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| MHST170001282014<br> | Received On : 21.02.2014<br>Registered On : 24.02.2014<br>Decided On : 15.01.2026<br>Duration: 11Yrs : 10Ms. :22Ds. |
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**IN THE COURT OF DISTRICT JUDGE – 1, VADUJ**  
**AT VADUJ, DIST.SATARA.**

( Presided over by – Vidyadhar B. Kakatkar )

**REG.CIVIL APPEAL NO.11/2014**  
**Exhibit No.26**

**Vijay Bhiva Dubale,**  
Age: 43 Years. Occ: Agriculture,  
R/o. Bombale, Taluka Khatav  
District Satara.

**...Appellant**  
(Ori.Plff.)

**VERSUS**

- 1. Shankar Shiva Dubale,**  
Age: 58 Years. Occ: Agriculture,
- 2. Namdev Shiva Dubale,**  
Age: 56 Years. Occ: Agriculture,
- 3. Dashrath Shiva Dubale,**  
Age: 53 Years. Occ: Agriculture,
- 4. Tatya Shiva Dubale,**  
Age: 48 Years. Occ: Agriculture,
- 5. Pintu Shiva Dubale,**  
Age: 45 Years. Occ: Agriculture,
- 6. Gangubai Shiva Dubale (Dead)**  
Legal heirs Res.Nos. 1 to 5
- 7. Mangal Arun Bhondave,**  
Age: 50 Years. Occ: Household,

- 8. Ranjana Malhari Dubale,**  
Age: 58 Years. Occ: Household,
- 9. Amol Malhari Dubale,**  
Age: 28 Years. Occ: Agriculture,
- 10. Anandabai Kisan Awaghade,**  
Age: 58 Years. Occ: Household,
- 11. Shalan Ramchandra Awale,**  
Age: 55 Years. Occ: Household,
- 12. Malan Gulab Awale,**  
Age: 52 Years. Occ: Household,
- 13. Chaya Vithal Sakat,**  
Age: 50 Years. Occ: Household,
- 14. Satwshila Nandkumar Sathe,**  
Age: 46 Years. Occ: Household,  
Nos.1 to 6 R/o-Bombale,  
Taluka Khatav, District Satara.  
Nos.7 R/o-Nidhal,  
Taluka Khatav, District Satara.  
Nos.8 & 9 R/o-Shirdhon Phata,  
Taluka Koregaon, District Satara.  
Nos.10 & 12 R/o-Gondavale Khurd,  
Taluka Man, District Satara.  
No.11 R/o-Vaduj,  
Taluka Khatav, District Satara.  
No.13 R/o-Pachwad,  
Taluka Khatav, District Satara.  
No.14 R/o-Tandulwadi,  
Taluka Khatav, District Satara.

**... Respondents**  
(Ori.defts.)

**Appearance :**

Ld. Advocate for the Appellant : Shri. P. D. Karande  
Ld. Advocate for the Respondents : Shri. N. M. Godase

**JUDGMENT**

( Delivered on: 15/01/2026)

1. The appeal is preferred by the original plaintiff against the judgment and decree passed in Regular Civil Suit No. 222/2011 by the learned 2nd Joint Civil Judge, Junior Division, Vaduj, on 30/01/2014. For the sake of convenience, the parties are hereinafter referred to according to their respective status in the original suit.

2. The suit properties are situated at village Bombale, Taluka Khatav, District Satara, and are recorded in the Record of Rights as under:

Block No. 540 admeasuring 1 H 17 R;

Block No. 601 admeasuring 0 H 65 R;

Block No. 522 admeasuring 0 H 01 R;

Block No. 521 admeasuring 0 H 01 R;

along with the well situated in Block No. 601 and the farmhouse situated in Block No. 521.

The aforesaid properties are hereinafter collectively referred to as the “suit property” for the sake of convenience.

3. The plaintiff states that Lakhu was the common ancestor of the parties. Lakhu left behind 2 sons, namely Shiva and Bhiva. Shiva was married to Ganubai and had children, namely Shankar, Dashrath, Namdeo, Mangal, Tatya, and Pintu. Bhiva was married to Sarja and had children, namely Malhari, Anandabai, Shalan, Malan, Chhaya, Satwashila, and Vijay. Malhari predeceased the institution of the suit, leaving behind his widow Ranjana and son Amol.

