



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

SECOND APPEAL NO. 669 OF 2016

- 1] Smt. Kusum w/o Baban Raskar,
Age – 66 years, Occu. Household,
R/o. 18 Park Road, Behind Post Office,
Vallabh Nagar, Indor, Madhya Pradesh.
- 2] Vivek s/o Baban Raskar,
Age: 44 years, Occu. Service,
R/o. 18 Park Road, Behind Post Office,
Vallabh Nagar, Indor, Madhya Pradesh.
- 3] Vikas S/o. Baban Raskar,
Age 38 Years, Occu. Education,
R/o. 18 Park Road, Behind Post Office,
Vallabh Nagar, Indor, Madhya Pradesh,
- 4] Rakhi w/o Anil Gaikwad,
Age 41 Years, Occu. Household,
R/o. Nityaseva, Nirmal Nagar,
Ahmednagar Dist: Ahmednagar.
- 5] Baliram Bhaurao @ Khandu Raskar,
Age 63 Years, Occu. Agril,
R/o. 18 Park Road, Behind Post Office,
Vallabh Nagar, Indor, Madhya Pradesh.
- 6] Ganesh s/o Baliram Raskar,
Age 41 Years, Occu. Agril,
R/o. 18 Park Road, Behind Post Office,
Vallabh Nagar, Indor, Madhya Pradesh.
- 6] Dinesh s/o Baliram Raskar,
Age 35 Years, Occu. Agril,
R/o. 18 Park Road, Behind Post Office,
Vallabh Nagar, Indor, Madhya Pradesh.

... Appellants
(Orig. Defendants)

VERSUS

- 1] Meerabai W/o. Maruti Chede,
Age-60 Yrs. Occu. Household,
R/o. 18 Park Road, Behind Post Office,
Vallabh Nagar, Indor, Madhya Pradesh.
(Since deceased through her legal heirs)

1-A) Sangita W/o Sanjay Bhujbal,
Age: 40 years, Occ. Household,
R/o 120/D15/5, Sch. No. 78,
Indore, Madhya Pradesh.

1-B) Suresh S/o Marutirao Chede,
Age: 46 years, Occ. Service,
R/o Behind Malava Mill,
31, Nav-Jivan Ki Fail,
Indore, Madhya Pradesh.

1-C) Sunita W/o Santosh Chede,
Age: 44 years, Occ. Household,
R/o Behind Malava Mill,
31, Nav-Jivan Ki Fail,
Indore, Madhya Pradesh.

1-D) Aman S/o Santosh Chede,
Age :22 years, Occ. Education,
R/o Behind Malava Mill,
31, Nav-Jivan Ki Fail,
Indore, Madhya Pradesh.

1-E) Mayank S/o Santosh Chede,
Age: 19 years, Occ. Education,
R/o Behind Malava Mill,
31, Nav-Jivan Ki Fail,
Indore, Madhya Pradesh.

- 2] Kusum w/o Gangadhar Padole,
Age: 58 years, Occu. Household,
R/o. Tilak Road, Ahmednagar,
Tal:Ahmednagar Dist:Ahmednagar.

- 3] Suman w/o Ramesh Bhujbal,
Age- 56 Yrs. Occu. House hold,
R/o Bhingar, Tal:Ahmednagar,
Dist:Ahmednagar.
- 4] Latabai w/o Asaram Chipade,
Age- 53 Yrs. Occu. House hold,
R/o. Chipade Mala, Kedgaon Devi Road,
Ahmednagar, Tal: & Dist: Ahmednagar. **... Respondents**
(Orig. Plaintiffs)

...

Mr. V. J. Dixit, Senior Counsel, i/b Mr. Satyajit S. Dixit, Advocate for Appellants.

Smt. M. A. Kulkarni, Advocate for Respondents.

...

AND

**CIVIL APPLICATION NO. 9994 OF 2023
IN SA/669/2016**

AND

**CIVIL APPLICATION NO. 11444 OF 2021
IN SA/669/2016**

CORAM : KISHORE C. SANT, J.

RESERVED ON : 24th July, 2024.

PRONOUNCED ON : 16th October, 2024.

