

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

**SECOND APPEAL NO.76 OF 2018**

- 1     Malanbai Bapurao Patkal,  
      Age 82 yrs., Occ. Agri. & Household,
- 2     Santram Bapurao Patkal,  
      Age 47 yrs., Occ. Service,
- 3     Sindhubai Santram Patkal,  
      Age 40 yrs., Occ. Service,
- 4     Akash Santram Patkal,  
      Age 18 yrs., Occ. Education,
- 5     Aditya Santram Patkal,  
      Age 15 yrs., Occ. Education,  
      Minor, through his legal guardian  
      mother- appellant No.3

All are r/o Chapadgaon, Tq. Shevgaon,  
Dist. Ahmednagar.

**... Appellants.**

**... Versus ...**

- 1     Yashodabai Patilba Zirpe (deceased)  
      Through her legal representatives :
  - 1A)   Patilba Dagdu Zirpe (deceased)
  - 1B)   Yenubai Gahininath Kakde,  
         Age 67 yrs., Occ. Household,  
         R/o Mangrul (Kd), Tq. Shevgaon,  
         Dist. Ahmednagar.

- 1C) Tukaram Patilba Zirpe,  
Age 64 yrs., Occ. Agri.,  
R/o Antarwali (Kh), Tq. Shevgaon,  
Dist. Ahmednagar.
- 1D) Damodhar Ptilba Zirpe,  
Age 61 yrs., Occ. Retired,  
R/o Chapadgaon, Tq. Shevgaon,  
Dist. Ahmednagar.
- 1E) Sau. Rukhmini Bapu Devadhe,  
Age 49 yrs., Occ. Household,  
R/o Bodhegaon, Tq. Shevgaon,  
Dist. Ahmednagar.
- 1F) Sau. Rahibai Aasaram Kashid,  
Age 44 yrs., Occ. Agri. & Household,  
R/o Bodhegaon, Tq. Shevgaon,  
Dist. Ahmednagar.
- 2 Tarabai Tukaram Zirpe,  
Age 52 yrs., Occ. Agri. & Household,  
R/o Antarwali, Tq. Shevgaon,  
Dist. Ahmednagar.
- 3 Raosaheb Gahininath Bhagwat (deceased)
- 3A) Rambhabai Raosaheb Bhagwat,  
Age 67 yrs., Occ. Household,
- 3B) Karbhari Raosaheb Bhagwat,  
Age 52 yrs., Occ. Agri.,
- 3C) Rajendra Raosaheb Bhagwat,  
Age 40 yrs., Occ. Agri.,
- No.3A to 3C are r/o Erandgaon,  
Tq. Shevgaon, Dist. Ahmednagar.
- 3D) Kadubai alias Mandabai Raybhan Mhasarup,  
Age 47 yrs., Occ. Agri.,

R/o Sukali, Post Mathachi Wadi,  
Tq. Newasa, Dist. Ahmednagar.

- 4 Kesharbai Sonyabapu Bhagwat,  
Age 67 yrs., Occ. Household,
- 5 Babasaheb Sonyabapu Bhagwat,  
Age 52 yrs., Occ. Agri.,
- 6 Sanjivani Bhausahab Bhagwat,  
Age 44 yrs., Occ. Household & Agri.,
- 7 Jaydev Bhausahab Bhagwat,  
Age 21 yrs., Occ. Education,
- 8 Yogesh Bhausahab Bhagwat,  
Age 18 yrs., Occ. Education,

No.4 to 8 are r/o Erandgaon,  
Tq. Shevgaon, Dist. Ahmednagar.

... **Respondents.**

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Mr. A.G. Talhar, Advocate for the appellants

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 09<sup>th</sup> JANUARY, 2019**

**JUDGMENT :**

1 Heard learned Advocate appearing for the appellants. No necessity to issue notice to the respondents by order dated 05.03.2018 of this Court. Record and Proceedings was called. Perused the same.

2 Present appellants are the original plaintiffs. They had filed suit for partition and separate possession as well as for declaration that the sale deed dated 20.03.1986 executed by one Haribhau (deceased) in favour of defendant No.2 is illegal and not binding on the share of the plaintiffs.

3 It is necessary to consider the facts of the case. One Kondiba Kasal is the ancestor. He was survived by wife, son Haribhau and three daughters viz. Mukta, Yashodabai and Malanbai. Kondiba expired. His wife is also no more. Haribhau died issueless in 1992. His wife Jamnabai's name was recorded to the 7/12 extract of the suit land. She expired in 2003. Out of three daughters of Kondiba, Muktabai expired on 04.02.2005. She is survived by defendant No.3 and one Sonyabapu. Sonyabapu has also expired and he is survived by defendant Nos.4 and 5 and one Bhausahab. Bhausahab also dead and he is survived by daughter Yogita. The suit properties are agricultural lands, bearing Block No.62/1 admeasuring 8 Hectares 11 Ares situated at village Antarwali (Kh), Tq. Shevgaon, Dist. Ahmednagar, more particularly, described in para No.1-A of the plaint and land Block No.62/2 admeasuring 1 Hectare 82 Ares situated in the same village, which has been more particularly described in para No.1-B of the plaint. Both the suit properties were originally

belonging to Kondiba. He had other agricultural lands also, like Block Nos.111/1, 103, 15, 76, 77. After death of Kondiba name of his son and daughters came to be mutated vide Mutation Entry No.94 to the 7/12 extract as a Karta of the family. Haribhau was cultivating the lands and his name was in fact mutated in the ownership column, whereas the names of the daughters were entered in the other rights column. Out of the other properties, all of them have sold Block No.111/1, 103 to one Kasole and Zirpe. Further, Block No.15 has been sold by all the heirs to one Bharat and Shridhar Patkal. It is stated that the suit properties are still in common and being cultivated by all of them. Haribhau executed sale deed of 1 Hectare 82 Ares land in favour of defendant No.2 on 20.03.1986 and the fact was mutated by M.E. No.288 to the 7/12 extract. However, consent of other heirs or siblings were not taken. Therefore, the plaintiffs say that they have undivided share in the said property and the said sale deed is not binding on their share. There is no partition between the plaintiffs and defendants by metes and bounds. However, there was a family arrangement.

4           The eastern side of Block No.1 was given to plaintiff No.1. Thereafter, there was defendant No.1's share. The middle portion was of defendant No.2 and then plaintiff No.3. Western side was given to

plaintiff Nos.2, 4 and 5. Muktabai in her lifetime sold 2 Hectares 2 Ares land from western side to plaintiff Nos.4 and 5 during her lifetime for consideration of Rs.1,32,500/-. Since then the plaintiffs are enjoying the said portion of land as owners thereof. When they gave application for getting their names mutated at that time defendant No.1 raised an objection. As a result of which their names have not been recorded to the 7/12 extract. They have filed appeal No.95/2001 before Sub-Divisional Officer, Ahmednagar. As the suit properties are not partitioned by metes and bounds, they do not want to keep it joint as they are facing problem in obtaining a loan. It is stated that they have 1/4<sup>th</sup> share in the suit property. When she asked defendants to separate the same, it was refused, hence, suit for partition and separate possession as well as declaration.

5           The defendants have resisted the claim of the plaintiffs stating that the suit properties are already partitioned. They have denied the contentions that the suit properties are still joint or there was only a family arrangement. Land Block No.62/2 was sold to defendant No.2 for legal necessity of the joint family. The agreement of sale was entered into during the lifetime of deceased Kondiba, however, the sale deed has been effected after his death. Block No.62 was partitioned amongst the

heirs of Kondiba. The details of the said oral partition has been given. The partition is made and names are given to the concerned portion and according to those names, the partition is stated to have been effected. After the partition all of them have been put in possession of the respective shares. Several sale transactions had taken place between the shareholders about different portions of land and if those transactions are taken into account, it becomes clear that suit property has been already partitioned. It was specifically pleaded that there is suppression of material facts by the plaintiffs. Plaintiff No.3 has purchased portion of the land in Gat No.62/1 in the name of plaintiff Nos.4 and 5, this fact admits that they had the knowledge about the previous partition and his specific admission has been given by the revenue authorities to that extent. It is also stated that the suit is beyond the period of limitation since, though the fact of sale in the year 1986 was known to the plaintiffs, they kept silent and therefore, now they are estopped from claiming partition in the said property.

6            On the basis of these rival contentions, issues came to be framed and parties went to trial. Evidence has been led, which is of documentary as well as oral. Taking into consideration the oral as well as documentary evidence on record, the learned Civil Judge Junior Division,

Shevgaon dismissed R.C.S. No.87/2005 on 04.04.2012. The plaintiffs thereafter approached the District Court, Ahmednagar in R.C.A. No.487/2012. Learned District Judge-9, Ahmednagar dismissed the appeal on 17.07.2017. Hence, the plaintiffs have filed the present Second Appeal.

7            Heard learned Advocate Mr. A.G. Talhar for the appellants and perused the Record and Proceedings.

8            It will not be out of place to mention here that he had made submissions supporting the case of the plaintiffs. He had specifically pointed out that both the Courts below have failed to consider that only family arrangement was previously made and what has been purchased by plaintiff No.3 in the name of plaintiff Nos.4 and 5 from deceased Muktabai was her undivided share, which is permissible in law. There was no documentary evidence to prove the previous partition. The alleged admission before the revenue authority ought not to have been considered by both the Courts. The oral as well as documentary evidence has not been properly appreciated and therefore he prayed for admission of the Second Appeal.

9            The defendants have come with a case that during the lifetime of Kondiba he had agreed to sale land Block No.62/2 to

defendant No.2 Tarabai. However, it is to be noted that no positive evidence has been adduced by them. PW 1 Santram had claimed ignorance about any such agreement. But ultimately it appears that Haribhau executed sale deed in favour of defendant No.2 on 20.03.1986. A fact is also required to be considered that the plaintiffs have come with a case that there were other joint family properties also, which have been sold by all the heirs. Under such circumstance, it was required to be proved by the plaintiffs that they had no knowledge about the transaction that had taken place in 1986. They have never objected to the same for about 18 years. It appears that there was a partition and specific portions which went to the share of each of them has been given in the written statement. The witnesses of the plaintiffs have categorically stated that they had the knowledge that after sale, defendant No.2 Tarabai is in possession of Block No.62/2. It is further to be noted that no doubt, the defendants have not come with specific date of which the partition was executed, however, it appears from the written statement that it was after the demise of Haribhau and it is only in respect of Block No.62/1. As per the plaintiffs, all of them were cultivating the land jointly. Under such circumstance, they were having knowledge about handing over possession of Block No.62/2, way back in the year 1986 to defendant No.2. When this fact is not challenged, both the Courts below were

justified drawing an inference that the said sale had taken place for and on behalf of the family. The conduct of the plaintiffs in keeping silence allows us to draw that inference. The admissions given by PW 1 who was deposing on behalf of himself as well as other plaintiffs are important. The fact that has come on record that even during the lifetime of Haribhau though the sale deed had taken place in 1986 and Haribhau died in 1992, none of the plaintiffs challenged the said transaction and no explanation for the same is coming forward from the plaintiffs. Not only the same from sale deed Exh.105 it can be seen that one more sale transaction in respect of Block No.62/1 took place between Jamnabai Haribhau Kasal (widow of Haribhau) and defendant No.2 to the extent of 30 R on 13.01.1997. PW 1 himself was present and himself and his brother were the attesting witnesses to this document. They have not objected to the said transaction. That means, since the properties were no longer joint family properties, they were being sold in pieces, though PW 1 Santram has denied that all the other heirs i.e. sisters of Haribhau had given consent to the transaction dated 20.03.1986. It can be seen from the cross examination of the said witness that he as well as those parties, on whose behalf he was deposing had every kind of knowledge.

written statement of defendant No.1 as to how the partition has taken place and each strip is given name is admitted by PW 1 Santram in his cross examination. Supporting the said fact, it is to be noted that the said fact is admitted before the revenue authority in the statement by plaintiff No.3 and the said statement is at Exh.151. It was important to see, the sale deed executed between Muktabai and plaintiff No.3 is in the name of plaintiff Nos.4 and 5. However, it appears that intentionally the said sale deed was not produced. Necessary inference can be drawn from the statements of the witnesses together with admissions given by PW 1 Santram. At the costs of repetition, it can be said that plaintiffs have suppressed the said fact. Further, from the said property, PW 1 Santram has purchased portion from plaintiff No.1 Malanbai. However, it is stated that he has purchased 4 Aana share. That transaction took place on 09.07.1996. The testimony of PW 1 Bharat, who is the brother of PW 1 Santram, would show that he has admitted a fact that there is partition between him and his brothers and it is recorded before Tahsildar in 2010. That means, when the land under cultivation of the plaintiffs further partitioned between them, if they had not got that portion under partition by metes and bounds, they could not have effected further partition. Under such circumstance, it does not lie in their mouth that the suit lands are still joint. Admittedly, in the sale deed which was

executed by Muktabai in favour of plaintiff Nos.4 and 5 she mentioned the boundaries. This also further supports the theory of partition.

11 Both the learned Courts below have considered all the factual aspects together with the legal points involved. Under such circumstance, no substantial question of law has been made out to admit the Second Appeal. Hence, the appeal is dismissed.

**( Smt. Vibha Kankanwadi, J. )**

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