4. The plaintiff further states that the suit properties were ancestral properties belonging to the joint family. Shiva and Bhiva died while the joint family status was subsisting. There was no partition of the suit properties by metes and bounds at any point of time. The plaintiff and the defendants constitute a joint family and are in joint possession of the suit properties. Subsequently, disputes arose between the family members, and therefore, they started residing separately, though the joint family status in respect of the suit properties continued.

5. The plaintiff further states that his father Bhiva was illiterate. Taking undue advantage of the same, Shiva deceived Bhiva and got his name recorded in respect of Block No. 601 by Mutation Entry No. 2838. Bhiva was never served with any notice regarding the said mutation entry. The said mutation entry is illegal, void, and not binding on Bhiva or his legal heirs, and no exclusive right accrued to Shiva on the basis of the said mutation entry.

6. The plaintiff further states that Defendant Nos. 1 to 7 have got their names entered in the Record of Rights by Mutation Entry No. 2992 on the basis of an alleged partition deed, which is false, bogus, and not binding on the plaintiff. The plaintiff and Defendant Nos. 8 to 14 together have a 1/2 share in the suit properties.

7. The plaintiff further states that Defendant Nos. 1 to 7 have started obstructing the possession and enjoyment of the suit properties by the plaintiff and Defendant Nos. 8 to 14. They are attempting to create third-party interest in the suit properties, which

has rendered it impossible for the plaintiff and Defendant Nos. 8 to 14 to jointly cultivate the suit properties.

8. The plaintiff demanded partition and separate possession of his legitimate share in the suit properties from Defendant Nos. 1 to 7. However, the defendants refused to effect partition. Hence, the plaintiff has instituted the present suit seeking partition and separate possession of his share in the suit properties and has also prayed for the relief of permanent injunction.

9. Defendant Nos. 1 to 7 filed their written statement through their power of attorney at Exh. 38 and they denied all the contents of the plaint. It is stated that the genealogy as stated in the plaint is correct. It is stated that plaintiff has not challenged the mutation entry Nos. 2838 and 2992 before the competent authority. The plaintiff cannot challenge the same in this suit. These defendants further stated that their father Shiva Lakhu Dubale executed a partition deed on 15/07/1992 based on which mutation entry number 2992 was registered and certified. It is further stated that 3 anna and a 2 paise share in block Nos. 522, 540 and 601 was allotted to Shankar, Namdev Dasharth Shiva Dubale and 3 Anna 3 paise share was allotted to Tatya and Pintu Shiva Dubale each. Block No. 541 is house property and the father of the plaintiff Bhiva constructed a house in that property, it is in the possession of the plaintiff.

10. The farmhouse situated in the property is constructed by the plaintiff and defendants, it is possessed by these defendants. Therefore, there is no question of dispossessing the plaintiff from that

property. The defendants are not going to sell any of those properties. There the plaintiff is not entitled to the relief of injunction.

11. These defendants further stated that the suit properties were owned by Shiva Lakhu Dubale. Some of those properties are purchased and some are allotted to him in partition. The father of the plaintiff himself applied for recording the name of Shiva Lakhu Dubale; his brother to block No. 601 as it was allotted to him in partition. It was filed on 25/07/1987. Shiva was in possession of that property since 30 to 35 years before 1987. The plaintiff is not entitled to claim anything in that property.

12. These defendants further stated that, Shiva and Bhiva were separated during their lifetime. The contention of the plaintiff that he and the defendants were having joint family is incorrect. There was previous partition. The plaintiff's suit is not maintainable and instituted only with a view to trouble these defendants. The suit is incorrectly valued. The plaintiff is not entitled to the relief of injunction as there is no cause of action. These defendants have prayed for dismissal of the suit.

13. Defendants no. 8 to 10, 11, 12 and 14 filed their written statement at Exh. 44 and admitted the contents of the plaint. The learned Trial Court while deciding the suit came to the following conclusions.

1. Defendants no. 1 to 7 have proved that the suit properties were partitioned previously between the plaintiff and defendants.

2. The plaintiff is not entitled to partition and he has no share in the suit properties.
3. The plaintiff is not entitled to the relief of permanent injunction.
4. Defendants no. 1 to 7 proved that Block No. 521 is their self acquired property.

