



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL (ST) NO. 5295 OF 2026

Farida Ashif Tamboli and Ors

..Appellants

Versus

Hamid Yakub Tamboli

...Respondent

WITH

INTERIM APPLICATION (ST) NO. 5451 OF 2026

IN

SECOND APPEAL (ST) NO. 5295 OF 2026

Mr. Mohammed Zain Khan, with Ashraf Kapoor, i/b One Legal, for the
Appellant.

CORAM: N. J. JAMADAR, J.

DATE : 8th APRIL 2026

ORDER:

1. This Second Appeal is directed against a judgment and decree dated 26th November 2025 passed in RCA No. 174 of 2024 by the learned District Judge, Alibag, District Raigad, whereby the said Appeal preferred by the Appellants, being the legal representatives of late Ajij Yakub Tamboli (the original Defendant No.1) against the judgment and decree dated 18th May 2010 passed by the learned Civil Judge, Senior Division, Alibag in SCS No. 107 of 1998, came to be partly allowed by modifying the said decree to the extent of

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1/8th share of late Fatima, in the properties of late Shaikh Hassan Vajir Tamboli.

2. Respondent Nos. 1 to 3-Plaintiffs instituted SCS No. 107 of 1998 seeking declaration, partition, and separate possession of their share in the suit properties which were purportedly owned by Shaikh Hassan; the father of Hawabi Yakub Tamboli, who was the mother of the Plaintiffs and Defendant Nos. 1 to 4.

3. It was the case of the Plaintiffs that Shaikh Hassan had two wives, first; Jainabi and second; Fatima. Fatima passed away issueless. Shaikh Hassan had a daughter from his first wife, Jainabi, namely Hawabi. Plaintiff Nos. 1 to 3 and Defendant Nos. 1 to 4 are the children of Hawabi, who inherited the suit properties from Shaikh Hassan. Thus, the Plaintiffs and Defendant Nos. 1 to 4 each have 1/7th undivided share in the suit properties.

4. Late Ajij Tamboli (D1) resisted the suit. It was contended that the suit properties described in paras 4(2) and 4(3) were not the properties of Shaikh Hassan. Those properties were purchased by Babaji Shahabuddin, the father of Fatima. After the demise of Babaji, Fatima became the sole holder of the said properties.

5. It was also contended that after Shaikh Hassan's death, Fatima's name was recorded in the Record of Rights of the suit properties. In the year 1965, Fatima made an oral gift "Hibba" in respect of CTS Nos.



436,689, 690, and 773 in favour of Defendant No.1. The latter accepted the gift and was put in possession of those properties. Since Fatima had no issue, Defendant No. 1 had looked after Fatima till her death. The Plaintiff and the rest of the Defendants had thus no right, title and interest in the suit properties.

6. By a judgment and order dated 18th May 2010, the learned Civil Judge, Senior Division, Alibag, partly decreed the suit. It was declared that Plaintiff Nos. 1 to 3 and deceased Defendant No.1 (Defendant Nos. 1/1 to 1/7) collectively, were entitled to 2/11th share each, and Defendant Nos. 2, 3 and Defendant No. 4, being the daughters of Hawabi, were entitled to 1/11th share in the properties described in paragraphs 4(1) to 4(3) of the Plaint. Defendant No.1 was also entitled to the remainder 1/8th share of late Fatima in the suit properties.

7. Being aggrieved, the Appellants preferred Civil Appeal No. 174 of 2014. Respondent Nos. 1 to 3-Plaintiffs also filed Civil Appeal No. 109 of 2010, questioning the computation of the share and the grant of the late Fatima's share in the suit properties in favour of Ajij Tamboli, the deceased Defendant No.1, exclusively, on the basis of the principle of “acknowledged kinsman”.

8. By the impugned order dated 26th November 2025, the learned District Judge partly allowed the Appeal. The findings of the Trial Court that the suit properties belonged to late Shaikh Hassan and that Ajij



Tamboli, the deceased Defendant No.1, had failed to prove the gift purportedly made by late Fatima, came to be affirmed. In regard to the succession to 1/8th share of late Fatima in the estate of Shaikh Hassan, the learned District Judge set aside the findings of the Trial Court that late Ajj Tamboli (D1) succeeded to the Fatima's share as an “acknowledged kinsman”.

9. Mr. Mohammed Khan, the learned Counsel for the Appellants, would urge that the Courts below have committed a grave error in entertaining and decreeing the suit for partition, instituted after the expiry of the period of limitation. The name of Fatima came to be mutated to the Record of Rights of the property CTS No. 436, after the death of Shaikh Hassan, and in the year 1965, the name of Defendant No.1 came to be mutated. The said fact was in the full knowledge of the Plaintiffs. Therefore, a clear case of exclusion of the other sharers was made out.

