



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

**SECOND APPEAL NO. 232 OF 2025
WITH
CIVIL APPLICATION NO. 5474 OF 2025 IN SA 232/2025**

Devidasrao s/o Tanajirao Deshmukh
and others ... **Appellants**

VERSUS

Shalanbai w/o Uttamrao Deshmukh
(died) through L.Rs. And others ... **Respondents**

...

Advocate for Appellants : Mr. Vishant Prabhakar Kadam
Advocate for Respondent nos. 1/1, 1/2, 2/1, 2/2 & 11 : Ms. A.N. Ansari
Advocate for Respondent nos. 3, 5 to 10 : Mr. Salunke Mayur Vasant

CORAM : SHAILESH P. BRAHME, J.
RESERVED ON : 19.08.2025
PRONOUNCED ON : 26.08.2025

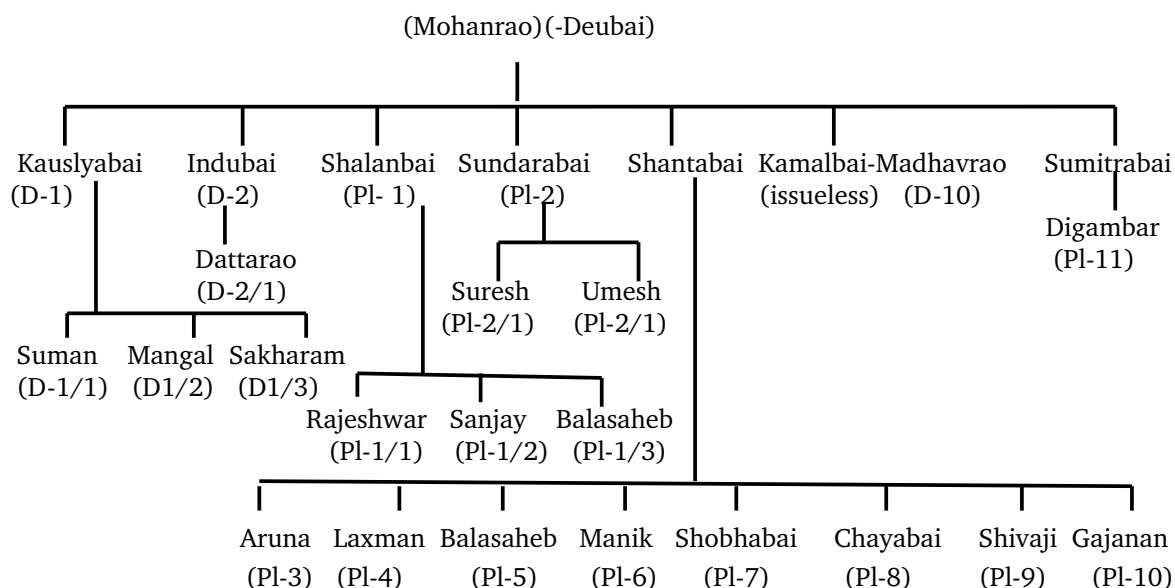
ORDER :

Heard both the sides.

2. The appellants/original defendant nos. 3 to 9 have approached High Court under Section 100 of the Code of Civil Procedure, challenging the judgment and decree dated 30.12.2016, passed in Regular Civil Suit No. 5/2011, by the trial Court, as well as judgment and decree dated 11.07.2024 passed by the Appellate Court in Regular Civil Appeal No. 17/2017. The respondent nos. 1 to 11 are the original plaintiffs. The remaining respondents are defendant nos. 1, 2 and 10. Parties are referred to their original status.

3. While assailing the concurrent findings of facts granting decree of partition and separate possession, the appellants have pressed into substantial questions of law incorporated in para No. 2 of the appeal-memo. Those are pertaining to limitation, entitlement of the parties to claim

partition and to receive share and the effect of decree of partition passed on 23.09.1982 in Regular Civil Suit No. 20/1979. Defendant nos. 3 to 9 are the purchasers. It is apposite to refer to the genealogy :



4. Before filing Regular Civil Suit No. 5/2011 by the plaintiffs for partition, possession and declaration that the sale-deeds are not binding and void, there was earlier round of litigation amongst the family members, which had reached up to the Apex Court. The relationship amongst the members of the family are undisputed. As per the information supplied by the parties, Deubai and Kamalbai-Defendant no. 5 (in RCS No. 20/1979) are no more. Kamalbai was issueless.

