



IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD

SECOND APPEAL NO. 258 OF 2025
WITH
CIVIL APPLICATION NO. 6971 OF 2025
IN SA/258/2025

Kamalabai Rajendra Munge,
Age: 65 Years, Occ: Nil,
R/o: Near Ground, Nideban-ves,
Udgir, Tq. Udgir, Dist: Latur.

... **APPELLANT**
(Org. Def. No.1)

VERSUS

1. Sujata Ishwar Waghmare,
Age: 40 Years, Occu: Household,
R/o: Dongargaon, Tq. Jalkot,
Dist: Latur.

... **(Org Plaintiff)**

2. Sangram Irba Munge,
Since deceased through LR's

2A] Sheshabai Sangram Munge,
Age: 68 Years, Occu: Household,
R/o: Togari, Tq. Udgir, Dist: Latur.

2B] Lalsha Lalu Sangram Munge,
Age: 48 Years, Occu: Labour,
R/o: Togari, Tq. Udgir, Dist: Latur.

2C] Varsha Sangram Munge,
Age: 46 Years, Occu: Household,
R/o: Togari, Tq. Udgir, Dist: Latur.

2D] Balika @ Baina Sangram Munge,
Age: 44 Years, Occu: Household,
R/o: Togari, Tq. Udgir, Dist: Latur.

2E] Suryakant Sangram Munge,
Age: 42 Years, Occu: Private Service,
R/o: Togari, Tq. Udgir, Dist: Latur.

2F] Chandrakant Sangram Munge,
Age: 38 Years, Occu: Private Work,
R/o: Togari, Tq. Udgir, Dist: Latur.

2G] Kiran Sangram Munge,
Age: 36 Years, Occu: H.H,
R/o: Togarl, Tq. Udgir,
Dist: Latur. ... (Org. Def. No.2)

3. Sandhya Gajanan Jagalpure,
Age: 36 Years, Occu: H.H,
R/o: Vikas-Nagar, Udgir Tq. Udgir,
Dist: Latur. ... **RESPONDENTS**
(Org. Def. No.3)

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Advocate for Appellant : Mr. Parag V. Barde.
Advocate for Respondent No.1/Caveator : Mr. Reddy Ajinkya.

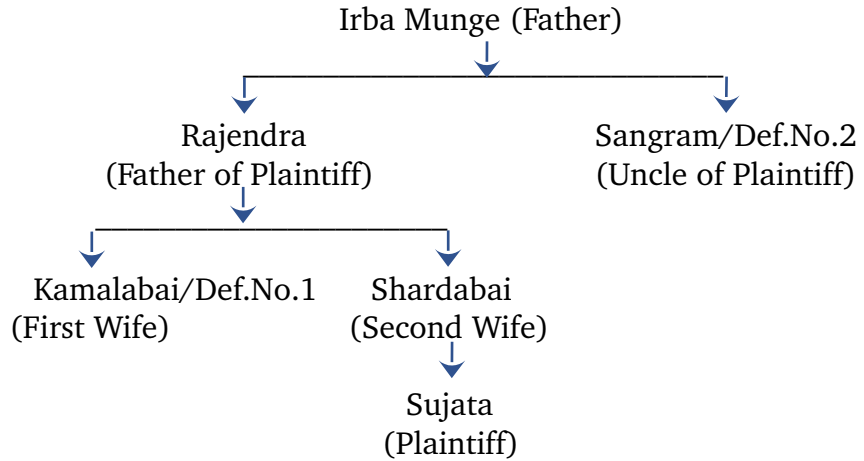
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CORAM : SHAILESH P. BRAHME, J.
DATE : 09.09.2025

JUDGMENT :-

1. This second appeal is directed against concurrent findings of facts in decreeing the suit of respondent No.1 for partition, possession and declaration that sale deed dated 29.06.2010 is null and void.

2. Respondent No.1 is the original plaintiff. The appellant is original defendant No.1 and respondent No.2 is original defendant No.2. Respondent No.3 is the purchaser vide sale deed dated 29.06.2010. To Understand the relationship, the genealogy is as follows :



3. Respondent No.1 had filed suit for partition, possession and declaration in respect of the sale deed in respect of Gut No.214 and house property. It is contended that suit properties were separate properties of her father Rajendra who is survived by herself and defendant No.1 Kamalabai, her step mother. It is further contended that she was being denied her share after death of her father. The appellant alienated part of house property to respondent No.3 Sandhya.

