



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

SECOND APPEAL NO. 821 OF 1999

1. Tukaram s/o Harji Jadhav,
(died) per L.Rs:-
 - (a) Ananda Tukaram Jadhav,
Since deceased through L.Rs.
 - 1-a-a Gangadhar s/o Anandrao Jadhav,
Age : 35 Years, Occu. : Agril.,
R/o Kadati, Tq. and Dist. Hingoli.
 - (b) Balubai w/o Mahadji Thorat,
Age : 50 Years, Occu. : Household,
R/o Sawad, Taluka Hingoli,
District Parbhani.
 - (c) Kalabai w/o Vithal Dange,
Age : 45 Years, Occu. : Household,
R/o Vaijapur, Tal. Hingoli,
District Parbhani.
 - (d) Vatchalabai W/o Dharuji Gulakhe,
Age : 30 Years, Occu. : Household,
R/o Amla, Taluka, Hingoli,
District Parbhani.
 - (e) Prayagbai W/o Yeshwanta Bhopale,
Age : 25 Years, Occu. : Household,
R/o Changephal, Tq. Hingoli,
District Parbhani.
2. Jayaji s/o Harji Jadhav,
Since deceased on 14.03.1999
per L.Rs :-

- (a) Kedarling S/o Jayaji Jadhav,
Age : 35 Years, Occu. : Agril.,
R/o Kadati, Taluka Hingoli,
Dist. Parbhani.
- (b) Sadashiv s/o Jayaji Jadhav,
Age : 27 Years, Occu. & r/o same.
- (c) Thakubai w/o Jayaji,
Age : 61 years, Occu. : & r/o as above

As per pursis dt. 06.02.2025 she is
dead and her L.Rs. are already on
record.

- (d) Shivkantabai W/o Baban Ingole,
Age : 30 Years, Occu. Household,
R/o Jawla (Bk), Tq. Sengaon,
Dist. Parbhani.
 - (e) Leelabai w/o Rameshrao Ingole,
Age : 24 Years, Occu. : Household,
R/o as above.
3. Sakharam s/o Laxman Lothe,
Since deceased through his L.Rs.
- 3/1 Sheshrao S/o Sakharam Lothe,
Age : 58 Years, Occu. : Agril.,
R/o Kalkondi, Post Narsi Namdeo,
Taluka and District Hingoli.
- 3/2 Devrao S/o Sakharam Lothe,
Age : 55 years, Occu. : Agril.,
R/o Kalkondi, Post Narsi Namdeo,
Taluka and District Hingoli.
- 3/3 Bhaurao S/o Sakharam Lothe
Age : 52 years, Occu. : Agril.,
R/o Kalkondi, Post Narsi Namdeo,

Taluka and District Hingoli.

- 3/4 Lilbai D/o Sakharam Lothe,
Now W/o Chandrakant Gaikwad,
Age : 65 years, Occu. : Housewife.,
R/o Kalkondi, Post Narsi Namdeo,
Taluka and District Hingoli.
- 3/5 Ujanavati D/o Sakharam Lothe,
Now W/o Baban Gaikwad,
Age : 62 years, Occu. : Housewife.,
R/o Khandala, Post Khandala,
Taluka and District Hingoli.
- 3/6 Babybai D/o Sakharam Lothe,
Now W/o Vitthal Kadam,
Age : 49 years, Occu. : Housewife,
R/o Ansingh, Post Ansingh
Taluka and District Wasim.
4. Ananda s/o Tukaram Jadhav,
Age : 27 Years, Occu. : Agriculture,
R/o Kalkondi, Tqluka Hingoli,
Dist. Parbhani.

.. Appellants

Versus

1. Kundlik S/o Maroti Jadhav,
Age : 27 Years, Occu. : Agriculture,
R/o Kadati, Taluka Hingoli,
District Parbhani.
2. Geetabai W/o Shankarrao
(Name of previous husband Gyanu)
Kawarkhe, Age : 40 Years,
Occupation : Agril.,
R/o Goregaon, Tqluka Hingoli,
District Parbhani.