5. Following sale-deeds were executed, which are not disputed :

Sr. No.	Date of sale-deed	Vendors	Area	Land Survey No.	Name of purchaser
1)	02.01.1970 (Exh. 162)	Deubai, Sundarabai (P2) Shantabai (P 3 to 10)	4 Acres	110	Umaji (D5)
2)	12.01.1970 (Exh. 163)	Deubai Sundarabai (P-2) Shalanbai (P-1) Digambar (P-11)	8 Acres 22 R 5 Acres	90/A 110/A	Kamlabai

3)	12.05.1977 (Exh. 164)	Madhavrao(D-10)	8 Acres 22 R	90/1/A 90/1/B	Umaji (D5)
4)	14.05.1980 (Exh. 165)	Kamlabai	5 Acres		Devidas Baburao (D-3&4)

6. Defendant no. 1 Kausalyabai and defendant no. 2 Indubai had filed Regular Civil Suit No. 20/1979 for partition, separate possession and declaration that the sale-deeds referred above were bad in law and not binding. The sale-deed dated 14.05.1980 (Exh. 165) was not the subject matter of that suit. Deubai Mohanrao Kalyankar was defendant no. 1 and present plaintiffs, their sisters and purchasers were the defendants. It was in respect of land Survey No. 110 and Survey No. 90/A. Suit was contested by the defendants. It was decreed vide judgment dated 23.09.1982. It's operative part is as follows :

“Order

The suit of the plaintiffs is decreed against the defendants as follows:

It is hereby declared that both the plaintiffs are having 1/8th share each in the suit fields s.no. 110 adm. 9 acres 8 Gts. and s.no. 90/A adm. 8 acres 22 Gts. situated at Pimpalgaon Mahadeo, Tq. Nanded, both the plntffs. are entitled for possession by effecting the partition as per metes and bounds.

The partition of the suit fields and separation of the shares shall be made by the Collector or any Gazetted Sub-Ordinate of the Collector deputed by him in this behalf in accordance with the law (if any) for the time in force relating to partition or the separate possession. And after the partition as per metes and bounds the plaintiffs be allotted the shares as per their own choice. The decree

shall be sent to the Collector for partition and separate possession as per sec. 54 of C.P.C.

It is hereby declared that the sale deeds exh. 68, 69, 72 and the sale deed dated 14.5.1980 executed in favour of Devidasrao and Baburao sons of Tanajirao Deshmukh are not binding on the present plaintiffs.

The defts.no. 6 & 7 do pay the entire costs of this suit of the plaintiffs, they and other defendants do bear their own costs.”

7. Being aggrieved, Regular Civil Appeal No. 234/1982 was preferred by defendant no. 5/Umaji. It was dismissed vide judgment dated 18.10.1989. Thereafter Second Appeal No. 65/1990 was filed, which was also dismissed on 14.07.2009. The decree is further confirmed by the Apex Court.

8. The judgment and decree dated 23.09.1982 passed in Regular Civil Suit No. 20/1979 was confirmed up to Apex Court. Defendant No. 5 was a party to the earlier litigation, who is the appellant before this Court. Defendant nos. 6 to 9 are heirs of defendant No. 5. The vendors-defendant nos. 3, 4 (in RCS No. 20/1979) and Kamalabai were also parties to earlier litigation. In this backdrop, again, plaintiffs filed present suit No. 5/2011 for partition, possession and declaration in respect of same subject matter and additionally a house property. They contended that there was no partition in the family and the sale-deeds executed by the members of the family are not binding. It was contested by the defendant nos. 1 and 2 only, mainly on the ground of *res judicata* due to the decision rendered in Regular Civil Suit No. 20/1979.

9. Interestingly, defendant nos. 3 to 10 did not file written statement in Regular Civil Suit No. 05/2011 and matter proceeded without their written statement. It was decreed partly on 30.12.2016, awarding 1/6th share to the daughters of Mohanrao and Deubai and directions were given to adjust

the equities by allotting the shares to the respective vendors.

10. The appellants, who were defendant nos. 3 to 9 did not contest the suit. They did not prefer appeal or cross objection before lower Appellate Court. The plaintiffs had filed Regular Civil Appeal No. 17/2017 against the judgment and decree dated 30.12.2016 passed in Regular Civil Suit No. 05/2011. The lower Appellate Court modified the decree vide judgment dated 11.07.2024, holding that the sale-deeds in question are not binding on the plaintiffs and all daughters are entitled to 1/6th share in the suit properties.

11. The learned counsel for the appellants submits that present second appeal deserves consideration on the substantial questions of law pressed into service. The decree of the lower Appellate Court holding that the sale-deeds are not binding, is perverse. It is submitted by the learned counsel that present suit is filed on 28.01.2011, challenging the sale-deeds of 1970, 1977 and 1980, which is grossly barred by time. It is further submitted that there was already partition in view a decree passed in earlier suit and therefore further decree of partition is uncalled for and unsustainable.

12. Per contra, learned counsel Mr. Salunke and Mrs. Ansari would vehemently submit that the daughters of Mohanrao and Deubai are entitled to equal share. The appellants did not challenge the decree passed by the trial court by preferring appeal in the lower Appellate Court and they are estopped from filing second appeal. It is further submitted that no substantial question of law involved in the appeal.

13. I have considered the rival submissions of the parties. Following admitted facts emerged in the appeal :

- (a) Regular Civil Suit No. 20/1979 was filed for partition, possession and declaration, pertaining to the sale-deeds, was decreed and it is confirmed up to the Apex

Court.

