



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

**SECOND APPEAL NO. 121 OF 2025
WITH
CIVIL APPLICATION NO. 3424 OF 2025 IN SA/121/2025**

**BALASAHEB IRAPPA CHAVAN AND OTHERS
VERSUS
SARUBAI W/O GANGADHAR DHUMAL AND OTHERS**

...
Advocate for Appellants : Mr. Mahendra B. Kolpe
Advocate for Respondent nos. 2 and 3 : Mr. Arun S. Lomte

CORAM : SHAILESH P BRAHME, J.
RESERVED ON : 19.09.2025
PRONOUNCED ON : 25.09.2025

PER COURT :

Heard both sides.

2. A common judgment and decree dated 25.06.2024 passed in Regular Civil Appeal No. 198/2015 and Regular Civil Appeal No. 204/2015 confirming the judgment and decree dated 31.10.2015 passed in Regular Civil Suit No. 87/2009, is impugned in the present second appeal.
3. The appellants are original defendant nos. 3, 5 and 6. The respondent nos. 1 to 3 are the plaintiffs. The respondent nos. 4 to 6 are defendant nos. 1, 2 and 4 respectively. The parties are referred by their original status in the suit. Undisputedly, Irappa died in 1993. His wife Lochanabai died in 1998 and they have six children comprising of five daughters and one son.
4. Three daughters namely Sarubai, Mudrikabai and Chabubai instituted Regular Civil Suit No. 87/2009 for partition and possession in respect of land Gat No. 215, Gat No. 76 and house property bearing Grampanchayat House No. 155. The suit properties are contended to be undivided joint family properties. They are married daughters. One of the daughters

Kaveribai had three sons namely Suryakant, Balasaheb and Sanjay. It is further contended that Balasaheb is alleged to have been adopted by grandfather. Balasaheb got executed a sale-deed on 13.06.1986 in respect of land Gat No. 215 in favour of his brother Suryakant, which is stated to be bogus. Further sale-deeds were executed on 19.12.1996 in favour of defendant no. 5 and 6, which are also bad in law. When the plaintiffs claimed their share, the defendants especially Balasaheb refused the same, which is the cause of action for filing the suit for partition and possession.

5. The defendants filed distinct written statements contesting the suit. The relationship was not disputed by them. The adoption of Balasaheb is stated to be valid and as per custom. A registered adoption deed dated 09.09.1976 is relied upon. They justified execution of the sale-deed by Irappa in favour of Suryakant for the legal necessity and further alienation by Suryakant in favour of defendant no. 5 Narsing and defendant no. 6 Amol. It is contended that the suit is barred by limitation. It is contended that the plaintiffs are not entitled to any share in the partition.

6. Parties adduced oral evidence before the Trial Court. The suit was held to be within limitation. The adoption deed was held to be valid. The sale-deeds executed on 13.06.1986 and 19.12.1996 were held to be not binding on the plaintiffs. Land Gat No. 215 was excluded from partition.

7. By judgment and decree dated 31.10.2015 suit was decreed partly granting 1/9th share to the plaintiffs and the defendant nos. 1 and 2 in land Gat No. 76 and house property No 155. The defendant no. 3 Balasaheb is granted 4/9th share in the above properties. Whereas, land Gat No. 215 is excluded from the partition and the suit to that effect is dismissed.

8. Being aggrieved by the judgment and decree passed by the Trial Court Regular Civil Appeal No. 198/2015 is preferred by defendant nos 3, 5 and 6 mainly against decree of partition and Regular Civil Appeal No. 204/2015 is preferred by plaintiffs against denial of partition in respect of land Gat No.

215 and upholding of adoption. By a common judgment and decree dated 25.06.2024 both appeals are dismissed.

9. At the outset it needs to be clarified that both Courts below concurrently held that sale-deed dated 13.06.1986 executed by Irappa in favour of defendant no. 4 Suryakant is binding on the parties because it was required to be alienated for legal necessity. Therefore, land Gat No. 215 was excluded from decree of partition. The adoption of defendant no. 3 Balasaheb by Irappa his grand father is evidenced by a registered adoption deed executed on 09.09.1976, is concurrently held to be valid. The plaintiffs have also preferred second appeal, which can be dealt with separately as no attempts are made for clubbing it with the present appeal. Presently, the submissions of the appellants are restricted to issue of limitation and entitlement of the plaintiffs to claim partition and consequentially shares in land Gat no. 76 and house no. 155.

10. The learned counsel for the appellants Mr. Kolpe submits that Irappa died in 1993 and the suit is instituted in 2009, which is grossly barred by time. It is further submitted that being adopted son, defendant no. 3 Balasaheb is the sole surviving co-parcener and entitled to receive the suit properties. It is submitted that plaintiffs being married daughters are not entitled to claim partition due to implication of section 29A of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act'). The learned counsel has also pressed into service Proviso to Section 6 of Amended Act. It is contended that no reasons are assigned by both Courts below for deciding the issues of limitation and demarcation of shares. According to learned counsel above submissions constitute substantial questions of law.

11. Per contra, learned counsel Mr. Lomte for the respondent nos. 2 and 3 supports both the judgments. It is contended that plaintiffs have also preferred separate second appeal challenging findings of validity of adoption deed and exclusion land Gat No. 215 from the partition. It is submitted that

Balasaheb was incompetent to be taken in adoption and no custom was proved. It is further submitted that allotment of shares cannot be faulted.

