



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

SECOND APPEAL NO. 369 OF 2025

- 1] Sahadu Mahadu Dukare [Jagtap],
Age: 65 Years, Occupation : Agriculturist.
- 2] Sambhaji Sahadu Dukare [Jagtap],
Age: 33 Years, Occupation : Agriculturist & business.
- 3] Shivaji Sahadu Dukare [Jagtap],
Age: 31 Years, Occupation : Agriculturist & business.
- 4] Anil Sahadu Dukare [Jagtap],
Age: 29 Years, Occupation : Agriculturist & business.
- 5] Chhayabai Sahadu Dukare [Jagtap],
Age: 60 Years, Occupation : Agriculturist.
- 6] Yogita Shivaji Dukare [Jagtap],
Age: 33 Years, Occupation : Agriculturist.

All R/o. Khadki Bk, Taluka : Chalisgaon,
District : Jalgaon.

..APPELLANTS
[Original Defendants]

VERSUS

- 1] Radhabai Chintaman Marathe,
Age: 58 Years, Occupation : Housewife.
- 2] Vatsalabai Chintaman Marathe,
Deceased Through Her Legal Representatives
- 2-A] Chintaman Sonu Marathe [Dead].
- 2-B] Kishor Chintaman Marathe,
Age: 27 Years, Occupation : Agriculturist.

2-C] Rahul Chintaman Marathe,
Age : 24 Years, Occupation : Not known.

3] Smt. Supadabai Mahadu Dukare [Jagtap],
Age: 38 years, Occupation : Housewife.

All R/o. Khadki Bk, Taluka : Chalisgaon,
District : Jalgaon.

.. RESPONDENTS

[Respondents, Original Plaintiffs]

...

Mr.S.V.Suryawanshi, Advocate for the appellants.
Mr.B.I.Mahajan, Advocate for the respondent nos.2, 2B, 2C
and 3.

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 14.10.2025.

ORDER :

1] Suit is filed by the plaintiffs for partition of the suit properties, possession, declaration and perpetual injunction. According to the plaintiffs, they have equal share in the suit properties. Father of the plaintiffs, namely, Mahadu Rakhmaji Dukare died on 18.03.2009. The defendant nos.2 to 4 are sons of defendant no.1. Defendant no.1 is plaintiff's brother. The defendant no.5 is wife of defendant no.1. The defendant nos. 1 to 4 have denied

plaintiffs right in the suit properties by not allotting share to them in the suit properties and the defendant no.1 by joining hands with each other illegally partitioned the land in the year 2006 and mutated their names. The plaintiffs' mother died prior to nine years. Plaintiffs' father was residing with defendant nos.1 to 4. Plaintiff no.1 got married in the year 1964. Plaintiff no.2 got married in the year 1984 and plaintiff no.3 got married in the year 1992. Defendant no.1 got married in the year 1981. Plaintiff nos.1 and 2 are residing at their matrimonial house at village Bahadarpur, Taluka Pachora, District Jalgaon and plaintiff no.3 is divorcee. The suit properties bearing Gat Nos.7/1/1 and 7/1/2 are ancestral properties. The name of plaintiffs' fathers name is recorded to the said properties on 10.08.1967 on demise of his father namely Rakhmaji Mahadu Dukare, names of defendant nos. 2 to 4 are recorded illegally on the basis of bogus entry No.979 in the year 2006 and the same is not binding on the plaintiffs. It is stated that land Gat No.81/A/2/1 of village Hirapur area 91 R. is purchased from the income of ancestral property. The

plaintiffs, who are sisters of the defendant no.1, have claimed partition. The defendants filed written statement. It is stated that the land is not ancestral property. On considering the material, the Trial Court has framed following issues :

Sr.No.	Issues	Finding
1.	Does plaintiffs prove that defendant No.1 in consolation with revenue authorities and by taking the disadvantage of extreme oldness of his father Mahadu Rukhmaji Dukare got mutated the suit properties on the name of defendant No.2 to 4?	Partly Yes.
2.	Does Plaintiffs proved that the Gram Panchayat House property No. 120 situated at village Khadki is ancestral property of plaintiff and defendants?	No.
3.	Does the plaintiffs proved that the suit property in Gat No.81/A/2/1, in Gat No.81/A/2/2, in Gat No.173/1B, the suit plot No.10 in Gat No.3/2/2B+3/2/1A are purchased out of joint family property income.	No.
3A.	Whether the suit is tenable in respect of its format?	Yes.
4.	Does Plaintiffs prove that they are having share in the suit property?	Partly Yes.
5.	What order and decree?	As per final order.