10. Secondly, Mr. Khan would urge, the Courts below were in error in holding that the suit properties belonged to Shaikh Hassan, the common ancestor. Thirdly, the Trial Court and the Appellate Court committed an error in directing the partition of the House bearing CTS No. 436 at Mouje Pen, as the said property is indivisible and, thus, a decree for partition of the said property could not have been passed.



11. Mr. Khan further submitted that the Courts below have misconstrued the registered gift deed under which Fatima had gifted the suit properties. Such misconstruction of evidence and misapplication of the governing provisions and precedents, give rise to substantial questions of law.

12. I have carefully perused the material on record and the impugned order.

13. The Courts below have recorded categorical finding that, late Shaikh Hassan was the original holder of the suit properties, by making reference to the instrument under which late Shaikh Hassan had acquired the properties. Shaikh Hassan had a brother, Nannu, who passed away intestate and sans any heir, except Shaikh Hassan and, therefore, Shaikh Hassan had become the sole owner of the suit properties. Jainabi was the first wife of Shaikh Hasan, who passed away in the year 1955. Jainabi passed away in 1962. Fatima, the second wife, passed away in the year 1997. Hawabi, the mother of Plaintiff Nos. 1 to 3 and Defendant Nos. 1 to 4, passed away in the year 1960. Conversely, Ajij Tamboli (D1), failed to establish the oral gift purportedly executed by Fatima, the step-grandmother of Plaintiff Nos. 1 to 3 and Defendant Nos. 1 to 4. The execution of the registered gift deed by Fatima in favour of Defendant No.1 was not of any significance as there was no material to show that late Fatima had ownership over the suit properties.



14. The aforesaid evaluation of evidence and findings of fact by the Courts below appear to be based on evidence and material on record. It is pertinent to that Defendant No.1 made an endeavour to set up inconsistent defences. Initially, it was contended that Fatima inherited the suit properties from her father Babaji and husband Shaikh Hassan. Later on an effort was made to drive home the point that Fatima became the owner of the properties as they were allotted to her in lieu of *Mahr* (dower). The two defences appeared to be, in a sense, irreconcilable. Thus, the Courts below were justified in recording a finding that the late Defendant No.1 failed to establish that Fatima had title over the suit properties which she could have passed by way of gift in favour of Defendant No.1. Such findings of fact are not open for interference in the exercise of jurisdiction under the regime of Section 100 of the Code of Civil Procedure, 1908.

15. The submission of Mr. Khan that the suit was barred by the law of limitation is required to be stated to be repelled. The material on record indicates that in the year 1987, the names of the Plaintiffs and Defendant Nos. 1 to 3 were mutated to the Records of Rights of the suit properties. At the instance of Defendant No.1, those mutation entries were cancelled in the year 1988.

16. Moreover, the mutation of the name of Fatima, or for that matter, Defendant No.1, to the Record of Rights of the suit properties does not



make or unmake the title. The mutation entries, it is trite, are made for fiscal purposes.

17. Secondly, Defendant No.1 being a co-sharer, his possession over the suit properties, even if taken at par, constitutes the possession of all the co-sharers. A clear case of exclusion, to the knowledge of the co-sharers, who were sought to be excluded, ought to have been pleaded and proved. It is well settled that, in order to establish ouster as between co-sharers, there must be an open assertion of hostile title by one of them to the knowledge of others, and that mere non-participation in the profits by one party and exclusive occupation by the other, is not conclusive.

18. The submission of Mr. Khan that the Courts below could not have passed a decree for partition, as the property bearing CTS No. 436 along with the house situated thereon is indivisible, does not carry the matter any further. Since the Courts below have passed a preliminary decree, the questions as to the manner in which the partition is to be effected among the parties, can be legitimately determined during the course of execution, post the drawing up of the final decree.

19. In the facts of the case, once it was found that Shaikh Hassan was the sole holder of the suit properties, and Hawabi and Fatima were the only heirs entitled to succeed to the estate of late Shaikh Hassan, the allotment of 7/8 share to Hawabi and 1/8 share to Fatima appears



impeccable. Since Defendant No.1 failed to prove that there was a valid acknowledgment of kinsman, the Appellate Court was justified in holding that late Ajij Tamboli (D1) was not entitled to exclusively succeed to 1/8th share of Fatima in the suit properties.

20. The conspectus of the aforesaid consideration is that no question of law, much less a substantial question of law, arises for consideration.

21. The Second Appeal thus deserves to be dismissed.

22. Hence, the following order:

: O R D E R :

- (i) Second Appeal stands dismissed.
- (ii) In view of the dismissal of the Second Appeal, Interim Application does not survive and accordingly stands disposed.

[N. J. JAMADAR, J.]