



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

SECOND APPEAL NO. 185 OF 2017

Dagdu Gujaba Marathe
Since deceased through his L.Rs.
Sandip Asaram Marathe and others .. Appellants

Versus

Manik Narayan Marathe
Since deceased through his L.Rs.
Santram Manik Marathe
Since deceased through his L.Rs.
Shobha Santram Marathe and others .. Respondents

Shri Mukul S. Kulkarni, Advocate a/w Shri N. B. Patekar,
Advocate for the Appellants.
Shri A. R. Devkate, Advocate for the Respondent Nos. 2/A to 2/C,
3 to 6, 10 and 11.

CORAM : SHAILESH P. BRAHME, J.
DATE : 23RD SEPTEMBER, 2025.

FINAL ORDER :

. Heard both sides.

2. Appellant Nos. 1 and 11, who are original plaintiffs have filed present second appeal being non suited by both the Courts below in R.C.S. No. 344 of 2005 for partition and possession. Remaining appellants are supporting their claim. Respondent Nos. 1 to 12 are the defendant Nos. 1 to 12 and remaining respondents are purchasers.

3. Plaintiffs filed R.C.S. No. 344 of 2005 for partition and possession stating that Narayan is the prepositus, who had two sons namely Gujaba of whom plaintiffs are lineal descendants and Manik of whom defendants are lineal descendants. It is stated to be joint Hindu undivided family having number of lands and the houses. It is contended that mutation entry Nos. 609, 749, 1221 are taken illegally. They claimed to have half share in the suit properties. Defendant No. 1 is stated to have allotted share to his daughter-in-law in compromise effected in R.C.S. No. 64 of 2005. The allotment of the half share to the defendant No. 1 was towards family arrangement. They claimed $\frac{1}{2}$ share in suit properties.

4. Defendant Nos. 1 to 11 contested the suit on the ground that Narayan had partitioned the properties and allotted shares to both of his sons. More area was allotted to the defendants because of low quality of lands. The sharers were cultivating lands separately and there was interse partition amongst the descendants. Defendant No. 1 had partitioned his land to his six sons. In R.C.S. No. 64 of 2005 filed by daughter-in-law of predeceased son, share was required to be allotted. The mutations were also effected in pursuance of the partition and which were not challenged by the plaintiffs or their descendants. It is further contended that there were alienations of the lands after allotment of shares.

5. Defendant Nos 13 to 19 admitted claim of plaintiffs. The

suit proceeded *ex-parte* against couple of defendants.

6. Parties adduced oral and documentary evidence. The mutation entries namely 609, 749 and 1221, revenue record and sale deeds were placed on record. Trial Court held that there is already partition in the family and both the branches are in occupation of the shares. It has also been recorded that there is interse partition amongst members of a branch. There are alienations by the sharers. The suit was dismissed vide judgment dated 06.01.2011. The findings recorded above are upheld in R.C.A. No. 21 of 2011 vide judgment dated 07.01.2017.

7. Learned counsel for the appellants Mr. Mukul Kulkarni submits that there is absolutely no evidence to show that there was partition between Gujaba and Manik, sons of Narayan. The suit lands are divided and permitted to be occupied by plaintiffs and the defendants through their descendants as a family arrangement. It is further submitted that both Courts below have committed patent illegality in holding that Narayan partitioned joint family properties between his sons during his life time. It is further submitted that revenue record and the alienations by the members of the family would not constitute separation by metes and bounds.

8. Learned counsel further submits that the record of the ceiling proceedings was not properly appreciated by the Trial Court. The statement of the defendant No. 1 recorded on

26.05.1977 would show the jointness. It is further submitted that application Exhibit 149 submitted by the defendant No. 1 was wrongly rejected by the Trial Court and the opportunity was denied.

9. Per contra, learned counsel Mr. Devkate appearing for some of the respondents submits that both the Courts below have taken plausible and reasonable view considering documentary evidence. The concurrent findings of facts recorded by the Courts below cannot be said to be perverse or illegal. It is further submitted that the factum of partition has been established by voluminous evidence like revenue record, cross examination of plaintiffs witnesses, alienations by the members of the family and procurement of loan by the members of the family. It is further submitted that even if the record of ceiling proceedings is taken into account, the view taken by Courts below cannot be upset.

10. I have considered rival submissions of the parties. The crucial question which needs adjudication is as to whether there was earlier partition between two sons of Narayan. Parties have adduced documentary evidence in the form of revenue record and sale deeds. Plaintiffs have produced certain documents after recording of evidence, which are part of ceiling record.

