

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.543 OF 2013

1. Vitthal Chango Pardhi,
Age: 52 years, Occu: Labour,
2. Pandurang Chango Pardhi,
Age: 49 years, Occu: Labour,
3. Pundlik Chango Pardhi,
Age: 47 years, Occu: Labour,
4. Vijay Chango Pardhi,
Age: 45 Years, Occu: Labour,

All R/o. Jalndri, Tq. Jamer,
Dist. Jalgaon.

... **Appellants**
(Orig. Plaintiffs)

VERSUS

1. Smt. Pramilabai W/o Supdu Pardhi,
Age: 67 years, Occu: Agril.,
2. Sau. Vatsalabai Prakash Pardhi,
Age: 42 years, Occu: Household,
3. Sau. Bebabai W/o. Ashok Pardhi,
Age: 27 years, Occu: Household,

All R/o. Jalandri, Tq. Jamner,
Dist. Jalgaon.

... **Respondents**
(Orig. Defendants)

WITH

X-OBJECTION NO.81 OF 2025
IN SA/543/2013

...

Advocate for Appellants in SA & Respondents in X-Obj. : Mr.
Wani Girish V.

Advocate for Respondents in SA & Petitioner in X-Obj. : Mr.
Bhokarika M. M.

...

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 14.10.2025

PRONOUNCED ON : 03.11.2025

JUDGMENT :

1. Heard both sides.
2. Second appeal is arising out of alternate findings of facts. Appellants are original plaintiffs in Regular Civil Suit No.30 of 1995 which was decreed by the Trial Court on 23.01.2006. The decree is reversed by Lower Appellate Court in Regular Civil Appeal No.74 of 2006 on 28.11.2012. Appeal is admitted on following substantial questions of law by order dated 06.02.2023.

(i) Whether the suit for partition and separate possession could have been dismissed when there is a concurrent finding recorded that the suit properties are ancestral and joint family properties of the plaintiffs and defendants ?

(ii) Whether the decree passed by the first appellate court, thereby, dismissing the suit for partition and

separate possession is contrary to the provisions of Section 6 of the Hindu Succession Act ?

3. Cross objection has been filed by the respondents mainly for challenging the findings that the suit lands are ancestral properties and plaintiffs are related to deceased Supdu through his first wife deceased Bhagabai. Following substantial questions of law are formulated :

(i) Whether both Courts below are justified in considering the relationship of the plaintiffs through their mother Tejabai with deceased Supdu when the same is disputed by the defendants ?

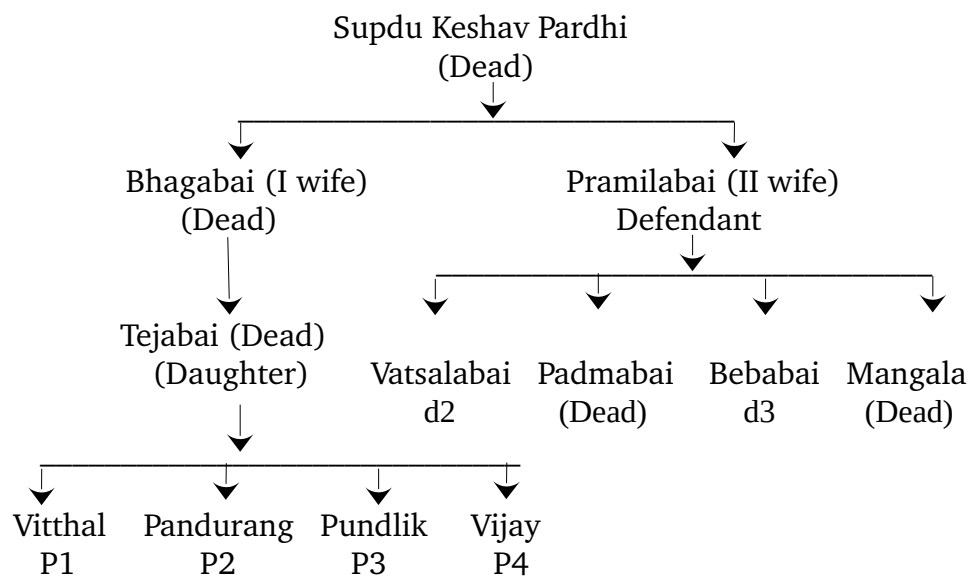
(ii) Whether the suit lands can be treated to be ancestral properties when pleadings and the evidence on record indicate that those were allotted to deceased Supdu in partition with his brother Garbad and thereafter those were regranted by the competent authority exclusively in the name of deceased Supdu and what would be the effect ?

