

MHCC010022461998



Presented on : 29-09-1998

Registered on : 29-09-1998

Decided on : 29-01-2026

Duration : 27 Y, 04 M, 1 Day

IN THE BOMBAY CITY CIVIL COURT AT GR. BOMBAY
S. C. SUIT No.8407 OF 1998
(H.C. SUIT NO. 4485 OF 1998)

Exhibit- 35

1. Rajan Paratpsingh Asher @ Kapadia
Aged 49 year,

2. Yash Rajan Asher alias Kapadia
Both are Residing at 119, Dediseth Agiary Lane,
3rd floor, Opp.Fanaswadi, Mumbai-400 002.

... Plaintiffs.

Versus

~~1. Uday Jethabhai Kapadia
Residing at 119, Dediseth Agiary Lane,
3rd floor, Opp.Fanaswadi, Mumbai-400 002.~~

(Since deceased)

~~1A. Mrs. Leena Uday Kapadia-
R/a: 119, Dediseth Agiary Lane,
3rd floor, Opp.Fanaswadi, Mumbai-400 002.~~
(Since deceased represented by
Defendant No.5 and 6)

~~2. Dr Govind Jethabhai Kapadia,
Residing at 3636, Red Coat Lane,
Potomac, M.D.20854, Washington, U.S.A.~~

(Since deceased)

2A.Dr. Geeta Govind Kapadia

... (Deleted)

2B.Ms. Jai Govind Kapadia
Both Residing at 8636,
Red Coat Lane, Potomac
M.D. 20854, Washington, U.S.A

2C. Dr. Deepti James Isham,
Residing at – 1723, Lemon Mint Court
Austin, Texas 78733
2A to 2C hereinabove in their capacity as
Legal heirs and legal representatives
of the deceased Defendant No.2
Late Dr. Govind Jethabhai Kapadia

3. Dr. Abhay Jethabhai Kapadia
R/a: 221, Walhala Drive,
V.A.23236, U.S.A.

3a. Mrs.Asha A. Kapadia
w/o late Dr.Abbhay J.Kapadia,
Aged 84 year
Residing at 2221, Walhala Drive,
Richmond V.A.23236,U.S.A.

3b. Dr.Meera Arun Gokli
d/o Late Dr.Abbhay J. Kapadia,
Aged 52 year
R/a: 13841, Hull Street Road Suite,
Midlothian VA 23112,U.S.A

3c. Dr. Ketan A. Kapadia
s/o late Dr. Abhay J. Kapadia

4. Dr. Ketan Kapadia
Def.No.3c and 4 both R/a: 2221,
Walhala Drive, Richmond V.A. 23236, USA.

5. Vithal Uday Kapadia

6. Keyur Uday Kapadia
Def.No.5 and 6 R/a: 119, Dadiseth
Agiary Lane, 2nd floor, Opp.Fhanaswadi,
Mumbai-02.

7. Sohanlal Prithviraj

8. Krishna Devi Bhasin
(Purchasers of Borivali Property)
both 7 and 8 r/a: B-25, Anand Nagar,
Opp. Royal Hotel, Santacruz (West),
Mumbai-400 054.

9. Smt.Jyotiben Dhirenkumar Jani
(Purchasers of Jan Khambaliya Property)
R/a: Block No.8, House No.9, Jashoda Mata
Sheri Googli Chowk, Jam Nagar,
Khambala 361 305.

...Defendants

SUIT FOR DECLARATION

**CORAM : HER HONOUR JUDGE
SMT. H. C. SHENDE
CITY CIVIL COURT, GR. BOMBAY
(C. R. NO.65)**

DATE : 29th January, 2026.

Appearances :

Mr. Yashodhan Divekar a/w Sandeep Wankhede, Advocate for plaintiff.
None for defendants.

JUDGMENT

In short the case of the plaintiff is that, -

1. The present suit is filed by the plaintiff seeking declaration of HUF status, partition, accounts, setting aside of alienation, consequential injunction in respect of several movable, immovable property allegedly belongs to the Hindu Undivided Family i.e. HUF of late Shri Padamsey Liladhar the common ancestor of both the parties i.e. plaintiff and defendants.