(b) The decree, which is confirmed in earlier round of litigation, is under execution.

(c) Present Regular Civil Suit No. 5/2011 is filed for partition, possession and declaration pertaining to the sale-deeds in respect of the self-same subject matter.

(d) The appellants/original defendant nos. 3 to 9 did not file written statement.

(e) The appellants/original defendant nos. 3 to 9 did not prefer appeal or cross-objection before the lower Appellate Court.

(f) Mohanrao and Deubai had six daughters, who are the only sharers of the joint family property.

14. I have already recorded that earlier suit was filed by defendant No. 1 Kausalyabai and defendant No. 2 Indubai against their sisters and vendors for self-same relief and subject matter. The decree passed in Regular Civil Suit No. 20/1979 is confirmed up to the Supreme Court. Due to the decree of partition, the status of the family ceased to be that of joint family. Under such circumstances, present Regular Civil Suit No. 05/2011 was absolutely not maintainable. There was no need to solicit any decree of partition or declaration. Only marginal changes due to the death of the sharers are needed to be taken into account for working out the shares. I am of the considered view that entire exercise of filing present suit, preferring appeal before the lower Appellate Court and then filing present second appeal is futility. It was beyond jurisdiction of the Civil Court to grant any relief when already decree passed by the competent Court in Regular Civil Suit No. 20/1979 was confirmed up to the Supreme Court.

15. It is wholly unwarranted to render any finding regarding the sale-deeds, which are subject matter of the present suit, when sale-deeds dated 02.09.1970, 12.1.1970, 12.05.1977 and 14.05.1980 are held to be not binding on the then plaintiffs -Kauslyabai and Indubai. The decree passed in the present suit by the Trial Court, which is modified by the lower Appellate Court in respect of the sale-deeds is inconsequential and unexecutable.

16. The appellants, who are original defendant nos. 3 to 9 did not prefer appeal against the decree passed by the Trial Court on 30.12.2016. They did not even contest the suit by filing written statement. The second appeal preferred at their instance cannot be entertained. The parties to the second appeal are bound by the decree passed in Regular Civil Suit No. 20/1979.

17. The substantial question of law pressed into service sans merit. Parties are bound by the decree passed in earlier round of litigation which is confirmed up to the Supreme Court. Though the lower Appellate Court entertained the appeal and modified the decree, which was in fact not required, the declaration that all the daughters of Mohanrao and Deubai are entitled to equal share of 1/6th cannot be faulted. The said part is in consonance with the decree confirmed up to the Supreme Court in Regular Civil Suit No. 20/1979. The number of sharers is reduced from 8 to 6 due to death. In that view of the matter, I find no reason to entertain the second appeal and the same is liable to be dismissed.

18. The learned counsel for the appellant seeks to rely on the judgment of **K. Arumuga Velaiah Vs. P.R. Ramasamy and another; (2022) 3 Supreme Court Cases 757**. This judgment is cited to buttress the plea of *res judicata*. I am bound to follow the judgment because in the present case also I have recorded that the decree passed in Regular Civil Suit No. 20/1979 for self-same relief would operate as *res judicata*.

19. The learned counsel Mr. Mayur Salunke for the respondent Nos. 3, 5 to 10 refers to the judgment of **Venu Vs. Ponnusamy Reddiar (D) through**

L.Rs. And another; 2017 AIR (SC) 2447. This is on the point of limitation. In the case at hand, the question of limitation does not arise because the subsequent suit for partition is held to be barred by *res judicata*.

20. Further reliance is placed on the judgment of **Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble and others; (2009) 10 Supreme Court Cases 654.** It is on the point that the purchasers of co-coparcener undivided interest is not entitled to possession of his interest unless he sues for partition and ask for allotment of share. The principles laid down cannot be disputed, but those cannot be made applicable to the present case.

21. The Second Appeal is dismissed with clarification that Kausalyabai, Indubai, Shalanbai, Sundarabai, Shantabai and Sumitrabai, shall be entitled to receive 1/6th share each in the suit properties. Accordingly, their heirs shall receive the shares 1/6th per strip.

(**SHAILESH P. BRAHME, J.**)

22. After pronouncement of the judgment, learned counsel Mr. Kadam for the appellants prays for continuation of the statement made by learned counsel for the respondents. In pursuance of the statement, the possession has not been parted yet. It is requested that appellants' desire to approach the Apex Court.

23. The request is opposed by the respondents. It is submitted that parties to the litigation have share in the suit property partition has not been effected by metes and bounds. They are deprived of their respective shares.

25. In pursuance of the statement, the *status quo* as to the possession is in operation till this date. I am inclined to grant *status quo* for further four weeks. There shall be *status quo* for further four weeks with a rider that the same shall stand vacated after expiration of the period without reference to

the Court.

26. It is made clear that if the appellants do not approach the Apex Court, order of *status quo* shall cease to have effect.

27. Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

mkd/-