(iii) Whether the suit filed by the plaintiffs is maintainable if the suit lands are treated to be self-

acquired properties of deceased Supdu and not the ancestral properties ?

4. Both learned counsels have addressed on the substantial questions of law framed in the second appeal as well as cross objections. The substantial questions of law in the cross objections are contemplated by the appellants' counsel and he expressly showed willingness to address those questions without seeking any time. Accordingly, I heard both sides on the substantial questions of law.

5. The appellants had filed suit for partition and possession. The relationship between the parties is admitted. Following genealogy is relevant.



6. It is contended that land Gut Nos.75 and 76 are the undivided joint family properties. Appellant's mother Tejabai predeceased Supdu. She was daughter born from first marriage of Supdu with Bhagabai. The defendants are the children born from the wedlock of second marriage of Supdu with Pramilabai. It is further pleaded that appellants had looked after Supdu in his old and ailing days. He intended to allot Gut No.75 by oral partition to the appellants. So was his last Will. The respondents however forcibly and illegally entered their name in the record of right and remained in possession. Supdu died on 31.10.1992 intestate. Appellants were denied their legitimate share in the property.

7. Respondents contested the suit on a plea that Supdu was staying with them in his last days. The relationship of plaintiffs with them was denied. It is further pleaded that suit lands are not ancestral properties but self acquired estate. He had allotted suit lands to the respondents and mutation entry No.194 was effected. Respondents are in possession of the suit lands as owner. The suit is barred by time and it is stated to be a false claim by the appellants.

8. Appellants/plaintiffs adduced oral evidence of four witnesses P.W.1 Vitthal, P.W.2 Chango, P.W.3 Ramdas and P.W.4 Subhabai. They placed on record village form No.14 at Exh.51, judgment in RTS Appeal No.32 of 1990 at Exh.52, heirship certificate dated 12.02.2004 at Exh.54, amongst other documents. Respondents/defendants adduced oral evidence of D.W.1 Pramilabai and produced on record 7/12 extracts, mutation entry No.106 Exh.62, mutation entry No. 121 Exh.63 and RTS Appeal No.65 of 2005 at Exh.66 besides other documents.

9. By judgment dated 23.01.2006 Trial Court held that plaintiff's grandmother Bhagabai was the first wife of Supdu and respondent No.1 Pramilabai is the second wife. It is further held that suit lands are ancestral and divided properties of deceased Supdu. The plaintiffs are held to be entitled to have share in the property. The suit was decreed granting them half share.

10. Being aggrieved, respondents preferred Regular Civil Appeal No.74 of 2006 which was allowed reversing the decree

of the Trial Court vide judgment dated 28.11.2012. The Appellate Court held that the plaintiffs are related to Supdu. However, plaintiffs being the children of predeceased daughter of Supdu are held to be not entitled to any share. The reliance is placed on the judgment of ***Sadashiv Sakharam Patil and others Vs. Chandrakant Gopal Desale and others [2012 (1) Mh.L.J. 197]***.

11. Learned counsel Mr. Wani appearing for the appellants submits that Lower Appellate Court committed patent illegality in relying upon judgment of *Sadashiv Sakharam Patil (supra)* when amended Section 6 of Hindu Succession Act (hereinafter referred to as “Act”) qualifies daughter as a coparcener giving her birth right, the plaintiffs are entitled to share. It is further submitted that in view of law laid down by Supreme Court in the matter of ***Vineeta Sharma Vs. Rakesh Sharma*** plaintiffs are entitled to get share notwithstanding that their mother predeceased supdu. It is submitted that relationship of the plaintiffs with Supdu has been established from the oral and the documentary evidence. It is further submitted that Supdu had no authority to transfer the suit land to defendant No.1

Pramilabai by mutation entry and that was fraudulently obtained by the respondents which is evident from the fact that Supdu has preferred RTS appeal.

12. Per contra, learned counsel Mr. Bhokarikar submits that both Courts below failed to take into account mutation entry at Exh.62 to show that there was re-grant of suit lands to deceased Supdu and those are his self-acquired properties. It is submitted that both the Courts below erred in holding that plaintiffs are related to deceased Supdu. It is vehemently contended that Supdu being the exclusive owner of the suit lands entitled to transfer them to respondent No.1. It is further submitted that heirship certificate dated 12.02.2004 which is at Exh.54 is not reliable and issued without hearing respondents.

13. I have considered rival submissions of the parties. With the assistance of both sides, I have gone through record and proceedings. In all, five substantial questions of law are framed in the present appeal and the cross objections. Considering oral and the documentary evidence from record, I propose to compartmentalize my reasoning in the following paragraphs.