3. Yelabai (died) L.Rs.
Muktabai W/o Ramchandra Ingle,
Age : 35 Years, Occu. : Agriculture,
R/o Sirasam, Taluka Kalamnuri,
District Parbhani. .. Respondents

Shri Vijay P. Latange, Advocate for Appellant Nos. 1/a/a.
Shri A. M. Nagarkar, Advocate fo Appellant No. 2(a) and 2(d).
Shri Pavankumar S. Agrawal, Advocate for the Appellant Nos.
3/1 to 3/6.
Shri B. S. Kudale, Advocate for the Respondent No. 1.
The Respondent Nos. 2 and 3 are served.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 12.09.2025
JUDGMENT PRONOUNCED ON : 04.10.2025

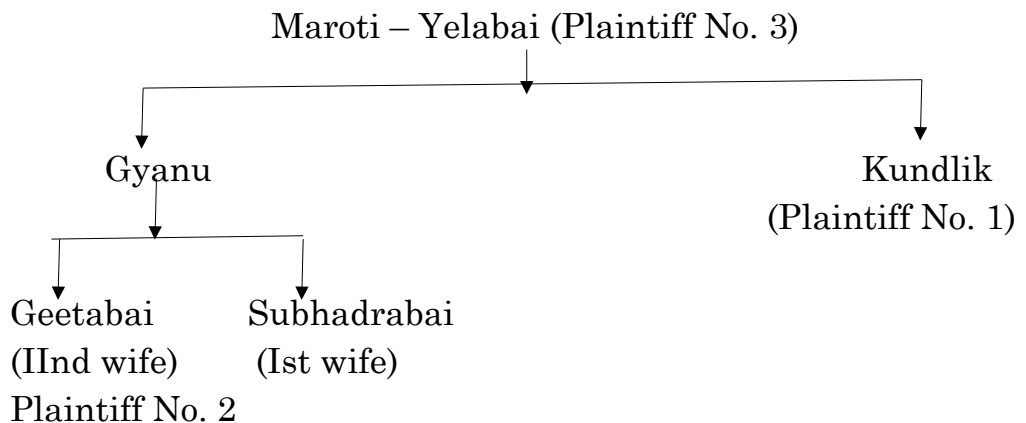
JUDGMENT :

. Heard both sides.

2. Second appeal is arising out of alternate findings of facts to the extent of land Sy. No. 47, which is the only disputed property. Trial Court held that land Sy. No. 47 is exclusively belonging to deceased Gyanu, which devolved upon his widow Subhadrabai, whereas lower Appellate Court held it to be of joint family property.

3. The substantial questions of law which fall for consideration as per order dated 28.04.2003 are as follows :

1. Whether the First Appellate Court is justified in holding that the land Survey No. 47 is joint family property ?
 2. Whether the First appellate Court is justified in reversing the findings that the land Survey No. 47 is self acquired property, without coming into close scrutiny with the reasons assigned by the trial Court and without giving reasons for accepting the said findings of facts recorded by the Trial Court ?
4. Appellants are original defendants. Respondents are original plaintiffs in R.C.S. No. 112 of 1976. Subhadrabai was defendant No. 1 in the suit, but she was deleted. The genealogy to show the relationship is as follows :



5. At the outset, it is necessary to clarify that R.C.S. No. 112 of 1976 was filed in respect of land Sy. Nos. 31/3, 2/E/5, 47/1, 47/2, 94/1 and a house property situated at Kadati for partition/possession and declaration that the alienations made by the then defendant No. 1 – Subhadrabai are not binding. Both the Courts below concurrently held that it was undivided family and decreed the suit for partition granting shares in land Sy. Nos. 31/3, 2/E/5, 94/1 and house. The whole controversy remains with Sy. No. 47.

6. It is contended by the plaintiffs that suit properties were undivided joint family properties. Sy. No. 47 was purchased in the name of Gyanu from Shivdasappa Wani vide sale deed dated 06.09.1952 by the joint family. It was purchased from nucleus of other properties. Maroti died in the year 1956. Gyanu died in the year 1960, who is survived by two widows Subhadrabai and Geetabai, but no issues. Subhadrabai alienated Sy. No. 47 illegally to the defendants without any legal necessity. She had no right to alienate as it was joint family property. The defendants were illegally enjoying possession of Sy. No. 47. The shares were denied and suit was required to be filed.