4. The suit is contested by the appellant on the ground that it is not maintainable. The relationship of the plaintiff is disputed. It is contended that appellant is the only legally wedded wife of Rajendra. The house property is said to be self acquired property.

5. Respondent No.3 also contested the suit and justified the alienation made in her favour vide sale deed dated 29.06.2010. She is said to be bonafide purchaser for value.

6. The suit was decreed by the Trial Court awarding half share to the plaintiff in the suit house and 1/4th share in land Gut No.214. The sale deed was held to be bad in law and not binding on the plaintiff. The decree is confirmed by Lower Appellate Court.

7. Learned counsel Mr. Barde submits that plaintiff was not the coparcener and therefore suit for partition was not maintainable. The reliance is placed on judgment of Supreme Court in *Revanasiddappa and another Vs. Mallikarjun and others ; 2023 AIR (SC) 4707*. It is further submitted that at the most, plaintiff would be entitled to maintenance till life time of the appellant. Both the Courts below have committed perversity and patent illegality. It is further submitted that suit is bad for non-joinder of Shardabai.

8. Learned counsel for the respondent Mr. Reddy repels the submissions by adverting my attention to cross-examination of Shardabai. It is vehemently submitted that plaintiff's mother was wedded wife of Rajendra and there is no challenge to the status. It is further submitted that the plaintiff has a share and partition opened at the demise of Rajendra.

9. I have considered rival submissions of the parties. I have gone through impugned judgments passed by Courts below. The only substantial question of law pressed into service by the appellant is as to whether plaintiff is entitled to maintain a suit for partition and claim share when she is illegitimate child and especially when she is not a coparcener.

10. The relationship between the parties has not been disputed. Appellant is the first legally wedded wife of deceased Rajendra. Plaintiff is begotten from second wife of Rajendra, Shardabai. Plaintiff examined Shardabai at Exh.80. She deposed in her chief that she was married with Rajendra as he had no issue from his first marriage with Kamalabai. In her cross, it is has been elucidated that Kamalabai was the first wife and she was the second wife. Her marriage was solemnized with Rajendra by following the rituals.

11. In given situation, the law laid down by Hon'ble Apex Court in *Revanasiddappa* would apply to the case at hand. The marriage between Shardabai and Rajendra was void one by implication of Sections 5 and 11 of Hindu Marriage Act, 1955. Plaintiff is entitled to have status of legitimate child by Section 16(3) of Hindu Marriage Act, 1955. I am guided by following

principles laid down by Hon'ble Apex Court in paragraph 54 of the judgment which are as follows :

“54. We now formulate our conclusions in the following terms:

(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or after the commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

(iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in subsection (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

(x) The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above. ”

12. If the plaintiff is held to be entitled to share in the self acquired property of Rajendra, then there is no reason to withhold her right to maintain a suit for partition. When suit was filed, Rajendra was no more. He died intestate. By legal fiction, plaintiff is at par with any other legitimate son or daughter. She may not be coparcener but she has interest in her father's property. Then, it is incomprehensible as to why she is to be deprived of her right to claim partition. A reliance can be placed on principles of *ubi jus ibi remedium* (where there is right there is remedy). The submissions of learned counsel for the appellant is preposterous. It is against Article 15 of the Constitution of India and brazenly offending law laid down by Apex Court in *Revanasiddappa*.

13. The proposition that plaintiff is entitled to maintenance only till life time of appellant Kamalabai is devoid of legal sanctity and even dangerous also. The partition would open on the death of Rajendra and step mother Kamalabai is allotted share then that becomes her absolute property. The plaintiff can have even no right to claim maintenance. The proposition is meritless and against the rule of law.

14. Both the Courts below have rightly dealt with the matter and recorded concurrent findings of facts. No interference is called for in the impugned judgments.

15. Second appeal is dismissed.

16. In view of disposal of second appeal, pending civil application does not survive. Civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

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vmk/-