Judgment Date : 09/03/2018
Judgment signed by : 26/03/2018
Presiding Officer on
Judgment uploaded on : 27/03/2018