2. The plaintiff No.1 is father of plaintiff No.2. Defendant No.1 to 6 are descendants from the same lineage, all are having their origin to Shri Padamsey Liladhar

3. It is a case of plaintiff that, Shri Padamsey Liladhar was the original owner of the suit property and had a constituted HUF. Upon his death his son Shri Jethabhai become karta of HUF. Shri Jetahbai died in the year 1959 and his wife Manjulabai died in the year 1992. Till the death of Smt.Manjulabai there was no dispute regarding the properties in between the plaintiff and the defendant particularly regarding the HUF properties. In fact the plaintiffs and the defendants jointly resided in one of the HUF properties namely, a building with a land bearing No. 1944, situated at 119, Dadhi Sheth Agyari Lane, Bhuleshwar division, Bombay. No adverse claim was made by the defendant No.1 to 6 till the year 1997. However, in the year 1997 the defendant No.1 to 6 disputed the status of plaintiff as a member of HUF, the defendant attempted to alienate certain suit properties and tried to disturb the plaintiffs possession in the Bhuleshwar premises.

4. It is further story of the plaintiff that pursuant to the notice Dtd. 06.12.1997 the defendant No.1 to 3 with support of defendant No.4 to 6 caused their names to be recorded in the revenue record in respect of the properties bearing survey No.5259, 5649, 5406 and 137 situated at Khambaliya Dist: Jamnagar, Gujrat which formed part of the suit properties. The plaintiffs have filed documents which are marked at Exh.19 to 23 in support of the claim showing that these properties originally stood in the name of Shri Jethabai and subsequent revenue entries were made by defendant No.1 to 3 claiming succession. As per

plaintiff the revenue entries not creating title however it shows that the defendants are attempting to illegally usurp the plaintiffs lawful share. A public notice Dtd. 6.3.1998 was issued by the defendant in Gujarathi news paper asserting exclusive rights. Thereafter the suit filed by the plaintiff wherein they are claiming 1/8th share in all HUF properties.

5. The summons served upon the defendants. The record reveals that the defendant appeared in the notice of motion. However by order Dtd. 25.04.2015 the suit proceeded ex-party against all the defendants.

6. The plaintiff No.1 has examined Mr. Rajan Pratapsing Ashar as his witness. The plaintiff reiterated all the facts mentioned in the plaint and in support of evidence the plaintiff relied upon the following documents:

Sr. No.	Particulars	Exhibit
1	Family Tree diagram	10
2	Certified copy of Property Card of Bhuleshwar Division Bombay, Bearing No.1944.	11
3	Translated copy of property card bearing Survey No.5259	19
4	Translated copy of property card bearing Survey No.5649	20
5	Translated copy of property card bearing Survey No.5406	21
6	Translated copy of property card bearing Survey No.137	22
7	Translated copy of relevant part of Inspection register	23
8	Translated copy of public notice issued in Gujarati News papers.	24

7. The evidence of the plaintiff has gone unchallenged. No written statement or evidence filed by the defendants.

8. The plaintiff after closing their evidence submitted their arguments in support of their claim.

9. The following points arise for my determination;

Sr.No	ISSUES	FINDINGS
1.	Whether the plaintiff and defendant No.1 to 6 constitute a HUF descended from Shri Liladhar Padamsingh?	In the affirmative
2.	Whether the suit properties are HUF properties ?	In the affirmative
3.	whether the plaintiff are entitled for 1/8th share in the suit properties ?	In the affirmative
4.	Whether the plaintiff are entitled for the relief?	In the affirmative
5.	What order and decree ?	Suit is decreed as per final order

REASONS

As to point No.1 and 2 :-

10. The family tree at Exh.10 filed by the plaintiff showing the members in the family. The evidence of plaintiff goes unchallenged. In absence of evidence to contrary the court is of view that Exh.10 clearly established that, the plaintiff and defendants are descended from shri Padamsey Liladhar.

