



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

SECOND APPEAL NO. 578 OF 2007

1. Dagadu S/o Ranga Mane,
Age : 63 Years, Occu. : Agriculture,
 2. Satyabhamabai W/o Dagadu Mane,
Age : 43 Years, Occu. : Household,
 3. Kum. Chhaya D/o Dagadu Mane,
Age : 25 Years, Occu. : Household,
 4. Balaji S/o Dagadu Mane,
Age : 22 Years, Occu. :
 5. Ku. Deepmala D/o Dagadu Mane,
Age : 20 Years, Occu. : Education,
- All R/o Kasarkheda, Tq. & Dist. Latur.
6. Trivenabai W/o Dattu Hale,
Since deceased through her L.Rs.
 - 6-A Dattu S/o Pandurang Hale,
Age : 70 Years, Occu. : Agril.,
 - 6-B Ashok S/o Dattu Hale,
Age : 36 Years, Occu. : Agril.,
 - 6-C Prakash S/o Dattu Hale,
Age : 28 Years, Occu. : Agril.,
 - 6-D Balaji S/o Dattu Hale,
Age : 22 Years, Occu. : Agril.,

All R/o Mamdapur, Tq. & Dist. Latur.

- 6-E Sanjivani W/o Suresh Kore,
Age : 22 Years, Occu. : Agril.,
R/o Matola, Tq. & Dist. Latur.
7. Ashok S/o Dattu Hale,
Age : 33 Years, Occu. : Agril.,
R/o Kasarkheda, Tq. & Dist. Latur. .. Appellants

Versus

1. Rangnath S/o Dagadu Mane,
Age : 33 Years, Occu. : Labourer,
2. Gopal @ Gunda S/o Dagadu Mane,
Age : 30 Years, Occu. : Labourer,
3. Subhadrabai W/o Dagadu Mane,
Age : 53 Years, Occu. : Household,

All R/o Kasarkheda, Tq. & Dist. Latur. .. Respondents

Shri N. D. Kendre, Advocate for the Appellants.
Shri Gaurav L. Deshpande, Advocate for the Respondents.

**WITH
SECOND APPEAL NO. 732 OF 2008**

1. Rangnath S/o Dagadu Mane,
Age : 33 Years, Occu. : Labourer,
2. Gopal @ Gunda S/o Dagadu Mane,
Age : 30 Years, Occu. : Labourer,
3. Subhadrabai W/o Dagadu Mane,
Age : 53 Years, Occu. : Household,

All R/o Kasarkheda, Tq. & Dist. Latur. .. Appellants

Versus

1. Dagadu S/o Ranga Mane,
Age : 63 Years, Occu. : Agriculture,
 2. Satyabhamabai W/o Dagadu Mane,
Age : 43 Years, Occu. : Household,
 3. Kum. Chhaya D/o Dagadu Mane,
Age : 25 Years, Occu. : Household,
 4. Balaji S/o Dagadu Mane,
Age : 22 Years, Occu. :
 5. Ku. Deepmala D/o Dagadu Mane,
Age : 20 Years, Occu. : Education,
- All R/o Kasarkheda, Tq. & Dist. Latur.
6. Trivenabai W/o Dattu Hale,
Since deceased through her L.Rs.
 - 6-A Dattu S/o Pandurang Hale,
Age : 70 Years, Occu. : Agril.,
 - 6-B Ashok S/o Dattu Hale,
Age : 36 Years, Occu. : Agril.,
 - 6-C Prakash S/o Dattu Hale,
Age : 27 Years, Occu. : Agril.,
 - 6-D Balaji S/o Dattu Hale,
Age : 22 Years, Occu. : Agril.,
- All R/o Mamdapur, Tq. & Dist. Latur.
- 6-E Sanjivani W/o Suresh Kore,
Age : 22 Years, Occu. : Agril.,
R/o Matola, Tq. & Dist. Latur.

7. Ashok S/o Dattu Hale,
Age : 33 Years, Occu. : Agril.,
R/o Kasarkheda, Tq. & Dist. Latur. .. Appellants

Shri Gaurav L. Deshpande, Advocate for the Appellants.
Shri N. D. Kendre, Advocate for the Respondents.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 12.11.2025
JUDGMENT PRONOUNCED ON : 19.11.2025

JUDGMENT :-

. Heard both sides finally.

2. Both second appeals are arising out of judgment and decree dated 05.09.2005 passed in R.C.S. No. 296 of 1999 in favour of the plaintiffs and judgment and decree dated 24.04.2007 of R.C.A. No. 195 of 2005 substantially confirming the decree with marginal modifications. Second Appeal No. 578 of 2007 is preferred by the defendants. Second Appeal No. 732 of 2008 is preferred by the plaintiffs. For the sake of convenience paper book of Second Appeal No. 578 of 2007 and parties by their original status are referred.

3. A paper book has been placed on record. Record and proceeding is also available before the Court, which is considered with the assistance of both the learned counsel. The substantial questions of law were framed vide order dated 16.02.2008 as follows :

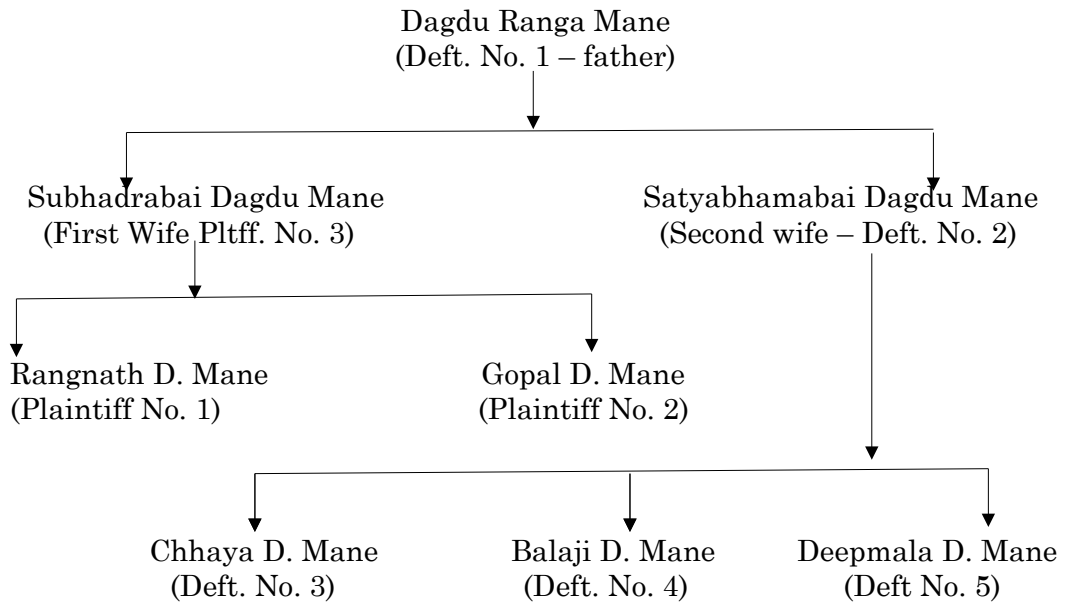
- (A) Whether the suit of the plaintiff is bad in law for non joinder of necessary parties viz. Gangubai Kashiba, who had purchased 5 acres land from defendant no. 1 and thereafter sold it to the defendant No. 2.
- (B) Whether the suit of the plaintiff is not maintainable for want of order of appointment of guardian for defendant No. 3 to 5 who were the minors on the date of filing of the suit.
- (C) When there is no compliance of Order 32 Rule 3 of C. P. C. whether the decree is nullity.
- (E) Whether the suit is maintainable without the challenge to the alienation by the defendant No. 1 in favour of Gangubai Kashiba dated 12.01.1989.
- (G) Whether the suit of the plaintiff is barred by the law of limitation by applying the provisions of Article 110 of the Limitation Act.
- (I) Whether the property purchased by the defendant no. 2 from Gangubai Kashiba Mane in the year 1996 under the registered sale deed can be made the subject of partition of joint family properties.
- (K) Whether by ignoring the decree passed by the court in R.C.S. No. 29/1993, the land in question in the said decree can be made available for partition.

4. Further substantial questions of law are framed vide order dated 18.02.2025, which are as under :

- [A] Whether the decree passed by the court below is unsustainable, in view of the law laid down by their lordships of Apex Court in the matter of ***Revansiddhappa and another Vs. Mallikarjun and others***, wherein it is held that Section 16(3) (as amended) of Hindu Marriage Act does not impose any restriction on the property right of illegitimate children and they have got right of whatever becomes property of their parents, whether self-acquired or ancestral ?

[B] Whether the defendant Nos. 3 to 5 are also entitled to share equal to that of plaintiff Nos. 1 and 2 ?

5. Respondents – plaintiffs had filed R.C.S. No. 296 of 1999 initially for partition and possession. Later on pleading and the prayers of declaration of the sale deeds were incorporated. The subject matter is land gut No. 54 admeasuring 3 H 24R situated at Kasarkheda, land gut No. 06 adm. 2H 64R and house property bearing Gram Panchayat House No. 238. The undisputed genealogy is as follows :



6. Following facts are undisputed :

- A. Plaintiff No. 1 is legally wedded wife of defendant No. 1 and plaintiff Nos. 2 and 3 born through their wedlock.
- B. Defendant No. 2 is second wife of defendant No. 1 and defendant Nos. 3 to 5 born through their wedlock.
- C. Defendant No. 6 Trivenibai is real sister of defendant No.

1, while defendant No. 7 is her son.

- D. Gangubai Kashiba Mane (D.W. No. 2) is aunt of defendant No. 1 – Dagadu.
- E. Registered sale deed executed on 12.01.1989 at Exhibit 80 by defendant No. 1 to Gangubai.
- F. Registered sale deed dated 22.07.1996 at Exhibit 70 executed by Gangubai to defendant No. 2.
- G. Registered sale deed dated 23.12.1998 at Exhibit 82 executed by defendant No. 1 to defendant No. 7.
- H. R.C.S. No. 29 of 1993 filed by defendant No. 6, which was compromised on 19.07.1993.

7. It's case of plaintiffs that the defendant No. 1, husband of the plaintiff No. 3 and father of plaintiff Nos. 1 and 2 had neglected them and denied them their share in the ancestral properties referred above. When first marriage was subsisting, he had contracted second marriage with the defendant No. 2 Satyabhamabai, which was void. In order to dodge the legitimate claim of the plaintiffs, he effected alienations referred above evidenced by Exhibit 80, 70, 82 and 81. Those were ostensible and bogus and articulated to frustrate the claims of the plaintiffs. Hence those are not binding on plaintiffs.

8. The defendants contested the suit by filing two different written statements, one by defendant Nos. 1 to 5 and another by defendant No. 6 and 7. The status of the plaintiffs and their claim was denied. It is contended that alienations were required

to be made by the defendant No. 1 for legal necessities. It is stated that R.C.S. No. 29 of 1993 was filed by the defendant No. 6 – Trivenibai for partition and a compromise decree was passed allotting her share from gut No. 06. Talathi did not recognize the decree and sale deed at Exhibit 82 was required to be executed. It is stated that defendant No. 1 was having only 03 acres of land after the alienations. The defendant Nos. 6 and 7 contended that they are bonafide purchasers for value.

9. In a nutshell the submissions of learned counsel for the appellants-defendants are that the suit is hopelessly barred by limitation, but the Trial Court did not frame the issue. Gangubai Kashiba, the purchaser vide sale deed at Exhibit 80 was a necessary party. The suit land alienated to her cannot be subjected to the partition. In the wake of compromise decree in R.C.S. No. 29 of 1993, suit land alienated by the defendant No. 1 to the defendant No. 6 vide sale deed dated 23.12.1998 is binding on the plaintiffs and cannot be subjected to litigation. It is further submitted that alienations made by the defendants are legal and valid. Those are binding on the plaintiffs and no relief can be granted to the plaintiffs.

10. It is submitted that suit is not maintainable, as it is filed against minor defendant Nos. 3 to 5 without there being any compliance of Order XXXIII Rule 3 of the Code of Civil Procedure (for the sake of brevity and convenience hereafter referred as to the “C.P.C.”). The plaintiffs are not entitled to partition and

share. Both courts below committed perversity in allotting them share, when very meager land is left with the defendant No. 1.

11. Mr. Gaurav Deshpande, learned counsel appearing for the plaintiffs canvassed that both the Courts below rightly decreed the suit for partition and declaration. Plaintiffs are entitled to have share in the ancestral properties. The allotment of 1/8th share to the defendant No. 2 – Satyabhamabai is illegal. It is submitted that sale deeds which are in question are ostensible and made to frustrate plaintiffs claim for partition and share. Even R.C.S. No. 29 of 1993 and compromise decree passed therein is collusive and after thought. It is submitted that suit is maintainable on all counts. Though the defendant Nos. 3 to 5 were minors, their natural guardian was on record and it was obligation of the Trial Court to decide the application which was submitted by the plaintiffs for appointment of guardian. In view of the decision rendered by Hon'ble Apex Court in the matter of Revansinddhappa and another Vs. Mallikarjun and others reported in (2023) 10 SCC 01 only legitimate children and legally wedded wife are entitled to have share in the ancestral property. It is further submitted that plaintiffs are leading life of vagrancy, despite having decree of both the Courts in their favour.

12. I have considered rival submissions of the parties and I have gone through record. The suit properties are stated to be undivided ancestral properties of the family. It is not the case of the defendants that there was ever partition and allotment of

shares. The defendant No. 1 tried to contend that properties are self acquired, but no material is placed on record to show independent source of income and acquisition of the property in his name. Besides oral evidence of the plaintiffs, depositions of D.W. No. 2 – Gangubai Kashiba, who is aunt of the defendant No. 1 shows that those are ancestral properties. In this backdrop I proceed to record my reasons in a comprehensive manner considering the substantial questions of law referred above.

I Maintainability of the suit :

13. The defendants have raised objection for maintainability of the suit on the ground that it is bad for non joinder of necessary party and non compliance of Order XXXII Rule 3 of the C. P. C. The defendant No. 1 sold 05 Acres from gut No. 54 to Gangubai Kashiba vide sale deed dated 12.01.1989 at Exhibit 80. She is contended to be necessary party and without making any prayer in respect of her sale deed suit is contended to be defective. No issue was framed in the Trial Court in this regard. No specific plea was taken by the defendants regarding non joinder of necessary party and non joinder of causes of action. These objections were dealt with by the lower Appellate Court vide point No. 5. Gangubai executed sale deed on 22.07.1996 in favour of the defendant No. 2 – Satyabhamabai, which is at Exhibit 70. Plaintiffs could have claimed no relief because of the subsequent alienations to the defendant No. 2. No case is made out by the defendants that presence of Gangubai is necessary for passing of effective decree. Ultimately the part of the suit land

sold to her is again redirected to the family that is the reason why it is not necessary for the plaintiffs to specifically challenge sale deed at Exhibit 80. The possession was never given to Gangubai.

14. I have considered the judgments of the Supreme Court cited by Mr. Kendre, learned counsel for the defendants/appellants in the matters of Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd and others reported in (2010) 7 SCC 417, Deputy Commissioner, Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and others reported in AIR 1953 SC 521 and Moreskar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) through L.Rs. and others reported in 2022 SCC OnLine SC 1307. which are elucidating the concept of necessary parties. Under given facts and circumstances, it cannot be said that Gangubai is necessary party. The substantial question of law at Sr. No. E is answered in favour of the plaintiffs.

15. Substantial question of law was formulated at 'C' referring to Order XXXII Rule 3 of the C. P. C. The defendant Nos. 3 to 5 are the children born out of the second marriage and they were minor when the suit was filed. Their biological parents were parties as defendant Nos. 1 and 2 in the suit. Plaintiffs submitted application for appointment of guardian, but it was not decided by the Trial Court. In the Trial Court no specific objection was raised in the pleadings by the defendants and, therefore, no issue was cast to that effect. In the lower Appellate

Court no ground was taken by the defendants in the appeal memo in that regard. For the first time in the High Court the submissions are being made. The plea which was available was not taken in the Courts below, cannot be pressed into service for the first time in the second appeal. There is no discussion in respect of objection.

16. As the substantial question of law is framed and arguments are advanced, I find it proper to deal with the submissions. As per Section 6 of the Hindu Minority and Guardianship Act, father is the natural guardian. Biological parents of the minors were before the Courts. It is nobody's case that interest of the minors has not been safeguarded either by the parents or by any of the relatives. It was nobody's case that despite there being parents, the minors are deprived of legitimate benefits. In given facts, plaintiffs cannot be blamed for not soliciting the orders on their application. Considering the provisions of Order XXXII Rule 3 of the C. P. C., a duty is cast on the Court on being satisfied of the fact of minority to appoint a guardian. The defendants could have insisted for deciding the application presented by the plaintiffs for appointment of guardian. They cannot be non suited by implication of Rule 3(a) of Order XXXII of the C. R. P., because no prejudice is caused to the minors specifically.

17. My attention is adverted to the judgments of the Supreme Court in Coordinate Bench of this Court cited by the learned

advocate Mr. Kendre in the matters of Ram Chandra Arya Vs. Man Singh and another reported in *AIR 1968 SC 954* and Ganeshshankar R. Upadhyay and another Vs. Brahmaprakash S. Upadhyay and another reported in *2011(5) Mh.L.J. 747*. The facts are distinguishable and the principles laid down will not enure to the benefit of the defendants. The substantial question of law at 'C' is answered against the defendants.

II Limitation :

18. Multiple objections are taken by the defendants to contest the suit on the plea of limitation. In the Trial Court issue of limitation was not formulated, but Appellate Court dealt with it at point No. 7. The marriage is of 1969. The averments of the plaint shows that plaintiff No. 3 is allegedly driven away by the defendant No. 1, when plaintiff No. 2 was in womb. It might have occurred in the year 1979. It is contended to be ouster. Article 110 of the Limitation Act provides limitation of twelve years from ouster/exclusion becomes known to the plaintiffs. It cannot be countenanced that physical ouster would immediately culminate into starting point of limitation. The cause of action is bundle of facts. Plaintiffs stayed at parents place of plaintiff No. 3. Plaintiff No. 3 was required to approach criminal court for securing maintenance. She was not party to R.C.S. No. 29 of 1993. There is no any other incident quoted which can be treated to be the knowledge. For the first time they were being denied right in the ancestral property in a meeting dated 18th March, 1999, when partition was demanded. Merely because plaintiffs

are staying away from the defendants would not give cause of action to file suit for partition. The submissions of the learned counsel for the appellants relying on Article 110 of the Limitation Act has no merit.

19. It is submitted by the learned counsel for the appellants that after attaining majority, suit was not filed within a period of three years for challenging the sale deed executed on 12.09.1989. Articles 58 and 60 of the Limitation Act prescribes limitation of three years and the time reckons when the ward attains majority. In the present case plaintiff Nos. 1 and 2 have attained majority in the year 1992 and 1993. Suit is filed on 29.04.1999. The sale deeds at Exhibit 81 and 82 were executed on 23.12.1998 in favour of the defendant Nos. 6 and 7. Any declaration in respect of these sale deeds cannot be said to be barred by time. Prayer clause of the suit shows that no declaration is sought in respect of sale deed executed by the defendant No. 1 in favour of third person Gangubai Kashiba executed on 12.08.1989 at Exhibit 80. I have already recorded observations that suit is maintainable in the absence of any relief for Exhibit 80 and for non joining of Gangubai. Both the Courts below have recorded concurrent findings that execution of sale deed to Gangubai who is real aunt of the defendant No. 1 is sham and bogus because no possession was transferred. On 22.07.1996, Gangubai executed sale deed to defendant No. 2. The suit is filed within three years from the sale deed. In that view of the matter it is not possible to accept the submission of the appellants that suit is barred by

limitation. The substantial question of law framed at 'G' is answered in favour of the plaintiffs.

III Validity of the alienations made by the defendants :

20. The defendants alienated part of the gut No. 54 to Gangubai, who inter alia alienated it to the defendant No. 2. The defendant No. 1 further alienated 04 Acres of gut No. 6 to defendant No. 6 vide sale deed at Exhibit 82. On the same day he alienated 02 Acres from gut No. 6 to the defendant No. 7. It is pleaded by the defendants that for the legal necessity alienations were required to be made. My attention is adverted by learned advocate Mr. Deshpande to the cross examination of the D.W. No. 2 to show that she never received possession. The defendant No. 2 – Subhadrabai was not having any independent source of income. Therefore, there is no reason to believe that she could have purchased the property from Gangubai on 22.07.1996. Both the Courts below have recorded findings in respect of above alienations against the defendants which are concurrent in nature. The defendants are unable to make out a case that for legal necessity suit lands were required to be transferred and possession was every parted with. Alienation in favour of the defendant No. 7 has also been castigated considering his admissions in the cross examination.

21. Surprisingly despite having compromise decree 19.07.1993 passed in R.C.S. No. 29 of 1993, defendant No. 1 endeavoured to execute sale deed in favour of his sister defendant No. 6 on

23.12.1998, is suspicious. It cannot be countenanced that talathi refused to record name of the defendant No. 6, after the compromise decree and sale deed was required to be executed. The overall conduct of the defendant No. 1 is objectionable. In all probabilities he endeavoured to dodge the legitimate claims of the plaintiffs. I find substance in the submissions of the learned advocate Mr. Gaurav Deshpande in this regard. Lower Appellate Court also elaborately dealt with the submissions in respect of sale deeds and independently assigned reasons to come to the conclusion that the alienations were not for legal necessity. I do not find any perversity or patent illegality in the findings recorded by the Courts below.

IV Effect of compromise decree in R.C.S. No. 29 of 1993 :

2. R.C.S. No. 29 of 1993 was filed by the defendant No. 6 – Trivenibai against the defendant No. 1 – Dagdu. It was in respect of land gut No. 6 for partition. Other joint family properties were not brought in common hotch potch. Plaintiff Nos. 1 and 2 who are the coparcners were necessary parties in a suit for partition. That was compromised by the defendant No. 1 with the defendant No. 6 conceding to allot 4 acres from gut No. 6. It was disposed of on the same day. If the defendant No. 6 – Trivenibai was to get 4 acres of land gut No. No. 6, then it is incomprehensible as to why again defendant No. 1 executed sale deed in her favour on 23.12.1998. These facts create doubt about the bonafides of the defendant No. 1 and the defendant No. 6. The findings recorded by the Courts below in this regard cannot

be faulted. There is every reason to infer that it was a collusive suit. The decree passed in R.C.S. No. 29 of 1993 is inconsequential and accordingly substantial question of law at 'K' is answered in favour of the plaintiffs.

V Entitlement of the shares as per the judgment of the Apex Court in the matter of Revansinddhappa and another Vs. Mallikarjun and others (supra) :

23. In view of authoritative pronouncement of the Supreme Court in the matter of Revansinddhappa and another Vs. Mallikarjun and others (supra) this court endeavoured to frame substantial questions of law. Admittedly, in the present case, defendant No. 2 is the second wife of a void marriage. The suit properties are ancestral properties. The defendant Nos. 2 to 4 are not entitled to get any share in the ancestral properties. They are entitled to have share which is to be allotted to the defendant No.1 – Dagdu. Plaintiffs are entitled to get equal share along with the defendant No. 1 – Dagdu. Thus, the plaintiffs are entitled to 3/4th share and Dagdu is entitled to 1/4th share. The defendant No. 2 – Satyabhanamabai is not entitled to any share along with plaintiff No. 3, which is a mistake committed by the lower Appellate Court. Her marriage with Dagdu is void. Under the Hindu Succession Act, 1956 she cannot claim equal status of a widow with Subhadrabai. Therefore Second Appeal No. 732 of 2008 is bound to succeed. The substantial question of law framed in pursuance of decision in the matter of Revansinddhappa and another Vs. Mallikarjun and others (supra) needs to be answered in favour of the plaintiffs. The defendant Nos. 2 to 5 are not

entitled to any share.

25. The above analysis leads met to pass following order :

O R D E R

- (i) Second Appeal No. 578 of 2007 is dismissed.
- (ii) Second Appeal No. 732 of 2008 is partly allowed.
- (iii) The judgment and decree passed by both the Courts below shall stand confirmed with a marginal modification that plaintiffs are entitled to 3/4th share and defendant No. 1 is entitled to 1/4th share.
- (iv) The defendant No. 2 shall not be entitled to any share.
- (v) Decree be drawn up accordingly.

[SHAILESH P. BRAHME J.]

bsb/Nov. 25