JUDGMENT :

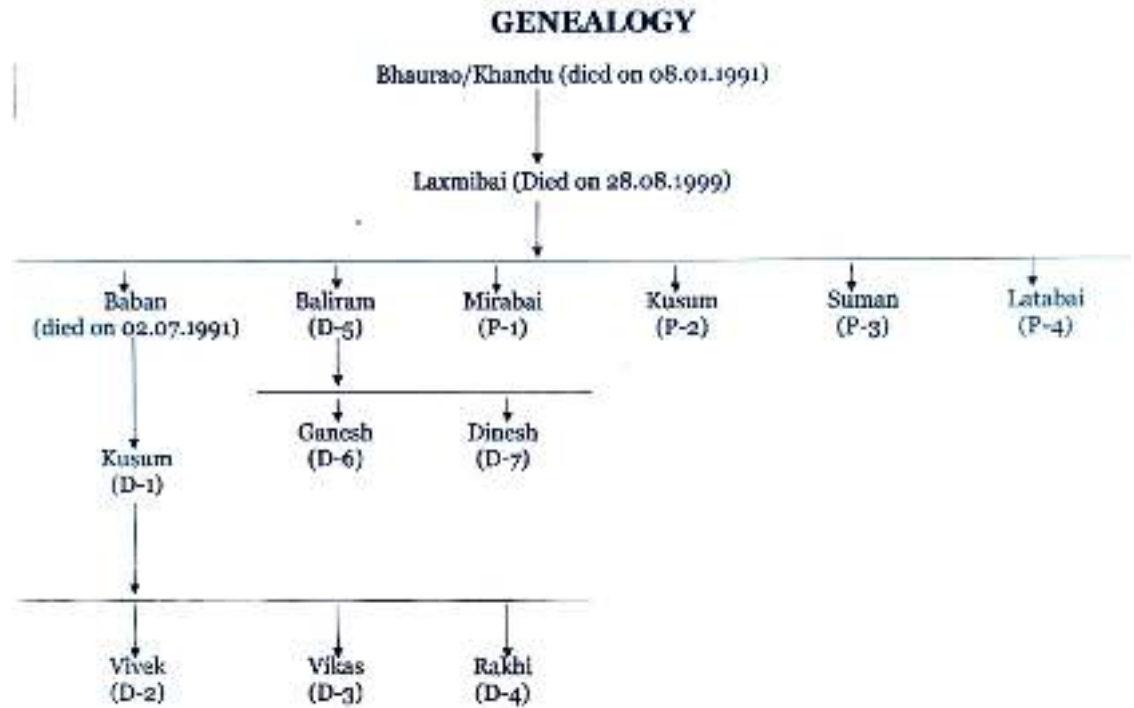
. This second appeal arises out of judgment and order dated 22nd January, 2016 passed by the learned District Judge – 03,

Ahmednagar in Regular Civil Appeal No.235 of 2007 arising out of judgment and order dated 9th October, 2007 passed by the learned 6th Joint Civil Judge (Senior Division), Ahmednagar in Regular Civil Suit No.64 of 2000. The suit was decreed declaring plaintiff Nos.1 to 4 have 1/18th share each in the properties. Defendant No.5 is held entitled to get 7/18th share and defendant No.1's husband has 7/18th share. The share was to be devolved upon their legal representatives in the suit properties.

2 By way of impugned judgment, the decree was modified. The appeal was partly allowed. The Cross-Objection Exh.19A came to be allowed. Plaintiffs Nos.1 to 4 were held entitled to get 1/12th share each in the suit properties. Defendant Nos.1 to 4 were held entitled to get 1/3rd share in joint amongst them. Defendant No.5 was held entitled to get 1/3rd share in the suit properties. Defendants Nos. 6 and 7 were not given separate share holding that they were claiming their share through defendant No.5 and they will be entitled to get the share from defendant No.5.