The plaintiff in support of their claim and evidence placed on record the documentary evidence at Exh.11 and Exh.19 to 23 which clearly demonstrate that the suit properties originally stood in the name of common ancestor Mr. Padamsey Liladhar and his successor Jethabhai who acted as a karta.

Here we must take note that, there is no evidence for about a partition prior to 1997. It is settled law that the mere mutation entries in the land record made subsequently cannot extinguished coparcenery right of the coparceners. It is also settled law that, the revenue record do not confer title and those are only fiscal entries do not confer any right in properties. The court therefore record finding point No.1 and 2 in affirmative.

As to point No.3:-

11. Admittedly the defendants neither have filed their written statements nor their evidence. The cross-examination of the plaintiff also not been taken. The plaintiffs evidence remained unshakened and supported by the documents filed by plaintiffs. The plaintiffs have specifically pleaded and proved their entitlement to the 1/8th share in the suit properties. I am constrained to reiterate that, there is no evidence from the defendant side to suggest exclusion of plaintiff or relinquishment of the share by the plaintiff at any point of time. The court therefore record his finding to point No.3 in affirmative.

As to point No.4:-

12. The plaintiff in the present matter have sought various reliefs including setting aside alienation, accounts, disclosure of tenancy, possession from defendant No.7 to 9. However except the bare words

and the property documents mentioned above, there is no other evidence brought on record by the plaintiff. No doubt the defendants only contested NM not filed their written statement or evidence and as per the earlier order of my predecessor the suit proceeded ex-parte against the defendant. The testimony of plaintiff not challenged by the defendant by cross-examining him still the court has to see whether the plaintiffs proved their claim and entitlement for reliefs prayed in suit.

13. The plaintiffs unfortunately have not produced on record the documentary proof regarding details of movable properties, details of bank accounts, details of share holdings so also the exact consideration received by the defendants from the alleged alienation. Hence the said rights or claims of the plaintiffs about partition and accounts cannot be adjudicated upon at these juncture. It can be adjudicated later stage if commissioner appointed report for the same.

14. However the alienation if any made by the defendant No.1 to 6 during pendency of HUF without consent of all coparcener not binding upon the plaintiff to the extent of their share in the property so the point decided accordingly by this court.

15. As mentioned earlier the defendant failed to defend the matter on merit. No evidence contrary to the claim of plaintiffs brought on record by the defendant. The testimony of plaintiff supported by the documentary evidence relied upon by him mentioned above.

16. The court in the circumstances and for the reasons proceed to pass following order

:- O R D E R :-

1. The Suit No. 8407 of 1998 partly decreed.
2. It is declared that the plaintiffs and defendants No.1 to 6 are members of the Hindu Undivided Family of late Shri Padamsey Liladhar.
3. It is declared that the suit properties described at Exh.11 and Exh.19 to 22 are HUF properties.
4. It is declared that the plaintiffs are entitled to 1/8 share in all suit HUF properties.
5. The defendant No.1 to 6 are directed to file affidavit disclosing list of existing tenancies in property at 119, Dadiseth Agiary Lane, Bhuleshwar, disclose the properties if any dealt with by them.
6. Defendant No.1 to 6 are restrained from transferring or creating third party rights in HUF properties till final partition.
7. The matter be referred to a Commissioner for account to ascertain income, expenditure and alienation and Commissioner submit report to court within six months from date of preliminary decree.
8. No order as to costs.
9. A preliminary decree for partition be drawn.

Date – 29.01.2026

(H. C. SHENDE)
Judge, City Civil Court,
Gr. Bombay.

Dictated on	: 29.01.2026
Transcribed on	: 31.01.2026
Corrected on	: 02.02.2026
Checked and Signed on	: 03.02.2026

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

04.02.2026 at 11.14 am
UPLOAD DATE AND TIME

Mrs. Prajakta K.More, Grade-I
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Smt. H. C. Shende (Court Room No.65).
Date of Pronouncement of Judgment/Order	29.01 .2026
Judgment/Order signed by P.O. on	03.02.2026
Judgment/Order uploaded on	04.02.2026