

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.791 OF 2016
WITH
CIVIL APPLICATION NO.14887 OF 2016**

1. Yeshwant s/o. Mesa Pratap,
Age : 71 years,
Occ. Pensioner and Agri.,
r/o. Karla, Tq. Tuljapur,
Dist. Osmanabad
Now at Holkar Nagar,
Labour Colony, Latur,
Tq. and Dist. Latur
 2. Ravi s/o. Yashwant Pratap,
Age : 30 years, Occ. Service,
r/o. Babhalgaon,
Tq. and Dist. Latur
 3. Ashok s/o. Mesa Pratap,
Age : 65 years, Occ. Agri.,
r/o. Kalra, Tq. Tuljapur,
Dist. Osmanabad
 4. Sachin s/o. Ashok Pratap,
Age : 30 years, Occ. Service,
r/o. Babhalgaon,
Tq. and Dist. Latur
- ..Appellants

Vs.

1. Bibhishan s/o. Mesa Pratap,
Age : 49 years, Occ. Agri.,
r/o. Kalra, Tq. Tuljapur,
Dist. Osmanabad
2. Anand s/o. Yashwant Pratap,
Age : 32 years Occ. Agri.,

r/o. Babhalgaon,
Tq. and Dist. Latur

3. Taramati w/o. Mahadeo Nagtilak,
Age : 54 years, Occ. Household,
r/o. Karajkheda,
Tq. and Dist. Osmanabad

4. Shantabai w/o. Dalit Kamble,
Age : 45 years, Occ. Household,
r/o. Andur, Tq. Tuljapur,
Dist. Osmanabad

5. Mukaranbai w/o. Navnath Gaikwad,
Age : 42 years, Occ. Household,
r/o. Andur, Tq. Tuljapur,
Dist. Osmanabad

6. Vasant s/o. Mesa Pratap,
Age : 39 years, Occ. Agri.,
r/o. Kalra, Tq. Tuljapur,
Dist. Osmanabad

..Respondens

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Mr.N.P.Patil-Jamalpurkar, Advocate for appellants

Mr.P.S.Chavan, Advocate for respondent no.1

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CORAM : SANGITRAO S. PATIL, J.

DATE : JULY 26, 2017

ORAL ORDER :

The appellants (original defendant nos.1,
2, 4 and 5) have challenged the judgment and
decree dated 19.08.2016 passed in R.C.A. No.148 of

2013 by the learned Principal District Judge, Osmanabad, whereby the judgment and decree dated 12.03.2013 passed in R.C.S. No.151 of 2007 by the learned Civil Judge, Junior Division, Tuljapur, have been confirmed.

2. The learned Counsel for the appellants submits that respondent no.1 (original plaintiff) had relinquished his right in the ancestral and joint family property, which was partitioned at the time of Gudipadwa of 1991, during the lifetime of the father of appellant no.3 and respondent no.1. On the application given by the deceased father of these parties, Mutation entry no.308 came to be recorded and the lands were recorded in the names of appellant no.2 - Ravi, appellant no.4 - Sachin, respondent no.2 - Anand and respondent no.6 - Anand. According to him, this partition was acted upon and therefore, there was no cause of action for respondent no.1 to file the suit for partition. He submits that the trial Court as well

as the first appellate Court ignored the legal effect of this partition and wrongly held that the suit property was not actually partitioned amongst all the sons of the deceased Mesa. The learned Counsel relied on the decision in the case of **Digambar Adhar Patil Vs. Devram Girdhar Patil (Died) and another, AIR 1995 SC 1728**, wherein it has been held that entry in the Record of Rights regarding the factum of partition is a relevant piece of documentary evidence in support of the oral evidence given by party to prove the factum of partition. It is further observed that under the Hindu Law, it is not necessary that the partition should be effected by registered partition deed. He, therefore, submits that the Second Appeal may be admitted to decide the question of law, whether on the basis of the partition and Mutation entry no.308, the ancestral and joint family property of the parties has been actually partitioned. He, further, questioned the

correctness of shares of the parties as determined by the trial Court. According to him, the sisters were not entitled to get any share.

3. The learned Counsel for the respondents supports the concurrent findings recorded by the trial Court as well as the first appellate Court and prays that the Second Appeal may be dismissed since there is no substantial question of law.

4. There is no dispute that as per the Hindu Law, it is not necessary that the partition should be effected by a registered deed of partition. The partition can be effected at the instance of all the parties having interest in the ancestral and joint family property by moving the revenue authorities. In the present case, the common ancestor of the parties was the deceased Mesa. He had four sons and three daughters. As per Mutation entry No.308, the ancestral and joint family property seems to have been allotted to three sons

only in total exclusion of respondent no.1 – Bibhishan and his sisters. There is absolutely no reason given for exclusion of respondent no.1 and his sisters from the said partition. There is nothing on record to show that the notice of this partition was given to them or that they had given consent to that partition. There is absolutely no evidence on record to show that they relinquished their rights to have shares in the ancestral and joint family property. If that be so, such inequitable partition, which totally ignored the rights of respondent no.1 to have share in the ancestral property and that of his sisters to have shares in the property falling to the share of their father i.e. the deceased Mesa, cannot be held to be legal and acceptable, more particularly, when respondent no.1 himself claimed share in the ancestral and joint family property by filing the suit. There are concurrent findings of fact recorded by the trial Court as well as the

first appellate Court that respondent no.1 did not relinquish his right in the ancestral and the joint family property. If that be so, respondent no.1 certainly would have a right to get share in the suit property.

5. The contention of the learned Counsel for the appellants that the cause of action for filing the suit for partition arose in 1991 when the Mutation entry no.308 was effected and therefore, the suit filed in the year 2007, would be barred by the law of limitation, also is not acceptable. There is nothing on record to show that respondent no.1 was actually ousted from the ancestral and joint family property and if that ouster was there, it was from any particular date within the knowledge of respondent no.1. Consequently, the period of limitation would not come in the way of respondent no.1 in claiming partition and separate share in the suit property. The concurrent finding of the learned trial Judge and that of the learned

Judge of the first appellate Court in this regard also needs no interference.

6. The learned Counsel for the appellants raised certain doubts about the shares determined by the trial Court as well as the first appellate Court. It is well settled that the daughters are entitled to have share equal to that of their brother in the share of their father determined in notional partition. Accordingly, the shares of the daughters of the deceased Mesa have been determined by the trial Court and the first appellate Court. After calculation of the shares of the parties while hearing this appeal, it seems that the learned Counsel for the appellants is convinced about the correctness of determination of the shares of the brothers and sisters, who are parties to the suit.

7. In my view, no substantial question of law is involved in this appeal. The concurrent

findings of the trial Court and the first appellate Court need no interference.

8. The Second Appeal is dismissed. Civil Application is disposed of.

9. On the request of the learned Counsel for the appellants, execution of the impugned judgment and decree is stayed for a period of six weeks from today.

[SANGITRAO S. PATIL, J.]

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