3 The present appellants are original defendant Nos.1 to 7. The present respondents are original plaintiffs. The parties are referred to as per their original status in the suit. The relations

between the parties in genealogy are produced hereinbelow:-



4 The properties, subject matter of the suit, are situated at Chas, Taluka and District Ahmednagar as below:-

Sr.No.	Gat No.	Area H. R.	Assist Rs. Ps.	Village
1)	173	1=03	2=06	Chas.
2)	190	4=60 0=11 ----- 4=71	6=19	Cash.
3)	283	0=16	1=50	Chas.
4)	1018	7=27 1=46 ----- 8=73	4=64	Chas.

5)	281	K	0=01	0=09	Chas.
			0=02		

			0=03		
6)	168	K	3=96	7=44	Chas.
			0=02		

			3=98		

5 The suit was filed in respect of property Gut No.173, 1 Hectare 3 R of village Chas. The property at serial No.4 was deleted in appeal. Thus, as per the genealogy, the relations are that defendant No.1 is wife of deceased brother of plaintiffs. Defendant Nos.2 to 4 are sons of defendant No.1. Defendant No.5 is another brother of the plaintiffs. Defendant Nos.6 and 7 are sons of defendant No.5. The plaintiffs, defendant No.5 and husband of defendant No.1 are the daughters and sons of one Bhaurao Khandu, who died on 8th January, 1991 at Indore. He was the original owner and possessor of the suit properties. Property No.168 was purchased by him from the joint family income and thus, the said property is also a joint family property. After the death of Bhaurao, plaintiffs' names were mutated in the possession column in revenue record vide mutation entry No.1525. Defendant No.5 and the husband of defendant No.1 deceased/Baban, however, obtained signatures of the plaintiffs on an

application on 22nd March, 1991, under the pretext that the application was for recording their names as legal heirs of deceased father. The plaintiffs, under the said belief, signed the application. Later on, they found that their names came to be deleted from the revenue entries by the Talathi. Defendant Nos.1 and 5 added the names of their sons in the revenue record on 16th April, 1992, vide mutation entry No.1646. After the death of husband of defendant No.1, entry was taken in the names of defendant No.1 and defendant Nos.2 to 4 vide mutation entry No.1647. The mother Laxmibai died on 28th August, 1999. There was an amount of Rs.21,000/- in the account of deceased Laxmibai in bank in fixed deposit. When the plaintiffs tried to withdraw the amount, the bank asked for succession certificate, as defendant No.5 had recorded his objection in the bank. At that time, the plaintiffs came to know that defendant No.5 has got even their names deleted from the properties as well. That plaintiffs, therefore, went to Talathi for recording their names. It was to their shock they found that their names and the name of their mother Laxmibai were deleted from the revenue record on 16th April, 1992.

6 It is the case of the plaintiffs that they never relinquished their rights in the suit properties. The suit properties being joint family

property, they have undivided share in the properties. The plaintiffs then asked for partition of the suit properties, however, the defendant avoided. The suit was, therefore, filed for partition and separate possession and for injunction.

7 All the defendants appeared and resisted the suit by filing their respective written statements. It is case of defendants that block No.168 was purchased by Baban in his own name. Defendant No.1 and defendant No.5 purchased the said property from their own income. The plaintiffs do not have any share in block No.168. It is their case that the plaintiffs and deceased Laxmibai have relinquished their shares in land block Nos.173, 190, 283, 1018 and 281 i.e. ancestral properties by giving an application in writing to Talathi. Deceased Laxmibai had also written that she is maintained by the defendants and therefore, she relinquished her share in the property. The Talathi after recording the statements of the plaintiffs and deceased Laxmibai, has deleted their names by following proper procedure, calling for objections. There-again, the plaintiffs gave in writing that they are relinquishing their rights in the share. It is only thereafter, the entries were taken bearing mutation entry Nos.1446 and 1447. It is denied that the defendants ever obtained signatures of

the plaintiffs under the false pretext. They raised objection as to the limitation as the alleged letter relinquishing right was given sixteen years back. Plaintiff No.2 was not residing with the husband and had come to reside with defendant Nos.1 to 4. She stayed with them for 8 to 10 years. The defendants took her care. They prayed for dismissal of the suit.