The learned Trial Court dismissed the suit. The said judgment and decree is challenged on the following grounds.

1. The judgment and decree passed by the learned Trial Court is against the principles of justice, equity and good conscience.
2. The issues are not framed as per the pleadings of the parties.
3. The pleading and prayer in the suit are not considered while framing the issues.
4. The learned Trial Court did not consider that the plaintiff and defendants and their respective predecessors in interest were having joint family and  $\frac{1}{2}$  share each in the suit properties.
5. The learned Trial Court erroneously held that there was previous partition of the suit properties despite there being no evidence to that effect.
6. The learned Trial Court failed to consider that the entries in the record of rights are not the conclusive proof of title.
7. Though the appellant proved that he has right in the suit properties, the learned Trial Court decided issue no. 3 in the negative.
8. The learned Trial Court erroneously held that Block No. 521 is the self acquired property of the Plaintiff and Defendants.

9. The learned Trial Court failed to consider the oral and documentary evidence on record and the case law produced by the Plaintiff.

14. The Plaintiff has prayed for allowing appeal and setting aside the impugned judgment and decree and allowing the suit.

15. Considering the pleadings, oral and documentary evidence on record and arguments of both learned advocates, the following points arise for my determination and my findings to them are as stated below for the following reasons.

| <b>Sr. No.</b> | <b>Points</b>                                                                                                                                                                  | <b>:</b> | <b>Findings</b>     |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------|
| 1..            | Has the Plaintiff proved that he and the Defendants are having a joint family?                                                                                                 | :        | In the affirmative. |
| 2..            | Has the Plaintiff proved that the suit properties are joint family properties?                                                                                                 | :        | In the affirmative. |
| 3..            | Have the Defendants Nos. 1 to 7 proved that there was previous partition of the suit properties?                                                                               | :        | In the negative.    |
| 4..            | Has the Plaintiff proved that the Defendants obstructed him while enjoying the suit properties and they are threatening to create third party interest in the suit properties? | :        | In the affirmative. |
| 5..            | Is the Plaintiff entitled to the relief of partition and separate possession?                                                                                                  | :        | In the affirmative. |
| 6..            | Is the Plaintiff entitled for the relief of permanent injunction?                                                                                                              | :        | In the affirmative. |
| 7..            | Is any interference required in the impugned judgment and decree?                                                                                                              | :        | In the affirmative. |

|     |              |   |                                                  |
|-----|--------------|---|--------------------------------------------------|
| 8.. | What order ? | : | Appeal is allowed with costs as per final order. |
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### **REASONS**

16. I have heard the learned advocates Shri. P. D. Karande and Adv. N. M. Godase for both sides.

#### **As to Point NoS.:1 to 3:-**

17. As all three points are related to each other, they are discussed together to avoid the repetition. The certified copy of mutation entry No. 2838 is produced on record at Exhibit 11. It states that Bhiva Lakhu Mang (Dubale) filed an application to the revenue authorities on 25/07/1987 for recording the name of his brother Shiva to the record of rights of block No. 601. It was stated in the application that the said property was recorded in the name of Bhiva but it was allotted to Shiva who was enjoying the same since last 30 to 35 years. Bhiva requested the revenue authorities to record the name of Shiva in his place. The mutation entry was certified on 10/08/1987. The record does not make it clear whether a notice of this mutation entry was issued to the parties or not. There is mention of application filed by Bhiva but the defendants has not produced any copy of such application on record.

18. The copy of mutation entry No. 2992 is produced on record at Exhibit 12. However the said mutation entry records the partition amongst Shiva and his sons. The mutation entry shows that the block number 490, 361, 369, 522, 540, 601 and 534 are the

properties affected by the said mutation entry. Only block No. 601 is the property which was involved in mutation entry No. 2838.

19. Learned advocate for the Appellants relied upon the judgment in the case of ***Jitendra Singh Vs State of Madhya Pradesh in special leave petition that (c) No.13146/2021*** decided by the Honourable Supreme Court of India. It is held that, in the revenue records does not confer the title on a person whose name appears in the record of rights. Entries in the revenue records or jamabandi have only “fiscal purpose” i.e. payment of land revenue and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court.