12. It is cursorily argued by the learned counsel for the appellants that the point of limitation was not properly dealt with. Record reveals that Trial Court had framed an issue to that effect. Lower Appellate Court also framed point for determination. Both the Courts below have recorded reasons for holding that suit filed in the year 2009 is within limitation. The cause of action shown in the plaint is that of 27.10.2009. A stray admission of the plaintiffs' witness that he was not allowed to come to the family house would not constitute the starting point of the limitation. I find that suit is filed within period of limitation from the exclusion of the plaintiffs from joint family properties. The findings recorded in that regard cannot be said to be perverse.

13. It is emphasized by the learned counsel for the appellants that the shares demarcated by the Courts below are not in accordance with law. The adoption is proved and appellant no.1 Balashaeb would become coparcener. Irappa died in 1993 and his wife Lochanbai died in 1998. When partition opened, appellant no. 1 stated to be the only male coparcener, who is entitled to inherit the joint family properties. Learned counsel made reference to Section 29-A of State Amendment of 1994. I am unable to be persuaded by the submissions that appellant no. 1 Balasaheb being male coparcener is entitled to get entire property. No specific provision has been pointed out to give preference to male coparcener. The State Amendment of 1994 may not make any difference because thereafter Central Amendment was introduced to Section 6 with effect from 09.09.2005. The case is governed by amended Section 6 instead of State Amendment of Section 29-A. The Central Amendment of 2005 would prevail. It does not provide any disqualification from claiming partition or share in the joint family by the married daughters.

14. The amended Act is held to be retroactive by Supreme Court in case of **Vineeta Sharma Vs. Rakesh Sharma and others**;(2020) 9 SCC 1. Therefore, amended section 6 would have full force even presuming that partition would have opened in 1993. I find no merit in the submission of learned counsel for the appellant.

15. It is necessary to reiterate the conclusion drawn by Apex Court in **Vineeta Sharma (supra)** which is very relevant to disapprove the submissions made by the counsel for the appellants. Following are the relevant findings :

“137. Resultantly, we answer the reference as under :

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when

he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.”

16. Trial Court worked out the shares of the parties on the basis of notional partition. The exercise undertaken is against amended Section 6 of the Act. The plaintiffs would be the co-parceners having birth right and they would be at par with Balasaheb. By implication of amended Section 6, five daughters and a son will have equal share in land Gat No. 76 and Grampanchayat house No. 155. They will get 1/6 share each. The submissions of the appellants in respect of allotment share are against the purport of the pronouncement of Supreme Court in the matter of **Vineeta Sharma (supra)**.

17. It is tried to be contended that as per law laid down in **Prakash Vs. Fulwati (2016) 2 SCC 36** plaintiffs stand disqualified being married daughters. It is contended that on the date of amendment i.e. 09.09.2005 daughters were alive but Irappa passed away in the year 1993. It is relevant to refer to following extract of the Supreme Court in the matter of **Vineeta Sharma (supra)**.

*“80. A finding has been recorded in **Prakash v. Phulavati** that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends.*

*Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of "living coparcener", as laid down in **Prakash v. Phulavati**. In our opinion, the daughters should be living on 9-9-2005. In substituted Section 6, the expression "daughter of a living coparcener" has not been used. Right is given under Section 6(1)(a) to the daughter by birth. Declaration of right based on the past event was made on 9-9-2005 and as provided in Section 6(1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave no room to entertain the proposition that coparcener should be living on 9-9-2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part.*

81. *In **Mangammal v. T.B. Raju 18**, the Court considered the provisions made in the State of Tamil Nadu, the State Government enacted the Hindu Succession (Tamil Nadu Amendment) Act, 1989, made effective from 25-3-1989, adding Section 29-A in the Hindu Succession Act, 1956. Section 29-A was held to be valid regarding succession by survivorship. Section 29-A provided equal rights to daughters in coparcenary property. The provisions were more or less similar, except Section 29-A(iv) treated a married daughter differently. The provisions were not applicable to the daughters married before the date of commencement of the Amendment Act, 1989. Thus, married daughters were not entitled to equal rights. That too, has been taken care of in Section 6, as substituted by the 2005 Act, and no discrimination is made against married daughters. In the said case, Mangammal got married in 1981, and Indira got married in or about 1984 i.e. before the 1989 Amendment. Therefore, it was held that because of Section 29-A(iv) of the Amendment Act, the appellant could not institute a suit for partition and separate possession as they were not coparceners. The*

*decisions in **Prakash v. Phulavati** and **Danamma** were referred, and it was opined that **Prakash v. Phulavati** would still hold the value of precedent for right of a daughter in ancestral property and only "living daughters of living coparceners" as on 9-9-2005 would be entitled to claim a share in the coparcenary property."*

18. One of the substantial question of law posed before this Court in the present appeal is that the applicability of section 6 prospectively. That has also been settled by the Supreme Court that Section 6 is retroactive. For the reasons stated above, I find no merit in the second appeal except modification of the shares.

19. Second Appeal is dismissed.

20. The appellant no. 1 Balasaheb, the respondent nos. 1 to 5 shall be entitled to equal 1/6th share in land Gat No. 76 and Grampanchayat house No. 155. With this modification the judgment and decree passed by the Trial Court in Regular Civil Suit No. 87/2009 dated 31.10.2015 stands confirmed.

21. Pending Civil Application is disposed of.

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

mkd/-