8 Thus, at these rival pleadings, the matter proceeded. The learned Trial Judge framed the issues and answered the issues holding that the plaintiffs have proved that they are having undivided share in the lands, except block No.168. The suit was within limitation. The plaintiffs are held entitled to get partition and separate possession. The injunction was refused holding that the plaintiffs failed to prove that the defendants were trying to alienate the suit properties and passed a judgment and decree declaring plaintiff Nos.1 to 4 have $1/18^{\text{th}}$ share each in the properties. Defendant No.5 is held entitled to $7/18^{\text{th}}$ share and defendant No.1's husband is held entitled to $7/18^{\text{th}}$ share. The share was to be devolved upon his legal representatives in the suit properties.

9 Against this judgment and decree, the defendants filed appeal bearing Regular Civil Appeal No.235 of 2007. The plaintiffs

also filed cross-objection. So far as ascertainment of shares is concerned, it is agitated that they are entitled to get 1/12th share instead of 1/18th. It is on the ground that after the death of Baban i.e. father of the plaintiffs, their mother namely deceased Laxmibai also inherited the share in the suit property, which would devolve upon her legal heirs. The cross-objection was thus, only to that extent.

10 The learned appellate Court held that the plaintiffs are entitled to get 1/12th instead of 1/18th. It also held that the plaintiffs have right even in property block No.168. Thus, the original defendants now have come to this Court challenging the judgment and order under appeal. This Court while admitting the second appeal, framed the following substantial questions of law:-

- “1) Whether mutation entry No.1525 would amount to relinquishment of their shares from the suit properties by the plaintiffs ?
- 2) Whether relinquishment of right in property requires registration under Section 17 of the Indian Registration Act taking into consideration the provisions under Section 17 (2) (viii) of the said Act?
- 3) Whether the first appellate Court was justified in exercising powers under Order XLI Rule 33 of Code of Civil Procedure in respect of Gut No.168 ?

- 4) Whether the suit was within limitation ?
- 5) Whether plaintiffs had share in the suit properties? If yes, to what extent ?
- 6) Whether interference is required in the Judgment and decree of both the Courts below ?”

11 In view of the substantial questions of law framed, the learned counsel for the parties addressed this Court.

12 In addition to oral submissions, the learned counsels for the parties have also placed on record written notes of arguments. The learned Senior Counsel Mr. Dixit submits that the plaintiffs have already relinquished their share by filing application before Talathi. The Talathi by issuing notices had deleted the names of the plaintiffs. In view of relinquishment of right, plaintiffs have no right in properties. The land block No.168 was never part of the joint family property. While filing cross-objection, the plaintiffs did not claim any right in the property block No.168. Still, the learned lower appellate Court has declared that the plaintiffs have share in the said land as well. The learned appellate Court has committed error in granting 1/12th share to the parties when that was never joint family property. Exhibit-75 i.e.

letter given to Talathi is admitted by the plaintiffs in the evidence. It is also further admitted that no appeal was preferred against mutation entries No.1446 and 1447. In the plaint itself there is reference that land block No.168 is purchased by Bhaurao and Baban. The signatures on the letter to Talathi are not disputed. Though the daughters can claim right in the joint family property, however, in view of letter of relinquishment, the daughters are not entitled to partition.

13 He further submits that mutation entry No.1525 shows that rights are relinquished, even by mother Laxmibai and therefore, there is no question of the plaintiffs getting share even in the property of deceased Laxmibai. Looking at the prayer in the suit, it is for partition and injunction. Once the shares are voluntarily given up, such prayer could not have been made. In view of Order VI Rule VII, the details of fraud are required to be specifically stated. In the plaint, no such details are given. Section 85 of the Maharashtra Land Revenue Code (MLRC) recognizes this mode of partition and relinquishment in the share in the joint family property. No such relief of declaration that the said writing is not binding, is sought for. When the trial Court has specifically held that no partition be made of land block No.168, the appellate Court without any justifiable reason has disturbed the said

finding. The learned appellate Court has wrongly framed the points. He further submits that in view of Section 17 of the Registration Act, it was not necessary to get the relinquishment deed registered as the document was only in the nature of memorandum of settlement. Section 17 of the Registration Act is not applicable. The reasoning given by the appellate Court as regards fraud is not correct. The cross-objection was only in respect of extent of share in the property. The appellate Court by granting partition even in respect of land block No.168 has exercised jurisdiction beyond its power.

