



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

**SECOND APPEAL NO.146 OF 2025
WITH
CIVIL APPLICATION NO.11676 OF 2024**

- 1) Ramchandra Gangaram Jadhav
Age: 58 years, Occu. Agriculture,
R/o: Chilwadi, Tq. & Dist. Osmanabad

...Appellant
(Orig. Defendant No.8)

VERSUS

- 1) Madhukar S/o Manikrao Thombare
Age- 57 Years, Occu-Agri.
R/o: Dhekari Tq. Tuljapur Dist. Osmanabad.
- 2) Brahmadev S/o Manikrao Thombare
Age-52 Years, Occu-Agri.
R/o: Dhekari Tq. Tuljapur Dist. Osmanabad
- 3) Dhanaji S/o Manikrao Thombare
Age-53 Years, Occu-Agri.
R/o: Dhekari Tq. Tuljapur Dist. Osmanabad.
- 4) Savita W/o Harshwardhan Pawar
Age: 54 yrs, Occu Household
R/o: Khandala, Tq. Tuljapur Dist. Osmanabad.
- 5) Shivaji S/o Bitu Naiknavare
Age-65 Years, Occu-Agri.
R/o: Hinglajwadi,
Tq. & Dist. Osmanabad.

- 6) Shanta W/o Kumar Naiknavare
Age-60 Years, Occu-H.H & Agri.
R/o: As Above.
- 7) Tukaram S/o Kumar Naiknavare
Age-64 Years, Occu-Agri.
R/o: As Above.
- 8) Kaka S/o Kumar Naiknavare
Age-64 Years, Occu-Agri.
R/o: As Above.
- 9) Mainabai W/o Maruti Kanase
Age-62 Years, Occu Household
R/o. Chincholi (B.) Tq. & Dist. Latur.
- 10) Chandrakala Bhagwat Ghadage
Age: 57 Years, Occu Household
R/o. Komadwadi,
Tq. & Dist. Osmanabad.
- 11) Padminibai Gangaram Jadhav
DIED Through Her LR's.
 - 11A) Jayshree Tanaji Suryawanshi
Age: 64 Years, Occu: Household
R/o. Sanja, Tq. & Dist. Osmanabad.
 - 11B) Dhanshree W/o Madhukar More
Age: 56 Years, Occu: Household
R/o: Wadgaon (S.),
Tq. & Dist. Osmanabad.

...Respondents

Advocate for Appellant : Mr.Shrikant Y.Patil h/f.Mr.Sanjay A.Wakure

Advocate for Respondent Nos.1,3 to 5,9 and 10 : Mr.Aniruddha A.Nimbalkar
a/w.Mr.Avishkar P.Patil

Advocate for Respondent Nos.6 to 8: Mr.N.J.Patil

CORAM : SHAILESH P. BRAHME, J.

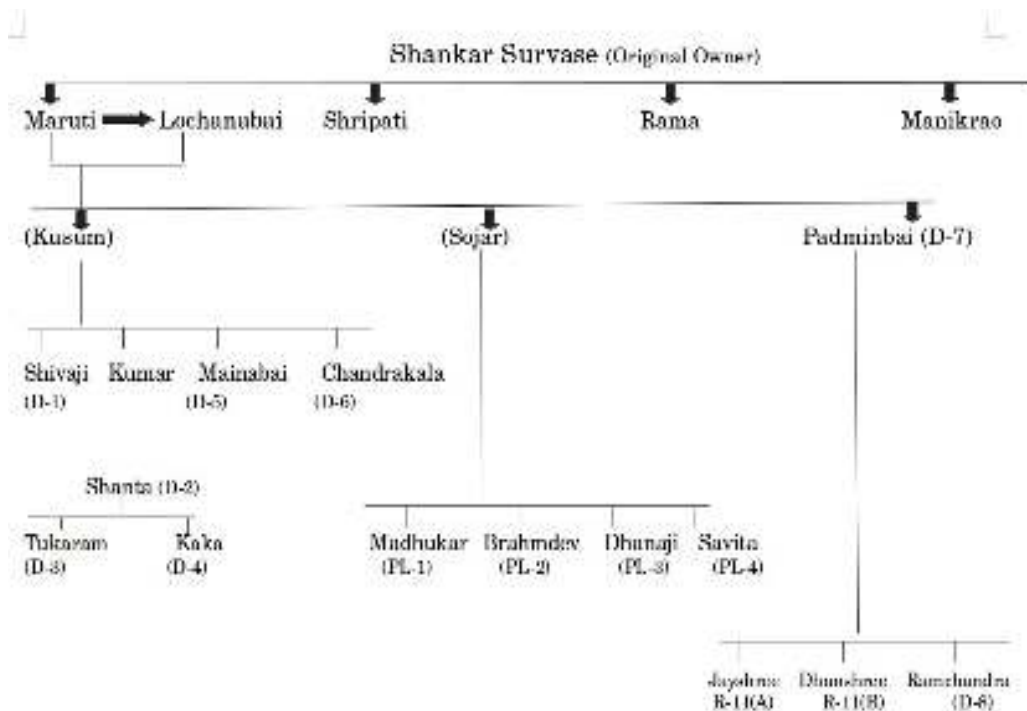
RESERVED ON : 13th AUGUST 2025

PRONOUNCED ON : 19th AUGUST 2025

FINAL ORDER :

1. Heard both sides.
2. Present appeal is emanating from concurrent findings of facts recorded by courts below in decreeing the suit of Respondent Nos.1 to 4 for partition and possession. The relationship *inter se* is not disputed. Appellant No.1 is original-defendant No.8. Respondent Nos.1 to 4 are the plaintiffs. They had filed R.C.S No.301 of 2011 for partition and possession which was decreed on 31.07.2017. Being aggrieved R.C.A No.88 of 2017 was filed which was dismissed on 04.12.2023. To understand the relationship as the matter pertains to partition of joint Hindu family following genealogy is relevant :

Genealogy



3. Respondent Nos.1 to 4 had filed suit that in the partition of 1972, Lochanabai/grandmother of the parties was allotted suit land i.e Gat No.103 which was part and parcel of Sy.No.60. Lochanabai was not the exclusive owner but she had three daughters who are also joint owners. She died in 1980 and her daughters became entitled to 1/3rd shares. There was no partition in the branch of Maruti or Lochanabai and therefore suit was required to be filed for partition.