20. Learned advocate for the Appellants relied upon the judgment in the case of ***Gurunath Manohar Pavaskar and Others Vs Nagesh Diddappa Navalgund and Others in Civil Appeal no.5794 of 2007***. It is held that,

*“a revenue record is not the document of title. It merely raises presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Indian Evidence Act. The courts below were, therefore, required to appreciate the evidence keeping in view the correct legal principles in mind”.*

21. Learned advocate for the Appellants relied upon the judgment in the case of ***State of HP Vs Keshav Ram in 1997 AIR (SC)***

**2181.** It is held that the entries in the revenue record can not be a basis for declaration of title.

22. Before going further it is necessary to note that there is presumption of joint family but there is no such presumption of joint family property. However when a defendant come with a case of previous partition, the burden lies upon him to prove the same. In the present matter, the defendant Nos. 1 to 7 came with the case of previous partition. Therefore they have to prove the same. If the written statement of these defendants is perused, the defendants have not given any description regarding partition which allegedly occurred between Bhiva and Shiva. They have given the particulars of the partition between these defendant Nos. 1 to 7 only. This is a subsequent event. These defendants have to initially prove the details of the partition and severance of the Joint family and separation by metes and bounds. There is no such evidence adduced by the defendants.

23. It is necessary to discuss the effect of mutation entry No. 2838. As observed by the learned Trial Court, the application filed by Bhiva on which Mutation Entry No. 2838 is based is not produced on record. Another important aspect is that only one property that is Block No.601 is included in the said mutation entry. There is no mention of the other properties. The said mutation entry does not mention the details of alleged previous partition. It is stated by the plaintiff that Shiva took advantage of the fact that Bhiva was illiterate and deceived him. The learned Trial Court has held that the plaintiff must prove the fraud. It is important to note that the plaintiff

has not come before the court with the exclusive case of fraud. Another important aspect is that only one property is noted in the mutation entry. The learned Trial Court has not considered that it was for the defendants No. 1 to 7 to prove the partition of remaining properties. There is no evidence to that effect. At present it is appearing from record that the name of Shiva was recorded on the basis of mutation entry only and as per the settled legal position, a mutation entry can not confer or take away right, title or interest in any property. Therefore, it is concluded that Shiva did not receive any rights as per mutation entry No. 2838. Defendants Nos. 1 to 7 have not disclosed how the other ancestral properties of Bhiwa and Shiva were distributed and who received which properties.

24. Learned advocate for the Appellants relied upon the judgment in the case of ***Roop Chand Vs Indradevi and others*** reported in ***AIR 1997 Madhya Pradesh 200***. It is held that mere admission that the cosharers are living separately in the same house and doing separate business do not amount to raise a presumption that there was a family settlement to deal with the property independently of their shares.

25. Learned advocate for the Appellants relied upon the judgment in the case of ***Shasidhar and Others Vs Smt. Ashwini Uma Mathad and Another*** reported in ***2015 SAR (Civil) 287***. The powers of the first appellate court being the final court of findings on facts are discussed by the honourable Lordships.

26. In this case, a copy of the purchase agreement for plot No. 361 dated 14/09/1974, executed by Bhiwa Laxman Dubale in favour of Shiva Laxman Dubale, has been submitted by the respondent at Exhibit 51. The said document is not registered and the defendant Nos.1 to 7 have not made any mention of this document in his Written statement. As a well-established principle of law, facts not mentioned in the pleadings will not be admissible because such evidence would be surprising to the opposing party. The said defendants have not noted in their written statement that any such transaction took place between Bhiva and Shiva. Therefore, no conclusions can be drawn from such a document. Even though the learned trial court has marked the said document, it will not be of any use to the said defendants.

27. The defendants have submitted a sale deed dated 31/03/1958 regarding the purchase of 5 ares land of survey No. 151 by Shiva Lakhu Dubale and Anyaba Tanaji Dubale from Namdev Sitaram Nimbalkar. This document is at Exhibit 52. In this regard, the Learned Trial Court has stated in its judgment that Survey No. 161 was purchased as per the said sale deed dated 31/01/1958. The number of the said property became 151 as per mutation entry No. 2024 (Exh.83). The copy of the said mutation entry submitted to the court does not show that the previous survey No. 161 has become survey No.151. Therefore, it is not clear on what basis the above conclusion of the Learned Trial Court was drawn. In such circumstances, it is concluded that the defendants have not proven the connection between the said property in this sale deed and the property claimed in this case.

