



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.470 OF 2023
WITH
CIVIL APPLICATION NO.11179 OF 2023**

1. Maruti S/o Baliram Pimple,
Age: 73, Occu: Agril,
R/o Bavi, Tq. Bhoom, Dist: Osmanabad.
 2. Vikram S/o Baliram Pimple,
Age: 67 years, Occu: Agril,
R/o: Bavi, Tq. Bhoom, Dist. Osmanabad. ..Appellants
(Orig. Defendant Nos.6 and 7)
- Versus
1. Prayagabai larcnan Pimple @
Prayagabai W/o. Hanumant Iandge,
Age: 63 years, Occu.: Household,
R/o: Vetral Zopadpatti, Pimpri Chinchwad,
Pune, Tq. and Dist. ..Orig. Plaintiff
 2. Anusaya W/o Bapurao Bhuibhar,
Deceased through LR's
- 2/A Chandrakant S/o Ankush Bhuibhar,
Age: 52 years, Occu: Agri,
R/o: Bangala Pimpla, Tq. Georai, Dist. Beed.
 - 2/B. Datta S/o Ankush Bhuibhar,
Age: 47years, Occu: Agri,
R/o: Bangala Pimpla, Tq. Georai, Dist. Beed.
 - 2/C. Rakhmaji S/o Bapurao Bhuibhar,
Age: 67years, Occu: Agri,
R/o: Bangala Pimpla, Tq. Georai, Dist. Beed.
 - 2/D. Ramkisan S/o Bapurao Bhuibhar,
Age: 62 years, Occu: Agri,
R/o: Bangala Pimpla, Tq. Georai, Dist. Beed.
 - 2/E. Baban S/o Bapurao Bhuibhar,
Age: 57 years, Occu: Agri,
R/o: Bangala Pimpla, Tq. Georai, Dist. Beed.
 - 2/F. Babasaheb S/o Bapurao Bhuibhar,
Age: 52 years, Occu: Agri,
R/o: Bangala Pimpla, Tq. Georai, Dist. Beed.

3. Padminibai Ramkrishan Bhuibhar,
Age: 57 years, Occu.: Agril,
R/o Ieet, Tq. Bhoom, Dist: Osmanabad.
4. Gahininath S/o Nivrutti Gharat,
Age: 67 years, Occu.: Agril,
R/o: C/o Babanrao Pachpute,
Post Kashti, Tq. Shrigonda, Dist. Ahmednagar.
5. Sukhadev S/o Nivrutti Gharat,
Age: 53 years, Occu.: Agri,
R/o: C/o Babanrao Pachpute,
Post Kashti, Tq. Shrigonda, Dist. Ahmednagar.
6. Vitthal S/o Changoji Gaikwad
(Deceased) ..Abated
7. Janardhan S/o Changoji Gaikwad,
Age: 67 years, Occu: Agril,
R/o: Jektewadi, Near Jodwadi,
Tq. Gewai, Dist. Beed.
8. Bhimabai Narayan Surve,
Age: 89 years, Occu: Agril,
R/o: Chumbli,Tq. Bhoom, Dist. Osmanabad. ..Respondents
(Orig. Defendants)

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Mr. N. S. Tekale, Advocate for the Appellants.

Mr. S. R. Mantri h/f Mr. S. S. Gangakhedkar, Advocate for
Respondent Nos.5 and 6.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 01st APRIL, 2025.

ORDER:-

1. The appellants/original defendant nos.6 and 7 impugn judgment and decree dated 28.03.2023 passed by Adhoc District Judge-1, Bhoom in Regular Civil Appeal No.1/2015, thereby upholding judgment and decree dated 20.11.2014 passed by Civil Judge, Junior Division, Bhoom in Regular Civil Suit No.201/1991.

(Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent no.1-Prayagabai instituted suit seeking partition and separate possession of suit properties. She claimed that suit properties, which are forming part of Gut Nos.196, 197 and 209 situated at village Bavi Tal. Bhoom, particularly described in plaint paragraph no.1 are ancestral properties of plaintiffs and defendants. She contends that one Ganpati Pimple was original owner. He had four daughters and one son. Ganpati expired in the year 1948 leaving behind Laxman as sole surviving coparcener. Ganpati had daughter namely Padminbai from his wife Sindhu. However, after birth of Padminbai, Sindhu expired. Thereafter, Laxman performed second marriage with Gayabai. The plaintiff is daughter of Laxman from Gayabai. The whereabouts of Padminbai are not known since last 30 to 35 years. Laxman also expired in the year 1970. As such, after death of Laxman, plaintiff, her mother Gayabai and grandmother Laxmibai acquired ownership of the suit properties. Gayabai performed second marriage. Therefore, plaintiff and mother of Laxman i.e. Laxmibai became owner of suit properties. At the time of Laxman's death, plaintiff was minor. She was looked after by her grandmother. Accordingly, name of plaintiff was recorded alongwith Laxmibai in mutation record. After death of Laxmibai, Bhimabai and Anusay became her legal

heirs. The plaintiff became owner of $2/3^{\text{rd}}$ share alongwith defendant nos.1 and 2. The plaintiff claimed her share in the suit property, but defendant nos.1 and 2 refused to effect partition, which is stated to be cause of action for filing Regular Civil Suit No.178/1988 against defendant nos.1 and 2. However, said suit was withdrawn and present suit for partition is filed with permission.

