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

SECOND APPEAL NO. 174 OF 2025

**SHKHDEO MANIKRAO KOLHE AND OTHERS.
VERSUS
NITIN SUKHDEO KOLHE AND OTHERS.**

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Mr. Shubham S. Koche, Advocate for appellants

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 2ND MAY, 2025

P.C. :-

1. The appellants/original defendant Nos. 3 to 5 impugn the judgment and decree dated 5.1.2024 passed by the District Judge, Aurangabad, in Regular Civil Appeal No. 66 of 2020 thereby upholding the judgment and decree dated 12.03.2020, passed by Civil Judge (J.D.), Aurangabad in RCS No. 982 of 2013. (Parties hereinafter are referred as per their original status).

2. Respondent/plaintiff instituted a suit seeking a decree for partition and separate possession contending that one Manikrao was original owner of the suit properties. In a partition dated 31.3.2008, defendant No.1 Sukhdeo and his brother Ram received their shares in the ancestral properties. The partition has been recorded vide mutation entry No. 2365. According to plaintiffs, defendant No.1 Sukhdeo became owner and possessor of suit property since date of partition. Plaintiff No.1 being son of Sukhdeo entitled for partition in the suit property.

Further, plaintiff No.2 being wife of defendant No.1, entitled for her share in partition.

3. Defendants refuted plaintiff's claim. According to them, after partition between Ram and Sukhdeo. The mother Laxmibai also received her share and she became owner of property. Similarly, defendant No.1 Sukhdeo became absolute owner and entitled to enjoy property. During his lifetime, suit for partition instituted by plaintiff would not be maintainable. The trial court framed issues based on pleadings of parties and dismissed the suit observing that defendant No.1 became absolute owner of his share on partition amongst defendant No.1, his brother and mother, hence, plaintiffs cannot seek partition. However, appellate Court reversed the finding recorded by trial court and decreed the suit of plaintiff holding that plaintiffs have 1/3rd share each alongwith defendant No.1, in the suit properties.

4. Mr. S.S. Koche, learned advocate for appellant relying upon observations of the Supreme Court of India in the case of ***Angadi Chadranna vs. Shankar and others Civil Appeal No. 5401 of 2025*** decided on 22.4.2025 submits that on partition amongst defendant No.1, his brother and mother, defendant No.1 acquired his share in joint family property. Therefore, on partition, defendant No.1 became absolute owner of separate and distinct share and such property will have to be treated as his self acquired property. He heavily relies upon the observations of the Supreme Court in para. 17, which read thus :-

“17. It cannot be disputed that properties divided among Defendant No.1 and his brothers through partition deed dated 09.05,1986, are joint family properties. However, as per Hindu law, after partition, each party gets a separate and distinct share and this share becomes their self-acquired property and they have absolute rights over it and they can

sell, transfer or bequeath it as they wish. Accordingly, the properties bequeathed through partition, become their self-acquired properties of the respective shares.”

5. Admittedly, one Manikrao was the owner of property. He died leaving behind his wife Laxmibai, son Sukhdeo and Ram. Plaintiff No.1 is son of Sukhdeo and Plaintiff Nos. 2 is wife of Sukhdeo. Parties are coming with the case that on 31.5.2008, there was partition and property left behind by Manikrao was allotted to Sukhdeo and Ram. Similarly, share was allotted to their mother Laxmibai. The plaintiffs have filed present suit seeking partition and separate possession in the share of Sukhdeo. It is not in dispute that plaintiff No.1 is son of Sukhdeo born from marriage with Plaintiff No.2 Mangal. In this background, the issue raised before this Court is, as to whether plaintiff No.1 is entitled to seek partition and separate possession of suit property or Sukhdeo being absolute owner was entitled to deal and dispose of the property ?

6. It is not disputed that parties are governed by Hindu Mitakshara Law. As observed by the Supreme Court in case of ***Angadi Chandran (supra)*** on partition of Hindu Joint family, each coparcener gets separate and distinct share and that share becomes his absolute property and he can sale/transfer or bequeath it. However, this legal position would apply as long as coparceners who received share in joint family property has no child. Admittedly, plaintiff No.1 was born to defendant No.1 Sukhdeo even prior to date of partition between him and his brother. Plaintiff No.1 being son has birth right in the property. Therefore, in the present case, defendant No.1 would not enjoy absolute ownership to the exclusion of the share of his son. It is trite that in case of partition between father and son, the mother also gets equal share, hence, plaintiff No.2 gets her share. In that view of the matter, the

proposition of law relied upon by the appellants would not apply in facts of the present case.

7. The appellate Court has rightly appreciated factual and legal aspects of the matter and decreed the suit upholding that plaintiffs have 1/3rd share each in suit properties, they have failed to prove that in partition dated 31.03.2008 share is given to defendant No.2 till her lifetime and on her death her share will be allotted to defendant No.1. They also failed to prove that defendant Nos., 1 and 2 are creating third party interest in suit properties Relying upon judgment of the Supreme Court in the matter of *Revansidhappa vs. Mallikarjun and others*, the appellate Court has observed that “the property once partitioned from the larger coparcenary and in the hands of father for his own branch, is not father’s separate property until partition happens within the branch. It continues to be coparcenary property in which children from his valid marriage have share.

8. In that view of the matter, no substantial question of law arises for consideration in this appeal. Same is dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-