2] The trial Court held that the defendant no.1, due to old age of his father namely Mahadu Rukhmaji Dukare, got mutated the suit properties in the name of defendant nos. 2 to 4. It is held that the plaintiffs prove that they are having share in the suit property and partly decreed the suit. The trial Court, by order dated 18.01.2023, has passed the following order :

ORDER

1.

2. It is hereby declared that plaintiff No. 1, 3 and defendant No.4 are having 1/4th share each in the suit property bearing Gat No.7/1/1 and Gat No.7/1/2.

3. It is hereby declared that plaintiff No.2A to 2C are having 1/12th share each in the suit property bearing Gat No.7/1/1 and Gat No.7/1/2.

4. The suit property in the Gat No.7/1/1 and Gat No.7/1/2 be partitioned between plaintiffs and defendant no.1 and handed over to them the possession of their respective shares as mentioned in order clause 1.

3] Being aggrieved by the aforesaid order, the defendants filed Regular Civil Appeal No.27/2023. The Appellate Court formulated the following points in the Appeal and answered accordingly :

Sr.No.	Points	Findings
1	Is it proved that, suit properties G.No.7/1/1 and 7/1/2 and house property No.120 of village Khadaki are the ancestral Joint Family properties of plaintiffs and defendants?	...In the affirmative to the extent of G.No.7/1/1 and 7/1/2.
2	Is it proved that, suit properties namely G.No. 81/A/2/1, G.No.81/A/2/2, plot No.10 in G.No.3/2/2B+3/2/1A and property G.No.173/1B are purchased out of joint family property income.	...In the negative.
3	Whether plaintiffs are entitled to the relief of partition and separate possession ?	...In the affirmative.
4	Whether impugned judgment and decree requires interference ?	...In the negative
5	What order ?	...As per final order.

4] The Appellate Court has concurrently held that the properties in Gat Nos.7/1/1 and 7/1/2 are the ancestral joint family property of plaintiffs and defendant no.1. The

same is based on evidence that the name of the father of the plaintiff was recorded in the revenue entry in 1967 of the said properties after the demise of his father viz. Rakhmaji Mahadu Dukare. All the plaintiffs are born before 10.05.2006 when the mutation entry No.979 is taken and that the plaintiffs are having birth right in the said properties. It is stated that plaintiffs' father Mahadu Rakhmaji Dukare was not entitled to effect partition excluding the plaintiffs, and therefore, mutation entry no. 979 has no legal sanction. As such, the present Second Appeal is filed by the original defendants on the following substantial questions of law :

1] Whether the Ld. Trial Court has erred in holding that the Suit Property bearing Gat No.7/1/1 & 7/1/2 are the ancestral 'Ancestral Properties' of plaintiffs and defendant No.1 without framing any issue to that effect contrary to Order XIV of the Code of Civil Procedure Code, 1908?

2] Whether both the Courts below have failed to consider the difference between 'coparcenary property' and 'ancestral property'.

After effecting partition of “Ancestral property”, same gets status of ‘coparcenary property’. By virtue of the Hindu Succession [Amendment] Act, 2005, the ‘coparcenary property’ are devolved amongst the Class-I heirs and not the ‘ancestral property’. As such, to take benefit of Section 6 and get right in coparcenary property, both the Courts below ought to have decided the nature of the suit properties as to whether the same is ‘coparcenary property’ or no, however, both the Courts below has not undertaken the said exercise?

3] Whether both the Courts below have failed to consider the provision of Section 6 of the Hindu Succession [Amendment] Act, 2005 and erred in calculating the shares of the Plaintiffs as 1/4th to each contrary to Section 6 (3) and Explanation appended thereto? If the share is determined by applying said provision, the Plaintiff No.1 and 3 would be getting at the most 1/8th share each and Plaintiff Nos. 2A to 2C would be getting 1/8th share jointly.