7. Subhadrabai, the then defendant No. 1 filed written statement contesting the suit mainly on the ground that Sy. No. 47 was self acquired property of her husband Gyanu purchased on 06.09.1952. The consideration was paid by her mother. Out of that 1/4th was contributed by the defendant No. 2 – Jayaji. She was required to alienate part of Sy. No. 47 to defendant No. 1 – Tukaram on 14.06.1971. Thereafter she was required to alienate 06 Acres 12 Gunthas to defendant No. 3 – Sakharam on 19.06.1976. The purchasers are in possession of the lands and alienations are valid.

8. The defendant No. 4 submitted written statement on the same line denying that Sy. No. 47 is joint family property. The defendant Nos. 2 and 3 also supported Subhadrabai and

reiterated that Jayaji had contributed 1/4th contribution and he was in possession of 6 Acres since beginning, which was converted into ownership vide sale deed dated 14.06.1971.

9. Parties placed on record documentary evidence in the form of revenue record and sale deeds. They adduced oral evidence of two witnesses on either side. Trial Court partly decreed the suit vide judgment dated 28.02.1985. Plaintiffs were granted half share including Geetabai in Sy. No. 31/3, 2/E/5, 94/1 and house. The suit land Sy. No. 47 was held to be exclusive property of Gyanu and the alienations by his widow Subhadrabai were held to be valid.

10. Being aggrieved respondents preferred R.C.A. No. 82 of 1985. By judgment dated 04.03.1999, appeal was allowed partly. Partition and shares in other properties was confirmed. The decree in respect of Sy. Nos. 47/1 and 47/2 was reversed holding that it was joint family property. Plaintiffs were granted 1/3rd share in Sy. No. 47/1 and 47/2. The sale deeds executed by Subhadrabai were held to be not binding on the shares allotted to them. Subhadrabai was held to be entitled to 1/6th share, which was directed to be allotted to the purchasers.

11. Learned counsel for the appellants Mr. Agrawal appearing for appellant Nos. 3/1 to 3/6 submits that both the Courts below ought to have allotted share to deceased Subhadrabai being widow. She was entitled to have a share along with plaintiffs. It

is submitted that lower Appellate Court committed grave error of jurisdiction in holding that Sy. No. 47 is joint family property when the revenue record, unchallenged mutation entries and the sale deeds disclose it to be exclusive property of Gyanu. It is submitted that after demise of Gyanu, Subhadrabai sold Sy. No. 47/2 to Jayaji and Ananda. Thereafter Sy. No. 47/1 to Sakharam as she was in need of money. It is further submitted that Kundlik is not entitled to get any share because he was not class I heir. It is further submitted that Geetabai, plaintiff No. 2 is not entitled to any share as she was remarried after death of Gyanu. Reliance is placed on the judgment of the Supreme Court in the matter of Kizhakke Vattakandiyil Madhavan (Dead) through L.Rs. Vs. Tiyyurkunnath Meethal Janaki and others reported in (2024) 3 MLJ 107.

12. Learned counsel Mr. Kudale has canvassed submissions on behalf of the respondent No. 1. Appellant No. 1/A and appellant Nos. 2(a) to 2(d) adopted his submissions. They submitted that there was more than 40 Acres of land available with the joint family, which was sufficient nucleus to purchase Sy. No. 47. As against that there is absolutely no evidence on record to show that any independent source of income was available to Gyanu. It is submitted that the so called financial assistance provided by mother-in-law of Gyanu was not established. The cross examination of defendants witness namely Sakharam did not corroborate the theory of Subhadrabai. It is vehemently submitted that respondent No. 1 – Kundalik is entitled to have entire land of Sy. No. 47 because Subhadrabai had no issue and

her share would fall back to Kundalik. It is further contended that respondent No. 2 Geetabai was entitled to have a share. It is further submitted that Appellate Court rightly decided the matter.

13. I have considered rival submissions. I have carefully gone through original record. Sy. No. 47 admeasuring about 24 acres was purchased from Shivdasappa Onkardas Wani vide sale deed dated 06.09.1952 in the name of Gyanu exclusively. Gyanu died in the year 1960 leaving behind Subhadrabai and Geetabai widows, but no issue. Near about 12 acres of part of Sy. No. 47, which was in possession of tenant Sadashiv was declared to be his ownership U/Sec. 38 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Subhadrabai sold Sy. No. 47/2 measuring 06 Acres to appellant No. 2 – Jayaji and appellant No. 4 – Ananda vide sale deed dated 14.06.1971 (Exhibit 89). The possession was also parted with. Thereafter she further alienated 06 Acres of Sy. No. 47/1 to her real brother, appellant No. 3 – Sakharam on 19.06.1976 vide sale deed Exhibit 91. The purchasers are in possession of the respective parcels of the lands.

14. The genealogy discloses that Subhadrabai was member of the family being first wife of Gyanu. The second wife was Geetabai, who contracted remarriage after death of Gyanu in the year 1960. The plaintiffs are allotted shares being members of joint family in various properties by both the Courts below.

Subhadrabai was alive and she was defendant No. 1 in the suit. She had filed written statement. She is entitled to be treated as a member of the joint family and entitled to receive share. It is incomprehensible as to why Subhadrabai is excluded when it comes to the partition in the properties. Learned counsel Mr. Agrawal is right in contending that Geetabai could be allotted a share, then definitely Subhadrabai is also entitled to share in not only Sy. No. 47, but other suit properties also.

15. Both the parties have not disputed that suit lands excluding Sy. No. 47 are undivided joint family properties. Subhadrabai died without leaving any issue, but the alienations made by her during the life time are relevant. The purchasers are entitled to have adjustments of the equities against the share allottable to Subhadrabai. Parties are not challenging partition in respect of other suit properties. But principally and logically she is entitled to have share in all the properties of the joint family along with other members of the family.

16. Geetabai remarried after death of Gyanu. Both learned counsels have made rival claims for entitlement of Geetabai to receive the share in the joint family property by referring to Sec. 2 of the Hindu Widows Remarriage Act 1856 (hereafter referred as to the 'Act of 1856' for the sake of brevity and convenience). The relevant section is as follows :

The Hindu Widows Remarriage Act 1856

1.

2. **Right of widow in deceased husband's property to cease on her re-marriage.**_ All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she has then died; and the next heir of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.”

17. The submission of the appellants is that on remarriage, Geetabai ceases to be member of earlier husband’s family. She is deemed to be dead. My attention is adverted to the judgment rendered by the learned Single Judge of this Court in the matter of *Sitabai Narhari Rakshe @ Sitabai Gangaram Shete and others Vs. Hari Laxman Rakshe and another* reported in *2012(1) Mh.L.J. 678*, *inter alia* reliance is placed on the judgment of the Supreme Court in the matter of Velamuri Venkata Sivprasad (dead) by L.Rs. Vs. Kothuri Venkateshwarly (dead) by L.Rs. and others reported in *AIR 2000 SCC 434*. Para Nos. 11 to 13 of the judgment of the learned Single Judge are reproduced as follows :

11. Mrs. Ambekar, learned Advocate for Respondent No.2 and Mr. Shitole, learned Advocate for Respondent No.1 have placed reliance on the Judgment of Supreme Court in the case of Velamuri Venkata Sivaprasad (dead) by Lrs v/s. Kothuri Venkateshwarly (dead) by LRs and others, reported in AIR 2000 SCC 434. After quoting Section 2 of the 1856 Act, the Supreme Court has observed this in paragraphs 17, 18, 19, 49, 54 and 57 as under:-

“17. Incidentally, the Act of 1856 was in the Statute Book until the year 1983 and it only stands repealed by Act 24 of 1983.

18. Section 2 of the Act of 1856, therefore, has taken away the right of widow in the event of re-marriage and the Statute is very specific to the effect that the widow on remarriage would be deemed to be otherwise dead. The words “as if she had then died” (emphasis supplied) are rather significant. The legislature intended therefore that in the event of a re-marriage, one loses the rights of even the limited interest in such property and after re-marriage the next heirs of her deceased's husband shall thereupon succeed to the same. It is thus a statutory recognition of a well reasoned preexisting Shastric Law.

“19: An attempt has however been made as regards overriding effect of Hindu Succession Act in terms of Section 4(1) thereof. Section 4(1) provides as below:-

4 Overriding effect of Act- (1) Save as otherwise expressly provided in this Act:- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act. (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.”