14. **Relationship** :-

In order to prove plaintiffs' relationship who are children of predeceased daughter Tejabai of deceased Supdu, four witnesses were examined. P.W.3 Ramdas has candidly stated that defendant No.1 Pramilabai was earlier married with Hiranman who happened to be his uncle. Her marriage with deceased Supdu was by Gandharva form. A witness is husband of cousin of the plaintiffs. Nothing detrimental to the relationship has been elucidated from his cross-examination. P.W.2 as well as P.W.4 are close relatives of the parties. The witnesses have consistently stated that Bhagabai was the first wife and Pramilabai was the second wife. Extract of village form No.14 at Exh.51 shows that Supdu was the father of plaintiffs mother Tejabai. The heirship certificate at Exh.54 issued after death of deceased Supdu, records names of both the parties as heirs. Except oral evidence of defendant No.1 Pramilabai, no material is placed on record to challenge the relationship of the plaintiffs with Supdu. I find that Trial Court has rightly recorded that the plaintiffs are children of predeceased daughter Tejabai of deceased Supdu.

15. **Nature of the suit lands :-**

Trial Court recorded that suit lands are joint family properties of the parties. Both Courts below did not assign any reasons as to whether the suit lands are ancestral properties or self-acquired properties of Supdu. Learned counsel Mr. Bhokariker is right in contending that both Courts below did not look into the fact that there was partition in between Supdu and his brother Garbad and Supdu was given suit lands by re-grants.

16. I have gone through cross examination of P.W.2 Chango as well as examination-in-chief of defendant No.1 Pramilabai. I have also considered the revenue record produced by the parties. The mutation entry No.106, at Exh.62 shows that Survey No.75/1, 75/2, 75/3 (Gut No.74, 75 and 76 respectively) were re-granted to Supdu by the competent authorities by paying the amount. Mutation entry No.121 at Exh.48 which is again reproduced at Exh.63 shows that on or about 09.02.1983 there was partition between Supdu and his brother Garbad. Gut No.75 was equally divided between them Gut No.74 was allotted to Garbad and Gut No.76 was allotted

to Supdu. There is substance in the submission of Mr. Bhokarikar that Gut Nos.75 and 76 are not the ancestral properties. Those were re-granted to Supdu exclusively.

17. Admittedly, Supdu died on 31.10.1992 intestate. He is survived by plaintiffs being children of predeceased daughter and the defendants. The defendants did not produce any partition deed or memorandum of partition to show that Supdu partitioned the suit lands to defendant No.1 Pramilabai. The mutation entry No.194 at Exh.64 is not the outcome of any partition but transfer of suit lands to defendant No.1. In my considered view, suit land are undivided joint family properties of both the parties after demise of supdu.

18. **Entitlement of the plaintiffs to claim partition :-**

I have carefully gone through pleadings of the defendants, evidence of Pramilabai and the mutation entry No.194 at Exh.64. Exh.64 shows that suit lands were transferred to defendant Pramilabai by Supdu. It does not spell out allotment of lands by way of partition. Its a trite law that mutation entry does not confer title. No testamentary disposition has been placed on record transferring the interest

of deceased Supdu to Pramilabai. Trial Court in this regard has rightly held that no ownership was transferred to Pramilabai. Supdu did not allot anything to plaintiffs. Its a theory of defendants that suit lands were allotted to defendants. This is unequitable distribution of assets. The theory is improbable. If the suit lands are held to be joint family properties, then the plaintiffs are entitled to claim partition. Once it is held that Supdu died intestate then both the parties are entitled to partition and separate possession.

19. The respondents claimed their ownership on the basis of mutation entry 194 at Exh.64. It's a case of plaintiffs that the said mutation was effected fraudulently. During life time of Supdu, RTS Appeal No.32 of 1990 was filed by him against defendant No.1 Pramilabai challenging mutation entry No.194. Lateron, it was dismissed on 19.04.1991 by Assistant Collector vide Exh.52. There is a substance in the contention of learned counsel Mr. Wani that Supdu did not transfer the suit lands. Otherwise, he would not have challenged the mutation entry. No benefits of the mutation entry can be given to the defendants.