14 In support of his arguments, the learned Senior Counsel placed reliance on the following judgments:-

- a) ***Ravinder Kaur Grewal and others Vs. Manjit Kaur and others,***
(2020) 9 Supreme Court Cases 706, to submit that no registration is required.
- b) ***Digambar Adhar Patil Vs. Devram Girdhar Patil (Died) and another,***
1995 Supp (2) Supreme Court Cases 428, in respect of Section 32-G of the Bombay Tenancy and Agricultural Lands Act.

15 Mrs. Kulkarni, learned counsel for the respondents vehemently opposed the second appeal. She submits that no substantial question of law is involved in the present appeal. Exhibit-75 is on simple paper and cannot be considered to be relinquishment deed. Reference to Section 85 of the MLRC is not material. In any case, this ground was not raised in the trial Court as well as in the appellate Court. Assuming that Section 85 of the MLRC is an application, still the procedure provided under Section 85 is not followed. Once the Court has come to a conclusion that the plaintiffs have right in joint family property, the appellate Court has rightly held that plaintiffs have right even in land block No.168. There is nothing on record to show that land block No.168 is purchased from the income of deceased Baban. The sale-deed of land block No.168 is not on record. The prayer in the suit was in respect of suit properties, which includes land block No.168. She further argued that the learned appellate Court has rightly exercised the power vested in it. So far as share is concerned, she submits that the learned appellate Court has rightly considered that deceased Laxmibai was also entitled to receive the share and after her death, all the parties will get share even in the property of deceased Laxmibai. The share can be modified at any stage.

16 In support of her arguments, the learned counsel for respondents relied upon the following judgments.

- a) ***Gangaram Sakharam Dhuri since deceased through L.R. Vishnu and others Vs. Gangubai Raghunath Ayare and others, 2007(5) Mh.L.J. 136.***
- b) ***Mahadev Govind Gharge and others Vs. Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, 2011(5) Mh.L.J. 532.***
- c) ***Ganduri Koteshwaramma and another Vs. Chakiri Yanadi and another, 2012(1) Mh.L.J. 613.***
- d) ***Ravinder Kumar Sharma Vs. State of Assam and others, AIR 1999 Supreme Court 3571.***
- e) ***Baikuntha Nath Paramanik (dead) by his L. Rs. and heirs Vs. Sashi Bhusan Paramanik (dead) by his L. Rs. and others, AIR 1972 Supreme Court 2531.***
- f) ***Vineeta Sharma Vs. Rakesh Sharma and others, (2020) 9 Supreme Court Cases 1.***

17 In rebuttal, the learned Senior Counsel submits that in the evidence of the plaintiffs it is accepted that all the plaintiffs got married prior to 1984. He invited attention to the evidence of Talathi, who was examined by defendant No.2. The Talathi in his evidence has clearly stated about letter of relinquishment and the entries taken on the basis of the said letter.

18 So far as the first question about mutation entry No.1525, this Court has to examine as to whether the letter Exhibit-75 can be treated to be a relinquishment deed. The signatures on the said letter are not disputed. What is disputed is only that the brothers under the pretext of filing an application for mutation took signatures of the plaintiffs. Except this, there is nothing to show any fraud. Therefore, the main question is as to whether even assuming that this letter is given voluntarily would amount to relinquishment. Section 17 of the Registration Act requires a document to be registered when the rights in respect of the immovable property are conveyed. In the present case, admittedly, there is no other document to show that the plaintiffs have conveyed their property or relinquished their share in the joint family property. This Court finds that though it is submitted by the

appellants, the Talathi had issued notice to the sisters and thereafter, had taken mutation entry No.1525. However, from the evidence of Talathi the same is not brought on record. From the said evidence, there is nothing to indicate that notices were issued to the plaintiffs. On the contrary, in the cross-examination, he accepted that he does not have document to show that the notices were issued to the plaintiffs. It is clear from the evidence that while taking mutation entry no procedure was followed. This Court therefore, holds that the mutation entry No.1525 would not amount to relinquishment of the shares of the plaintiffs in the suit property.