11. It reveals from record that mutation entry No. 609 (Exhibit 45) was effected on 17.06.1986 disclosing partition on the basis of

partition deed between plaintiff No. 1 and plaintiff No. 2. Mutation entry No. 749 (Exhibit 46) was effected on 15.10.1999 showing partition amongst plaintiff No. 1 – Dagadu and his sons. Mutation entry No. 1221 (Exhibit 47) is effected on 16.08.2005 indicating distribution of the lands amongst the parties to R.C.S. No. 64 of 2005. Since 1986 the mutation entries are in record and till this date they are not challenged by any of the parties.

12. Long standing mutation entries have presumptive value and those are relevant piece of evidence to show the partition. Learned counsel Mr. Devkate has rightly relied on the judgment of the Supreme Court in the matter of Digambar Adhar Patil Vs. Devram Girdhar Patil (Dead) and another reported in *1995 Sup. (2) SCC 428*. It's para No. 5 is relevant. The presumption has not been rebutted by the appellants. A stray reference to the statement dated 26.05.1977 recorded in ceiling proceedings is not sufficient to rebut the presumption. Mr. Devkate has rightly relied on the **judgment dated 10.07.2017 of the Coordinate Bench in Second Appeal No. 471 of 2003 in the matter of Radhabai Pundlik Makone and others Vs. Girjabai Rajaram Luhudkar and others**. In this regard further reference to the judgment of the Supreme Court in the matter of Kesharbai @ Pushpabai Eknathrao Nalawade (Dead) by L.Rs. and another Vs. Tarabai Prabhakarrao Nalawade and others reported in *(2014) 4 SCC 707* also supports the defendants.

13. My attention is adverted to cross examination of plaintiffs

witness Haribhau. In the cross examination he admitted that lands were separately given to Manik and Gujaba and the plaintiffs were residing separately. He has specifically admitted that the lands were allotted by partition to himself, his real brother Dagdu and Manik. The denials of alienations of land by Dagdu to Gahininath and further alienation of 08 Acres of land to Inaarcom Company are false. Next witness of plaintiff, Raosaheb has clearly admitted that Dagdu sold land to Gahininath. Haribhau sold land to Bhausahab and Haribhau further sold land to Bhanudas and Dashrath. Further it is admitted that Balu and Sampat sold land to Dashrath and further Haribhau and Dashrath sold land to Inaarcom Company.

14. From the depositions of the witnesses of the plaintiffs an inference can be drawn that members of the family have alienated lands fallen to their shares. Nobody questioned the alienations. This piece of evidence is very relevant and clinching to indicate their separation. Following alienations made by the members of the family are eloquent in this regard.

Sr. No.	Vendor	Purchaser
01.	Defendant No. 3 - Balasaheb	Gahininath Marathe
		Dashrath Marathe
		Inaarcom Company
		Vandana Akolkar
		Bhivsen Jadhav
02.	Dattu – son of plaintiff No. 2	Bhau Marathe

		Bhivsen Marathe
		Inaarcom Company
03.	Defendant No. 1 – Manik	Suresh Sakhare – Deft. No. 22
04.	Bhausahab, Son of plaintiff No. 1	Gahininath
05.	Haribhau, Plaintiff No. 2	Bhausahab Marathe
06.	Dagadu, Plaintiff No. 1	Bhausahab Jadhav
		Dashrath Jadhav
		Inaarcom Company.

15. Both the Courts below have taken into account all the alienations referred above in coming to the conclusion that there is partition in the family and members were allotted their shares. Even financial assistance was also availed of by them. I do not find that there is any perversity or patent illegality so as to need interference by this Court.

16. Defendants have placed on record adequate and clinching material to indicate partition in the family. As against that there is absolutely nothing on record to show that family is still undivided. The position when ceiling proceedings were undertaken in 1977 might not have been continued. On preponderance of probabilities the case is made out by respondents. Besides the mutation entries referred above, Khasara Patrak Exhibit 48 to 68, 7/12 and 8A extracts Exhibit 26 to 44 and Exhibit 6 to 25 are indicative of the independent holding and cultivation, which is rightly appreciated by the

Courts below.

17. I do not find any merit in the submissions of the learned counsel for the appellants that there was no partition during lifetime of Narayan. A stray reference of admission in the cross examination of defendants witness Laxman that after death of Narayan, Manik and Gujaba were jointly cultivating the lands is not sufficient to show jointness. Considering material on record it can be safely concluded that there was already partition. Application Exhibit 149 submitted by the defendant No. 13 was rejected by the Trial Court on 26.11.2010. The reasons assigned for rejecting the application cannot be faulted. It is far fetched to contend that opportunity was not given for adducing the evidence.

18. I do not find that any substantial question of law involved in the second appeal. Second appeal is dismissed.

19. After pronouncement of the judgment, the learned counsel for the appellants prays for continuation of interim relief.

20. Interim relief is in respect of injunction from creating any third party interest. It is in operation till today. The same shall remain in operation for further four weeks.

[SHAILESH P. BRAHME J.]