4. Appellant and Respondent No.11 only contested the suit by

filing written statement. Lochanabai was in possession of land Sy.No.60. She had given suit land to appellant's father/Gangaram who was her son-in-law. An agreement to sale was executed on 28.01.1976 between them. Thereafter sale deed was executed on 12.11.1979 for medical expenses and repayment of loan. The record of right was accordingly mutated and the suit land is inherited by appellant from his father/Gangaram

5. Learned counsel for the appellant submits that trial court did not frame issue regarding limitation and the suit land was sold vide Exhibit-66 for legal necessity. Appellate court also did not frame such a point for determination, though specific ground was raised. It is contended that suit is hopelessly barred by limitation because without challenging sale-deed Exhibit-66, suit is filed for partition. It is submitted that there are pleadings regarding legal necessity still perverse findings are recorded by courts below. It is further contended that plaintiffs did not challenge the sale-deed at Exhibit-66.

6. *Per contra*, learned counsel Mr.Nimbalkar for the Respondents/plaintiffs would submit that Lochanabai was not the

exclusive owner and she had no authority to sale suit land Exh.66 to Gangaram. Her three daughters were having equal shares and there was no legal necessity. It is further submitted that both the courts below have discussed and assigned reasons holding that there was no legal necessity. It is further submitted that lower appellate court elaborately considered plea of limitation though specific point was not framed. It is further submitted that if sale transaction Exh.66 is void, there is no necessity to challenge it.

7. I have considered rival submissions of the parties and I have gone through judgments of both the courts below. It reveals from the record that in 1972 there was partition amongst four sons of Shankarrao Survase. Lochanabai was wife of deceased son Maruti. Plaintiffs and the defendant are from the branch of Maruti and Lochanabai through three daughters viz. Kusum, Sojarbai and Padminbai. No evidence is placed on record to show that there is partition *inter se* amongst the descendants of Maruti or Lochanabai. Due to the existence of three daughters, Lochanabai was not the exclusive owner of land which was allotted to her in partition in 1972. Lochanabai and her three daughters are tenants in common

having equal share. Both the courts below have rightly recorded findings in this regard by elaborate reasons.

8. Lochanabai sold suit land to Gangaram/son-in-law on 12.11.1979 vide sale-deed Exhibit-66. She had no authority to alienate the joint family land. No consent of daughters who were co-owners were obtained. In the written statement appellant pleaded that alienation was made for medical expenses and repayment of loan. The plea of legal issue has been discussed by the trial court in paragraph No.41 and lower appellate court in paragraph Nos.58 and 59. Those are findings of facts and no perversity can be found in them.

9. The specific issues regarding limitation and legal necessity were not framed by trial court. During the course of hearing, application Exhibit-55 was submitted by the appellant for framing additional issues including that of limitation. In pursuance of that Issue Nos.2(A) and 2(B) were framed. The appellant did not challenge the order passed by trial court for not framing issue of plea of limitation. Both the courts below have considered both the pleas and assigned reasons. Therefore, there is no substance in

saying that plea of limitation and legal necessity are not dealt with.

10. It has also been recorded that the sale-deed Exhibit-66 at the instance of Lochanabai is void because she was not the exclusive owner and there was no legal necessity. If the transaction is void then it would not bind the plaintiffs. In this regard judgment is cited by learned counsel Mr.Nimbalkar of the Division Bench of Karnataka High Court in the matter of **Ganpati Santaram Bhosale and another vs. Ramchandra Subbarao Kulkarni and others** reported in **AIR 1985 (Karnataka) 143**. The relevant portion is extracted as below :

“19.The second contention that the suit should have failed for lack of specific relief in regard to the setting aside of the sales is also devoid of merit. It is now well settled that in a suit for partition by Hindu coparcener it is not necessary for him to seek the setting aside of the sale. It is sufficient if he asks for his share in the joint family properties and he be put in possession thereof and for a declaration that he is not bound by any alienations or interest of others created in such properties which fall to his share.”

. The lower appellate court has rightly recorded that there was no necessity for the Respondents/plaintiffs to seek relief of declaration in respect of sale-deed Exhibit-66.

11. Lower appellate court has elaborately dealt with plea of limitation. There is no material on record to show that plaintiffs

were aware of sale-deed dated 12.11.1979 Exhibit-66. It's not a case that they were confronted with the sale-deed but still they remained silent. Lochanabai died in 1980. Plaintiff's mother/Sojarbai expired in 1997. Their Aunt/Kusum expired in 1995. In the written statement a plea of sale-deed Exhibit-66 is taken. Thereafter plaintiffs found that it was being executed fraudulently and without there being any authority. The plea of limitation raised by appellant has no substance.

12. Both the courts below have considered all aspects of the matter and recorded findings which are plausible and reasonable. No substantial questions of law are involved in the matter. Hence, I pass following order :

ORDER

- A) Second appeal is dismissed.
- B) Civil application is disposed of.
- C) There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]