19 The second question is about Section 17 (2)(viii) of the Registration Act. This section clearly requires that whenever immovable property is conveyed or the right is relinquished, registration is compulsory. In the case of *Ravinder Kumar Sharma* (supra), the question was in respect of family settlement, which was reduced into writing and memorandum was prepared. The Honourable Apex Court in the said judgment held that such document need not be registered. The Court considered that the question would depend upon as to whether the document in dispute creates or transfers right in immovable property or whether it is only

memorandum which only recorded pre-existing rights in the immovable property or arrangements or terms already settled between the party in respect of immovable property. It is held that when the document creates or transfers rights for the first time in immovable property, registration would be necessary.

20 Considering above aspect, the nature of the present so-called relinquishment deed needs to be considered. Taking the case of the appellants as it is, the appellants have also stated that the mutation entry was taken on the basis of document of relinquishment deed. So it is clear that even the defendants accepted that the document Exhibit-75 was not a memorandum of settlement, but was a document by which the plaintiffs relinquished their share. This Court finds that the judgment in the case of *Ravinder Kumar Sharma* (supra) is not of any avail to the defendants in this case. The second question of law is thus answered that the documents Exhibit-75 cannot be accepted in the evidence as it is not registered.

21 So far as third question, as to whether the first appellate Court was justified in exercising power under Order XLI Rule 33 of the Code of Civil Procedure is concerned, this question needs to be

tested not only in view of Order XLI Rule 33, but also to be tested in the light of cross-examination of the plaintiffs.

22 It is seen in the present case that the findings recorded by the trial Court as regard land block No.168 is accepted by the plaintiffs. Even in the cross-objection, there is nothing to indicate that the said finding is challenged by raising ground. In view of this fact, it was not proper for the first appellate Court to pass any decree in respect of land block No.168. The decree to that extent passed by the appellate Court needs to be set aside.

23 So far as limitation is concerned, the point is not seriously agitated by any of the parties. Therefore, this Court holds that the finding does not require any interference.

24 So far as extent of share of plaintiffs in the share of the suit properties is concerned, this Court finds that the father of the plaintiffs and defendants died on 8th January 1991. Naturally after his death, the property went to four plaintiffs, husband of defendant No.1, deceased Baban, other son i.e. defendant No.5 and Laxmibai, mother of plaintiffs and defendant Nos.1 & 5. Thus, there were seven shares.

After Laxmibai, the share of Laxmibai would further devolve upon the four plaintiffs, husband of defendant No.1 and defendant No.5. Thus, six shares. This Court finds that the learned appellate Court has rightly therefore, demarcated the shares. Defendant Nos.1, 2 and 3 will get share in the share of deceased Baban. Defendant Nos.5, 6 and 7 altogether will get one share and the plaintiffs will get one share each by making six shares out of share to which Laxmibai was entitled.

25 The fifth question is about entitlement of the plaintiffs to the share in the suit properties. The law is now settled by the Honourable Apex Court in the case of *Vineeta Sharma* (supra). Thus, all the plaintiffs have the shares in the property to the extent as held by the learned District judge in the appeal.

26 As regards the last question, this Court holds that no interference is required so far as first four questions are concerned. The interference is required only in respect of granting share to the plaintiffs even from land block No.168. This Court thus, holds that the decree passed by the learned first appellate Court needs to be maintained, except clause No.3(a) i.e. in respect of land block No.168.

Thus, only modification to the decree in respect of clause 3(a), which reads as under:

“3 (a) It is hereby ordered and decreed that plaintiffs No.1 to 4 have got 1/12th share each in the suit properties described in para 1(1) to (3) and (5).”

27 Decree be drawn up accordingly. The appeal is allowed to above extent. No order as to costs.

28 Pending civil applications also stand disposed of.

[KISHORE C. SANT, J]

. At this stage, learned Senior Counsel for appellants prays for continuation of interim relief, which is running since admission of the appeal.

2 This request is heavily opposed by the learned counsel for respondents. However, looking to the fact that the interim relief is continued for long time, the same be continued for further six weeks from today, with a condition that the appellants shall not alienate the properties or shall not create any third party interest in the suit properties.

[KISHORE C. SANT, J]