28. In the circumstances, I conclude that mere separate residence and mess would not amount to the partition by metes and bounds. The defendant Nos.1 to 7 have not proved the previous partition. All the suit properties are still liable for partition and the plaintiff and defendant Nos. 8 to 14 have  $\frac{1}{4}$  share in that property. Therefore though the plaintiff and defendants are staying separately, they are not separated by metes and bounds. Therefore, they are entitled to partition. I answer point Nos. 1 and 2 in the affirmative. I answer point no. 3 in the negative.

**As to point No. 4 to 6: -**

29. The plaintiff has stated that the defendant Nos.1 to 7 are obstructing him while cultivating the suit property and they are trying to sell the suit properties. As I have observed earlier, the plaintiff has proved his right, title and interest in the suit properties. The defendants have challenged the claim of the plaintiff by filing a written statement which itself proves a cause of action. Admittedly the suit properties are recorded in the name of the defendants. Therefore, if they create a third party interest in the suit properties, it will seriously prejudice the plaintiff and will create obstacles in separating his share from the defendants. It will also create multiplicity of the proceedings. The principle of lis pendence is not sufficient to protect the rights of the plaintiff in the present case.

30. The genealogy of the parties is not disputed. Therefore it is clear that the legal heirs of Shiva have joint  $\frac{1}{2}$  share and legal heirs of Bhiva are jointly having  $\frac{1}{2}$  share in the suit properties. The plaintiff is entitled to get his share separated by following due

process of law. The plaintiff is also entitled for the relief of permanent injunction to the effect that the defendant Nos. 1 to 7 shall not oust him from the suit property till partition is effected and the possession plaintiff's share is handed over to him. The plaintiff is also entitled to the relief of permanent injunction to the effect that the defendant Nos. 1 to 7 should not sale the suit properties or should not create any third party interest therein till the share of the plaintiff is separated by the competent authority. Accordingly I answer point Nos. 4 to 6 in the affirmative.

**As to point number 7: –**

31. I have gone through the judgment and decree passed by the learned Trial Court. It appears that the learned Trial Court has wrongly placed reliance upon mutation entry No. 2838. The learned Trial Court missed the important aspect that the mutation entry cannot transfer or take away any right, title or interest in any immovable property. The learned Trial Court has wrongly placed he reliance upon the documents produced by defendant Nos. 1 to 7. The learned Trial Court has wrongly concluded that the defendants Nos. 1 to 7 have proved that there was previous partition between the predecessors of plaintiff and the defendants which ultimately resulted into dismissal of the suit. In my considered opinion this judgment and decree needs interference. The suit needs to be decreed with costs. Therefore, I answer point No. 7 in the affirmative and proceed to pass the following order.

**ORDER**

1. The appeal is allowed with costs.

2. The judgment and decree passed by the learned 2<sup>nd</sup> Joint Civil Judge Junior Division Vaduj in R.C.S.No. 222/2011 decided on 30/01/2014 is quashed and set aside.
3. R.C.S.No. 222/2011 is decreed with costs.
4. It is hereby declared that the plaintiff and defendants Nos. 8 to 14 are jointly having  $\frac{1}{2}$  share and defendant Nos. 1 to 7 are jointly having  $\frac{1}{2}$  share in the suit properties.
5. The precept be sent to the collector of Satara for effecting partition by metes and bounds of the suit properties as per the respective share of the parties.
6. Defendant Nos. 1 to 7 are restrained from ousting the plaintiff from the suit properties or from alienating the suit properties or creating any third party interest therein till there partition by metes and bounds is effected.
7. Preliminary decree be drawn up accordingly.
8. Inform the concerned Trial Court accordingly.
9. Record and proceeding be sent back to the learned Trial Court.

Vaduj  
Dt. 15/01/2026

(Vidyadhar B. Kakatkar)  
District Judge-1 Vaduj

**CERTIFICATE**

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

*(S. A. Pawar)*  
*Stenographer Grade-1*