20. The Appellate Court relied on the judgment of *Sadashiv Sakharam Patil (supra)* and held that plaintiffs being children of predeceased daughter are not entitled to claim partition. It was a decision of learned Single Judge of Bombay High Court rendered on 06.09.2011. After that decision, two judgments were rendered by the Supreme Court to govern right of the daughter namely *Prakash Vs. Phulawati and others [(2016) 2 SCC 36]* and *Danamma @ Suman Surpur Vs. Amar [(2018) 3 SCC 343]*. After those decisions authoritative pronouncement of three Judges Bench of the Supreme Court *in Vineeta Sharma Vs. Rakesh Sharma [(2020) 9 SCC 1]* is rendered which governs the field and clarifies in no uncertain term the right of the daughter in joint family. This Court cannot be oblivious of the decision of the larger strength.

21. I have gone through judgment of learned Single Judge in *Sadashiv Patil (supra)* and especially paragraph Nos.13 and 14. With respect, it is not possible to conquer with the view taken by learned Judge. The observations in paragraph No.13 of the judgment runs counter to the law laid down by Supreme Court in the matter of *Vineeta Sharma*.

22. Learned counsel Mr. Wani has meticulously taken me through the following relevant paragraphs which unequivocally support plaintiffs claim for partition. The following are the relevant extracts :

“68. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodedified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of Section 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment, i.e., 9.9.2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).”

“69. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9.9.2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).”

In re: Effect of enlargement of daughter's rights

“70. Under the proviso to Section 6 before the amendment made in the year 2005 in case a coparcener died leaving behind female relative of Class I heir or a male descendant claiming through such Class I female heir, the daughter was one of them. Section 6, as substituted, presupposes the existence of coparcenary. It is only the case of the enlargement of the rights of the daughters. The rights of other relatives remain unaffected as prevailed in the proviso to Section 6 as it stood before amendment.”

“71. As per the Mitakshara law, no coparcener has any fixed share. It keeps on fluctuating by birth or by death. It is the said principle of administration of Mitakshara coparcenary carried forward in statutory provisions of Section 6. Even if a coparcener had left behind female heir of Class I or a male claiming through such female Class I

heir, there is no disruption of coparcenary by statutory fiction of partition. Fiction is only for ascertaining the share of a deceased coparcener, which would be allotted to him as and when actual partition takes place. The deemed fiction of partition is for that limited purpose. The classic Shastric Hindu law excluded the daughter from being coparcener, which injustice has now been done away with by amending the provisions in consonance with the spirit of the Constitution.”

“80. A finding has been recorded in Prakash v. Phulavati that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9.9.2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of "living coparcener", as laid down in Prakash v. Phulavati. In our opinion, the daughters should be living on 9.9.2005. In substituted Section 6, the expression “daughter of a living coparcener” has not been used. Right is given Under Section 6(1)(a) to the daughter by birth. Declaration of right based on the past event was made on 9.9.2005 and as provided in Section 6(1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1)

leave no room to entertain the proposition that coparcener should be living on 9.9.2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part.”

23. Plaintiffs are sons of predeceased daughter of Supdu. As per amended Section 6 of the Act, daughter is brought at par with son and she is to be treated as coparcener. A birth right is conferred upon her. There is no reason to divest the birth right to the predeceased daughter. If the submission of learned counsel Mr. Bhokarika for the respondents is accepted then that would be offending purport of Section 6 as well as law laid down by Supreme Court in the matter of *Vineeta Sharma*.

24. Relying on the judgment of *Vineeta Sharma*, I have no iota of doubt that notwithstanding the death of plaintiffs' mother Tejabai, they are entitled to claim partition and share. It is also made clear by Supreme Court that Section 6 is retroactive. It would be discriminatory to deprive the plaintiffs from the benefit of Section 6 of the Act. The Appellate Courts judgment is wholly unsustainable.

25. There was no necessity for the respondents to prefer cross appeal because Appellate Court did not pass any decree against them. Appellate Court dismissed the suit in its entirety. No appeal can lie against any findings. Respondents could have challenged the so called erroneous findings in the present second appeal also. In that sense, I propose to dismiss the cross appeal. However, the findings challenged by the respondents have been dealt with in fore going paragraphs.

26. Instead of answering the substantial questions of law formulated in the present appeal, I preferred to summarize my analysis as follows :

- (i) Plaintiffs are children of predeceased daughter of deceased Supdu.
- (ii) The suit lands are not ancestral properties but undivided joint family properties.
- (iii) The plaintiffs are entitled to have partition and separate possession as per Section 6 of the Act.

27. In view of above, I pass following order :

- (a) Second appeal is allowed.

- (b) The judgment and decree dated 28.11.2012 passed in Regular Civil Appeal No.74 of 2006 is quashed and set aside and judgment and decree dated 23.01.2006 passed in Regular Civil Suit No.30 of 1995 shall stand restored and upheld.
- (c) Cross objection is dismissed.
- (d) There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

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