4] Whether both the Courts below have erred to take into consideration the effect of ‘partition’ effected by Mahadu Rakhmaji Dukare

u/s. 85 of the Maharashtra Land Revenue Code, 1966, more particularly when said 'partition' u/s. 85 of the M.L.R. Code is neither challenged by the Plaintiffs nor the same is declared as illegal by any Court or Authority?

5] The appellate Court has held that the properties in Gat No.7/1/1 and 7/1/2 are ancestral properties and the same could not have been mutated by the father of the defendant no.1 on 10.05.2006 and sanctioned on 30.05.2006 as the plaintiffs' father was not entitled to effect partition excluding the plaintiffs as they have share in the property by Amendment Act, 2005.

6] As regards substantial questions of law no.1 mentioned in para no.4 is concerned, joint-ness is presumed and that there was no evidence given by the defendants to show that the properties at Gat No.7/1/1 and 7/1/2 were purchased from the personal income by the father of the defendant no.1 and there is no material to alter the concurrent finding of fact rendered in First Appeal. The defendants in their written statement have not referred to

the property at Gat No.7/1/1 and 7/1/2 as self acquired or received as stridhan by defendant no.5. The defendant has specifically averred as regards self acquired properties and stridhan of defendant no.5. The defence has been that the plaintiff married prior to the 2005 amendment and as such not entitled to partition. The evidence on record indicates that the name of the father of the plaintiffs and defendant no.1 was mutated in the revenue record of the above properties after the demise of the grand-father of the plaintiff and defendant no.1. As regards substantial questions of law no.2 in para no.4 is concerned, the appellants are under misconception of different mode of distribution of coparcenary property and ancestral property. Ancestral property refers to property inherited from male ancestor for at least four generation while coparcenary property refers to both the ancestral property and the property acquired through the efforts of coparceners. Coparcenary property is a wider concept. The joint family property is owned by the coparcenars. In the instant case, the finding is recorded that the property in Gat Nos.7/1/1

and 7/1/2 are the joint family properties and by virtue of Section 6 of the Hindu Succession [Amendment] Act, 2005, the plaintiffs have right in the property by their birth [*Vineeta Sharma Vs. Rakesh Sharma and others reported in [2020] 9 SCC 1*]. There is no partition effected of the property prior thereto either by the decree of the Court or by a registered partition. Considering the same, the plaintiffs have share in the suit property.

7] Section 6 of the Hindu Succession Act, 1956 is as under :

[6. Devolution of interest in coparcenary property.—

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this subsection shall affect or invalidate any disposition or alienation including any partition or testamentary

disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son,

grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.—*For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.*

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.—*For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]*

8] The contention of the appellants that first the ancestral family property has to be divided between sons of

the defendant no.1 and their father, and thereafter, the property left with the father has to be partitioned amongst all siblings on the demise of the father, is a misconception as after 2005 amendment, all coparcener including the daughters have right in the joint family property similar to that of sons. Considering the same, the question of law nos.2 & 3 raised at para no.4 do not arise for consideration.

9] By virtue of Section 6 of the Hindu Succession Act, the daughter of a coparcener, by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son and proviso contained therein states that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. Explanation to the Section explains that for the purpose of the section 'partition' means any partition made by execution of a deed of partition duly registered

under the Registration Act, 1908 or partition effect by the decree of a Court. In the instant case, there is no partition effect by a registered deed of partition and registered under the Registration Act or partition effect by the decree of a Court. The attempted partition under Section 85 of the Maharashtra Land Revenue Code, 1966 in 2006 is also after the Act having come into force after 20th December, 2004 and as such cannot effect right of the plaintiffs in the joint family property. Thus the question whether there was binding partition in view of partition carried out under Section 85 of the Maharashtra Land Revenue Code, 1966 does not arise. As such, no case is made for interference. Second Appeal is dismissed accordingly.

10] In view of dismissal of Second Appeal, Civil Application No.10311/2025 is also disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC