



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH AT NAGPUR**

**SECOND APPEAL NO. 362 OF 2022**

**1) Raju Anandrao Samrit,**  
Aged about 59 years, Occu.: Business,

**2) Prakash Anandrao Samrit,**  
Aged about 52 years, Occu.: Business,

R/o. Jagnath Budhwari, Piwli Marbat  
Chowk, Nagpur

**... Appellants**

**.. Versus ..**

**1) Ratna Pradip Mali,**  
Aged about 50 years, Occu.: Housewife,  
R/o. Ghodpeth, Tahsil-Bhadravati,  
District-Chandrapur.

**2) Vaishali Kishore Fandi,**  
Aged about 44 years, Occu.: Housewife,  
R/o. Ganjipeth, Old Jailkhana, Nagpur  
District Nagpur.

**...Respondents**

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Shri Madhur Deo, Advocate for appellants.  
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**CORAM : SMT. M.S. JAWALKAR, J.**

**DATED : 21/12/2023**

## **JUDGMENT**

Heard the learned counsel for the appellants.

2. The present appeal is filed being aggrieved by the judgment and decree dated 04/05/2022 passed by learned District Judge-2, Nagpur in Reg. C.A. No. 336/2018, thereby upholding the judgment and decree dated 21/03/2018 passed by learned Civil Judge, Junior Division, Nagpur in R.C.S. No. 855/2013, whereby the suit for partition and separate possession filed by respondent no. 1/plaintiff came to be decreed.

3. The facts in the matter can be summarised as under:-

The plaintiff's case is that defendant nos. 1 and 2 are her real brothers and defendant no. 3 is real sister. The suit properties bearing CTS No. 133 admeasuring 103.08 sq.mtr. situated at Jagnath Budhwari, Nagpur and CTS No. 205, admeasuring 59.08 sq.mtr. situated at Mahal, Nagpur, were the ancestral and joint family properties of their father

late Anandrao Damduji Samrit and his family. He died intestate on 15/01/2010. His widow and mother of the parties to the suit Rukhmabai predeceased to him on 01/09/2000. After the death of Anandrao, the suit properties have not been partitioned between the parties to the suit. The defendants avoided to partition them even after receiving of a legal notice dated 20/11/2012 on behalf of the plaintiff. Therefore, the plaintiff filed a suit for relief of partition, separate possession and mesne profit.

4. The defendant nos. 1 and 2 resisted the suit by filing their written statement and denied that the suit properties are joint family properties of the parties. It was their contention that the suit property of CTS No. 133 is already partitioned and it is allotted to their share. The plaintiff and defendant no. 3 did not have any kind of concern with regard to it. The suit property of CTS No. 205 is their self acquired property and the plaintiff and defendant no. 3 did not have concern over it.

5. The learned Trial Court after appreciating the evidence on record, recorded its finding that the plaintiff proved that the suit properties are ancestral and joint family properties of the parties to the suit. It is also recorded that defendant nos. 1 and 2 failed to prove that the suit properties have already been partitioned between the parties to the suit. These findings are upheld by the learned lower Appellate Court after due consideration of the evidence on record. In view of these concurrent findings of the facts, I do not see any substantial question of law arise for consideration in the present matter. As such, the appeal stands dismissed.

**[SMT. M.S. JAWALKAR, J.]**