“49. Incidentally, be it noted that the Succession Act of 1956 obviously is prospective in operation and in the event of a divestation prior to 1956, question of applicability of Section 14(1) would not arise since on the date when it applied, there was already a remarriage disentitling the widow to inherit the property of the deceased husband. The Act of 1856 had its full play on the date of re-marriage itself, as such Succession Act, could not

confer the widow who has already re-married, any right in terms of Section 14(1) of the Act of 1956. The Succession Act has transformed a limited ownership to an absolute ownership but it cannot be made applicable in the event of there being a factum of pre-divestation of estate as a limited owner. If there existed a limited estate or interest for the widow, it could become absolute but if she had no such limited estate or interest in lieu of her right of maintenance from out of deceased husband's estate, there would be no occasion to get such non-existing limited right converted into full ownership right.

“54. Incidentally, Section 24 of the Succession Act of 1956, placed certain restrictions on certain specified widows in the event of there being a re-marriage; while it is true that Section speaks of a predeceased son or son of a pre-deceased son but this in our view is a reflection of the Shastric Law on to the statute. The Act of 1956 in terms of Section 8 permits the widow of a male Hindu to inherit simultaneously with the son, daughter and other heirs specified in class I of the Schedule. As a matter of fact she takes her share absolutely and not the widow's estate only in terms of Section 14. Remarriage of a widow stands legalized by reason of the incorporation of Act of 1956 but on her re-marriage she forfeits the right to obtain any benefit from out of her deceased husband's estate and Section 2 of the Act of 1856 as noticed above is very specific that the estate in that event would pass on the next heir of her deceased husband as if she were dead. Incidentally, the Act of 1856 does not stand abrogated or repealed by the Succession Act of 1956 and it is only by Act 24 of 1983 that the Act stands repealed. As such the Act of 1856 had its fullest application in the contextual facts in 1956 when Section 14(1) of the Hindu Succession Act was relied upon by Defendant No.1.

“57. Having considered the matter from all perspectives, we do feel it expedient to record that the Division Bench of the Andhra Pradesh High Court clearly fell into an error in not considering the true effect of Section 2 of the Act of 1856. According to us, final decision rendered by the learned single Judge on non-applicability of Section 14(1) of the Hindu Succession Act remains well sustained, though on a different line

of reasoning as indicated herein above. Accordingly, it must be held that the Division Bench was in error in applying Section 14(1) of the Hindu Succession Act on the fact situation in the present case.”

12. Thus, it is clear that the question of law framed at the time of admitting this Second Appeal is squarely covered by atleast three Judgments.

13. In view of the conclusive and binding Judgments of the Division Bench and of the Supreme Court in Velamuri Venkata Sivaprasad (supra), there is no merit in the Second Appeal and the same is accordingly dismissed.

18. Further reliance is placed on the judgment of the Supreme Court in the matter of Kizhakke Vattakandiyil Madhavan (Dead) through L.Rs. Vs. Tiyyurkunnath Meethal Janaki and others (supra). In that case also Supreme Court was dealing with entitlement of a widow who contracted second marriage. The provisions of the Act of 1856 were considered. It is reiterated that widow on remarriage loses her right in the property of her earlier husband. I have no hesitation to uphold the contention of the appellants that Geetabai is not entitled to have any share in the property. The allotment of share to her by both the Courts below, especially in land Sy. No. 47 is illegal. The respondent No. 1 – Kundalik, respondent No. - Yelabai and Subhadrabai are entitled to have share in the Sy. No. 47. Out of them respondent No. 3 - Yelabai died and her share would devolve on Kundalik and Subhadrabai.

19. It has come on record that joint family had various other

properties and acerage was about 37 to 40. It can be said that sufficient nucleus was available with the family for purchasing land Sy. No. 47. A reference is made to mutation entry No. 185, which shows that all the suit lands including Sy. No. 47 was shown to be of joint family properties of Subhadrabai, Kundalik and Subhadrabai was the manager. It has also come in the deposition of defendant's witness Jayaji that there was sufficient nucleus to purchase land Sy. No. 47. Even evidence of D.W. No. 1 – Kundalik also shows that Sy. No. 47 was purchased from nucleus of the joint family. Relying on this material Appellate Court recorded a finding that it is a joint family property.