3. The defendant nos.1 and 2 filed written statement and denied relationship with plaintiff. Initially, suit was dismissed for non-joinder of necessary parties. However, in Regular Civil Appeal No.95/2002, it was remanded back to Trial Court with direction to plaintiff to add all heirs of Ganpati and Laxmibai in suit. Accordingly, defendant nos.3 to 5 were added as party being heirs of Ganpati and Laxmibai. The defendant nos.6 and 7 are added, as defendant nos.1 and 2 sold out portion of suit property to them during pendency of suit. After remand of suit it was decreed holding that plaintiff is daughter of deceased Laxman. Similarly, defendant nos.6 and 7 failed to prove that they are bonafide purchasers. In result, decree for partition was passed. The original defendant nos.1, 6 and 7 appealed against decree of Trial Court to District Judge. The learned District Judge dismissed appeal with marginal modification as to allotment of share and held that plaintiff is having $5/16^{\text{th}}$ share, defendant no.3 is having

3/16th share, defendant nos.1 and 2 are having 1/8th share each, defendant nos.4 and 5 are having joint 1/8th share and defendant nos.8 and 9 are having joint 1/8th share. In this background, purchasers/defendant nos.6 and 7 have filed present Second Appeal.

4. Mr. Tekale, learned Advocate appearing for the appellants raises two major objections to the decree under Appeal. According to him, defendant nos.1 and 2 are held entitle to receive 1/8th share in suit property on partition. There is no dispute about alienation of suit property by defendant nos.1 and 2 in favour of appellants under registered sale deed. Therefore, Appellate Court ought to have adjusted shares of vendors of appellants against land possessed by appellants. Secondly, he submits that plaintiff failed to describe suit property by giving requisite details of four boundaries in the plaint. The suit property is part of large chunk of lands scattered in various gut numbers. Since description of property was inadequate, suit ought to have been dismissed for want of compliance under Order VII Rule 3 of Code of Civil Procedure.

5. Having considered submissions advanced and from reasoning adopted by Courts below, it can be observed that suit properties have been described in plaint giving survey numbers, which are now converted into gut numbers. Assuming that part of property

in respect to gut numbers is ancestral property of plaintiff and defendant nos.1 to 4, there appears sufficient compliance required under Order VII Rule 3 of Code of Civil Procedure. Rule 3 stipulates that if the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. In present case, plaintiffs have specified gut numbers of each of land, which is subject matter of suit. Therefore, contention of appellants as to non-compliance of Rule 3 of Order VII of Code of Civil Procedure cannot be countenanced.

6. Second contention raised by appellants/purchasers of defendant nos.1 and 2 that once share is allotted to defendant nos.1 and 2 in partition, appellants being purchasers put in possession of definite share, they can be adjusted by allotment of that land to share of defendant nos.1 and 2 and continue ownership and possession of appellants/purchasers as per sale deed. The aforesaid limb of argument can be answered on the basis of law espoused by Supreme Court of India in case of ***Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others***¹, wherein it is held as under:

¹ (1983) 1 SCC 18.

“A transferee from a party of a property which is the subject matter of partition can exercise all the rights of the transferor. There is no dispute that a party can ask for an equitable partition. A transferee from him, therefore, can also do so. Such a construction of section 54 of the Code of Civil Procedure advances the cause of justice. Otherwise in every case where a party dies, or where a party is adjudicated as an insolvent or where he transfers some interest in the suit property pendente lite the matter has got to be referred back to the civil court even though there may be no dispute about the succession, devolution or transfer of interest. In any such case where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject matter has devolved, he would neither be violating the decree nor transgressing any law.”

7. In light of aforesaid exposition of law, once decree is sent under Section 54 of Code of Civil Procedure for effecting actual partition and allotment of share of agriculture land in pursuance to decree, *pendente lite* purchasers (appellants herein) can definitely seek allotment of properties in equitable manner. The Collector then make equitable partition taking into consideration interest of all the concerned.

8. In that view of the matter, no substantial question of law arises for consideration in this Appeal. Hence, Appeal stands dismissed with liberty in favour of appellants to pursue their remedy during execution of decree in terms of law laid down by Supreme Court of India in case of ***Khemchand Shankar Choudhari and Another*** (supra).

9. In view of dismissal of Second Appeal, pending Civil Application stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025