

MHKO010023762012



Presented on : 06.08.2012
Registered on : 06.08.2012
Decided on : 04.08.2026
Duration : Ys. Ms. Ds.
: 13 11 29

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
AT KOLHAPUR**

(Presided over by Shri. A. M. Patil)

**Reg. Civil Appeal No.378/2012.
Exh. 74**

- 1. Yashwant Dhondiram Potdar,**
Deceased Through his Legal Heirs,
- 1/A. Smt. Saraswati Yashwant Potdar,**
Age : 62 Yrs., Occu. Household,
R/o. A/p. Bajar-Bhogav, Tal. Panhala,
Dist. Kolhapur.
- 1/B. Shri. Vijay Yashwant Potdar,**
Age : 45 Yrs., Occu. Agriculture,
R/o. A/P. Bajar-Bhogav, Tal. Panhala,
Dist. Kolhapur.
- 1/C. Sou. Chaya Gajanan Potdar,**
Age : 47 Yrs., Occu. Household,
R/o. A/p. Nivachiwadi (Horpavade),
Tal. Panhala, Dist. Kolhapur.
- 1/D. Sou. Sindhutai Vinayak Potdar,**
Age : 43 Yrs., Occu. Household,
R/o. A/p. Khujgaon, Tal. Shirol,
Dist. Sangli.
- 1/E. Sou. Vachala Sachin Asagavkar,**
Age : 40 Yrs., Occu. Household,
R/o. A/p. Udgaon, Tal. Shirol,
Dist. Kolhapur.
- 2. Muralidhar Dhondiram Potdar,**
Age : 53 Yrs., Occu. Agriculture,
R/o. As above.

**..Appellants.
(Ori.Defts.)**

- 3. Vasant Dhondiram Potdar,**
Deceased Through LRs.
- 3/A. Prakash Vasant Potdar,**
(Deceased Through Lrs.)
- 3/A/1. Jyoti Prakash Potdar,**
Age : 42 Yrs. Occu. Household,
R/o. Shinganapur, Tal. Karveer,
Dist. Kolhapur.
- 3/A/1. Vivek Prakash Potdar,**
Age : 20 Yrs., Occu. Education,
R/o. Shinganapur, Tal. Karveer,
Dist. Kolhapur.
- 3/A/3. Vaishnavi Prakash Potdar,**
Age : 22 Yrs. Occu. Education,
R/o. Shinganapur, Tal. Karveer,
Dist. Kolhapur.
- 3/B. Sou. Swapnita Sadanand Potdar,**
Age : 50 Yrs., Occu. Household,
R/o. A/p. Patan, Tal. Patan,
Dist. Satara.
- 3/C. Sou. Mangal Dinkar Potdar,**
Age : 40 Yrs., Occ. Household,
R/o. A/P. Shivare, Tal. Shahuwadi,
Dist. Kolhapur.
- 4. Babasaheb Dhondiram Potdar,**
Age : 57 Yrs., Occu. Agriculture,
R/o. As above.
- 5. Bhikaji Shripati Potdar,**
Deceased Through LRs.
- 5/A. Vikas Bhikaji Potdar,**
Age : 40 Yrs., Occu. Agriculture,
R/o. Bajar Bhogav, Tal. Panhala,
Dist. Kolhapur.
- 5/B. Vandana Gajanan Potdar,**
Age 55 Yrs., Occu. Household,
R/o. Radhanagari, Tal. Radhanagari,
Dist. Kolhapur.
- ..Appellants.**
(Ori.Defts.)

5/C. Nanda Gajanan Potdar,

Age : 51 Yrs., Occu. Household,
R/o. Panchgaon, Tal. Karveer,
Dist. Kolhapur.

5/D. Yogita Yogesh Potdar,

Age : 38 Yrs. Occu. Service,
R/o. Tisangi, Tal. Gaganbawada,
Dist. Kolhapur.

..Appellants.
(Ori.Defts.)

Versus

1. Vasant Shripati Potdar,

Age : 52 Yrs., Occu. Goldsmith,
R/o. Sangrul, Tal. Karveer,
Dist. Kolhapur.

2. Gajanan Shripati Potdar,

Age : 47 Yrs., Occu. Goldsmith,
R/o. As above.

3. Ramchandra Shripati Potdar,

Age : 39 Yrs., Occu. Goldsmith,
R/o. As above.

4. Smt. Akkatai Shripati Potdar,

Deceased Through LR.
(Respondents No. 1 to 3)

..Respondents
(Orig. plaintiffs)

Appearances :

Shri. H. S. Mali, the learned Advocate for Appellants.

Shri. B. D. Patil, the learned Advocate for the Respondents.

JUDGMENT

(Delivered on - 04th Day of August, 2026)

01. The present appeal is preferred by the appellants/defendants being aggrieved by the judgment and decree dt 25/04/2012 passed by learned Jt. Civil Judge Junior Division, Panhala in Reg. Civil Suit No. 67/2005

whereby the suit for partition and separate possession was decreed.

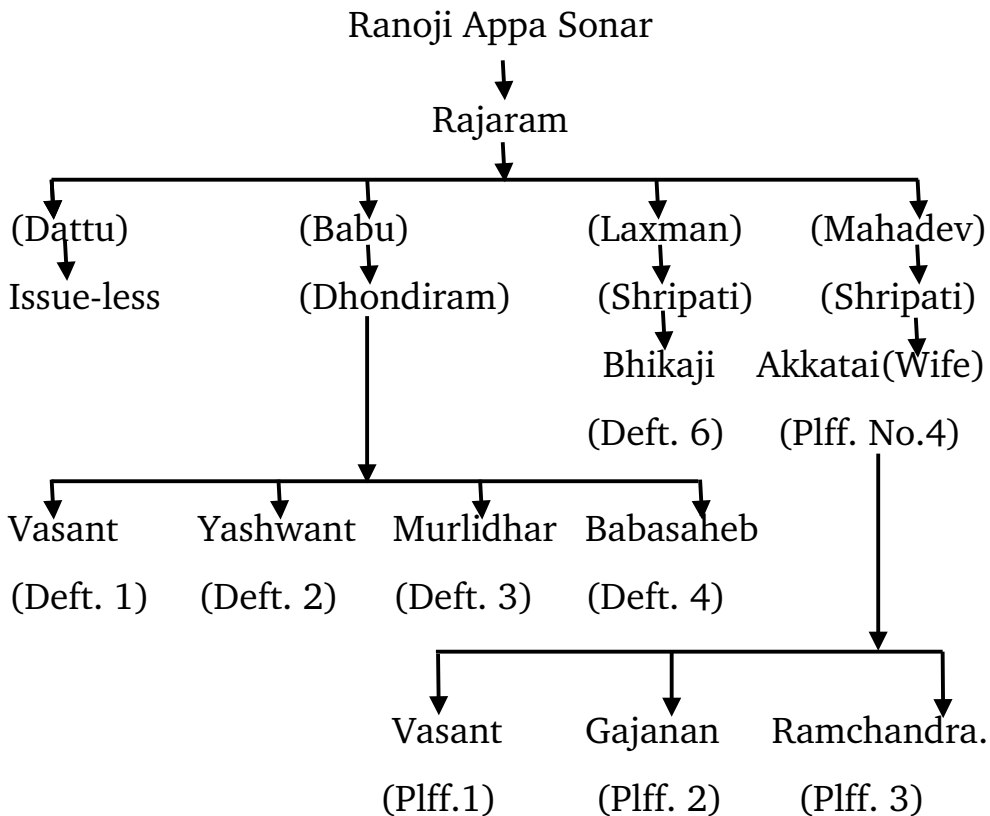
02. The description of suit properties;

A) The agriculture properties situated at Bajar Bhogav, Tal. Panhala, Dist. Kolhapur. are as under ;

Sr. No.	R. S. No.	Old Gat No.	New Gat No.	Admeasuring
1	151/1	119	129	0.58
2	151/2	120	130	0.61.

All the above properties are the subject matter of present suit. They are referred as “suit properties” for short.)

03. The genealogy (which is part of the suit) of the family is as under :-



04. The Plaintiffs' case in short is as under;

It is the case of the plaintiffs that they and the defendants are the joint family members of the common ancestor Rajaram Ranoji Sonar @ Potdar. Plaintiffs and defendants are cousin. After demise of Rajaram, the suit properties was owned by his sons namely Dattu, Babu, Laxman and Mahadev. Dattu died issueless. Mahadev was blind and he shifted to Tisgaon, Tal. Gaganbawada to reside with his in-laws. He died their on 07/12/1943. After his death, his son Shripati shifted to Sangrul, Tal. Karveer and died on 20/09/1982. The plaintiff No. 4 is the wife of deceased Shripati and plaintiffs No. 1 to 3 are his sons. After demise of Rajaram, suit property mutated in the name of Babu. Thereafter, Babu and Laxman got recorded their names in respect of suit property in place of Rajaram. They further contented that the suit property was not partitioned between the heirs of Rajaram. They further contended that, defendants No. 1 to 4 are the heirs of Dhondiram Babu Potdar and defendant No. 5 is the heir of Shripati Laxman Potdar. They further contended that, they have 1/3 joint share in the suit properties. It constrained them to file the suit for partition and separate possession.

05. Defendants resisted the suit by filing their written statement below Exh. 17. They contended that, the suit properties never owned by Rajaram Ranoji Potdar and therefore, question of partition does not arise. They further contended that, the plaintiffs and defendants are not the

members of joint family. They never resided jointly. They also contended that, the plaintiffs have no share in the suit properties. Those are exclusive properties of Babu and Laxman. Hence, they prayed to dismiss the suit.

06. Learned Advocate for the appellants argued that, plaintiff failed to prove genealogy as relied by the plaintiffs, as well as the suit properties are ancestral properties. Though there was no evidence on record, the learned trial Court decreed the suit only on the basis of Exh. 28 and therefore, the impugned judgment is prima-facie perverse. He also relied on the following case laws;

- 1 ***Satyabamabai Wasudeo Dhanjode and Ors. Vs. Chhatrapati Zibal Dhanjode and Ors., 2004 (1) ALL MR 779***, to contend that, as per Sec. 3 of the Indian Evidence Act, the plaintiff has to stand or fall on its own merits and not on weaknesses of the defence.
- 2 ***State of Bihar and Ors. Vs. Sri. Radha Krishna Singh, AIR 1983 SC 684***, to contend that, genealogy of the family is to be proved in view of Sec. 13 and Sec. 32 (5) of the Indian Evidence Act. As there is tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim to concoct, fabricate or procure false genealogy to suit their ends, the Court is relying on the genealogy put forward must guard themselves against falling into trap led by a serious of documents. In considering the oral evidence, regarding a pedigree a purely mathematical cannot be made, because where a long line of decent has to be proved, it is obvious that the witnesses who are examined to depose to the genealogy would have to depend on their special means of knowledge which may have come to them through their ancestors.

07. The learned Advocate for the respondents argued that, the defendants did not deny the genealogy in their written statement specifically and therefore, it is considered to be admitted. He further argued that, the judgment passed by the learned trial Court is correct and legal and no interference is needed by this Court. He also relied on the following case laws;

- 1 ***Miss Catarina Fernandes and Ors. Vs. Jose Menino Rodrigues, 2012 (5) AIR Bom R 804*** to contend that, *adverse possession, time from which period of 12 years begins to run is when possession of the defendant become adverse to plaintiff.*
- 2 ***Smt. Sukhman Vs. Subaso And Ors. 2019 Legal Eagle (CHHAT) 12494*** to contend that, *mere possession and mutation do not confer exclusive rights.*
- 3 ***Mangilal Vs. Saligram and Ors., AIR 2009 (NOC) 1273 (M.P.)*** to contend that, *plea of limitation may not come in way of coparcener asking for partition reason being, a coparcener at any point of time may ask for partition from other coparcener.*
- 4 ***Dayanand and Ors. Vs. Dharam Pal, 2010 Legal Eagle (PHHC) 999*** to contend that, *mutation does not confer title. Adverse entries do not affect a person till the title of the person is threatened by opposite party.*
- 5 ***Dama Sakharam Gongale Vs. Bija Dharma Khobragade, 2006 (3) Mh. L. J. 384*** to contend that, *death certificate is public document it has a high probative value.*

08. After appreciating the evidence on record the learned trial court came to the conclusion that, the plaintiffs proved that the suit properties are their ancestral properties and they are entitled for their share and separate possession. As such, trial Court has decreed the suit.

09. Heard both the sides at length. Upon hearing, following points arise for my determination. I have recorded my findings against each of them for the reasons stated below;

Sr. No.	POINTS	FINDINGS
1.	Whether plaintiffs established that, the suit properties are their ancestral properties?	...No.
2.	Whether plaintiffs established that, they are entitled for partition and separate possession of suit properties? If Yes, What share?	...No
3	Whether impugned judgment and decree requires any interference?	...Yes.
4	What order ?	Appeal is allowed.

REASONS

10. The plaintiff Ramchandra (PW1) examined himself below Exh.33. He relied on the following documents;

Sr. No.	Document	Exhs.
1	Death extract of Shripati Mahadev Potdar	21
2	Death extract of Dhondiram Potdar	22
3	Death extract of Shripati Laxman Potdar	23
4	Extract of Birth – Death extract of 1938-1942	24
5	Extract of Birth – Death extract of 1938-1942	25
6	Extract of Birth – Death extract of 1938-1942	26
7	Extract of consolidation scheme	27
8	Extract of book RS No. 151	28

11. Defendants have examined Muralidhar (DW1) below Exh. 41. He relied on the following documents;

Sr. No.	Document	Exhs.
1	7 X 12 extract of Gat No. 129 of 2003-2004	44
2	7 X 12 extract of Gat No. 130 of 2003-2004	45
3	7 X 12 extract of Gat No. 130 of 2004-2005	46
4	7 X 12 extract of Gat No. 129 of 2004-2005	47
5	Extract of 'C' register	48
6	Diary extract	49
7	7 X 12 extract of Gat No. 151/1	50
8	7 X 12 extract of Gat No. 151/2	51

As to Points No.1 to 4:

12. All the points are interlinked and hence, they are taken up together for discussion.

13. The plaintiffs examined Ramchandra (PW1) on behalf of all the plaintiffs. He deposed that the genealogy as given in the plaint has been prepared on the basis of original record of Helavi (हेळवी) (class of persons who

maintain record of ancestors) and as per the said genealogy the relationship between the parties are correct. He further deposed that, the suit properties were belonging to the original person Rajaram Ranoji Potdar. But thereafter, those were not partitioned in between his four sons. He also reiterated the same in his affidavit of examination in chief as per the plaint.

14. He was cross-examined by the defendants at length. During cross-examination, he admitted that, he did not file any document to show that the suit properties were belonging to Ranoji.

15. Defendants examined Murlidhar (DW1) on behalf of them. He reiterated the same as per the written statement. During cross-examination, he admitted that, the suit properties are their ancestral properties which were standing in the name of Babu Sonar and Laxman Sonar. Babu is his grandfather.

16. Upon perusal of oral and documentary evidence on record, it is seen that, the plaintiffs should have proved the genealogy as he relied by leading cogent evidence. Mere filing of death certificate is not sufficient. Plaintiffs should have examined Helavi who prepared the genealogy to prove the same. In absence of that evidence, it cannot be said that, the plaintiffs are belonging to that genealogy. The burden was on the plaintiffs to prove that the original

person Ranoji or Rajaram was the owner of the suit properties and then it came to their descendents. The plaintiffs failed to prove that, the numbers of sons to Rajaram; when Rajaram died; which Helavi has record of their family; how Babu and Laxman succeeded the property; Dattu, Babu, Laxman and Mahadev were real brothers; from which Revision Survey number suit properties have come; what is the area of suit properties.

17. After going through the document below Exh. 28, it is seen that, Revisional Survey No. 151 is having 6 Acre 15 Gunthe land. Its old number is 137. It is Government land given to Rajaram Ranoji Sonar. If it is so, then it is not sufficient evidence to prove the fact that the suit properties are the ancestral properties of the plaintiffs. Except exh. 28, there is no document on record, to prove that the suit properties were belonging to Rajaram Ranoji Sonar. Therefore, the conclusion drawn by the learned trial Court on the basis of Exh. 28 that the suit properties were belonging to Rajaram is incorrect. As such, the plaintiffs have failed to prove that the suit properties are their ancestral properties and hence, the impugned judgment needs interference at the hands of this Court. The case laws relied upon by the respondents are not applicable to the case in hand. Hence, I answer points No. 1 to 3, accordingly and to answer point No. 4, I pass the following order.

ORDER

- 1 Appeal is allowed.
- 2 The judgment and decree passed by learned Jt. Civil Judge Junior Division, Panhala in Regular Civil Suit No. 67/2005 on dtd. 25/04/2012, is hereby quashed and set aside.
- 3 The suit is dismissed.
- 4 Parties to bear their own costs.
- 5 Decree be drawn up accordingly.
- 6 Copy of this judgment and record and proceeding be sent to the Trial Court.

(Dictated and pronounced in open Court.)

(**A. M. Patil**)

Kolhapur.

Date : 04/08/2026.

Principal District Judge, Kolhapur,

JO Code-MH02456