20. However, lower Appellate Court failed to appreciate clinching part of the evidence, which is indicative of the fact that Sy. No. 47 has to be held as self acquired property of Gyanu on the preponderance of probabilities. The revenue record after alienations especially Exhibit 89 is over looked. Following are the circumstances, which would indicate that Sy. No. 47 is self acquired property.

- A. Sy. No. 47 was exclusively purchased in the name of Gyanu, by registered sale deed.
- B. Sy. No. 47/2 to the extent of 06 Acres was sold by Subhadrabai to appellant No. 1 – Jayaji and appellant No. 4 – Ananda jointly on 14.06.1971. A mutation entry No. 206 was effected, which was not challenged. Thereafter names of the purchasers were included in 7/12 extracts

(Exhibit 62 and 63) showing their names are over looked.

- C. No steps were taken by the respondents to challenge mutations or record of rights.
- D. Subhadrabai sold part of Sy. No. 47/1 to the appellant No. 3 – Sakharam on 19.06.1976 by sale deed at Exhibit 91.
- E. Both sale deeds at Exhibit Nos. 89 and 91 recite that part of Sy. No. 47, which was alienated was land belonging to Gyanu and thereafter Subhadrabai.
- F. As Jayaji had contributed to the extent of 1/4th in consideration, therefore, his right was recognized by executing sale deed Exhibit 89. The oral evidence of the defendants unequivocally show the contribution of Jayaji.
- G. The surrounding circumstances supported by revenue record indicate that the theory of appellants that Gyanu had purchased Sy. No. 47 from 3/4th contribution from his mother-in-law and ¼ from Jayaji cannot be ruled out.

21. Learned counsel Mr. Kudale adverted my attention to the cross examination of defendants witness – Sakharam, who has disclosed that the payment of Rs. 6,000/- by his mother to Gyanu was related to him by his mother and there was no document showing such a payment from mother. Gyanu's mother-in-law was also not examined. These submissions do not command me. It is not known as to whether his mother-in-law was alive when

the evidence was recorded so as to depose in his favour. These stray instances are not sufficient to hold that land was purchased from joint family nucleus.

22. I find no merit in the submissions of Mr. Kudale that by implication of Sec. 15 of the Hindu Succession Act, the share falling to Subhadrabai needs to be allotted to the respondent No. 1 – Kundalik. Kundalik is entitled to half share in other suit lands, which are joint family properties. Subhadrabai was competent to alienate part and parcels of the Sy. No. 47 vide sale instances Exhibit Nos. 89 and 91. Kundalik can have no claim to the extent of Sy. No. 47.

23. The shares allotted by the lower Appellate Court are not in accordance with law. Subhadrabai was illegally excluded from sharing the joint family properties. Geetabai is already held to be not entitled to any share still she is being allotted 1/6th share by the lower Appellate Court. If Sy. No. 47 is the exclusive property of Gyanu, the respondents are not entitled to claim anything in it.

24. Assuming that the finding of the lower Appellate Court that Sy. No. 47 is joint family property, still the alienations made by Subhadrabai cannot be upset. The total acerage of all lands would be about 47 acres. Out of that 12 acres of Sy. No. 47 was given to the tenant – purchaser. In the balance Subhadrabai and respondent No. 1 – Kundalik will get half share. Thus,

Subhadrabai is entitled to 17 acres 20 Gunthas. She has alienated considering Exhibit Nos. 89 and 91, in aggregate 12 acres. The net result is that the sale deeds executed in favour of the appellants need to be validated.

25. I find that lower Appellate Court has committed grave error of jurisdiction in holding that Sy. No. 47 is joint family property. The substantial questions of law are answered in the negative. Therefore, I pass following order.

O R D E R

- a. Judgment and decree dated 04.03.1999 passed by the learned Additional District Judge, Hingoli in R.C.A. No. 82 of 1985 is quashed and set aside.
- b. Judgment and decree dated 28.02.1985 passed in R.C.S. No. 112 of 1976 is confirmed.
- c. R.C.S. No. 112 of 1976 stands dismissed to the extent of land Sy. No. 47 holding that sale deeds at Exhibit 89 and 91 are legal and valid.
- d. Decree be drawn up accordingly.

[SHAILESH P. BRAHME J.]