



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

3 SECOND APPEAL NO. 177 OF 2025
WITH
CIVIL APPLICATION NO. 5146 OF 2025

1. Prabhakar S/o. Nanasaheb Tat,
Age: 37 years, Occu: Agriculture
R/o. Apegaon, Tq. Ambejogain, Dist. Beed.
2. Bhausahab S/o. Nanasaheb Tat,
Age: 35 years, Occu; Agriculture
R/o. Apegaon, Tq. Ambajogai,
Dist. Beed.

....APPELLANTS
(Orig. Def. No. 4 & 5)

VERSUS

1. Uma @ Urmila W/o. Audumber Shinde,
Age:37 years, Occu: Household,
R/o. Apegaon, Tq. Ambajogai,
Dist. Beed.
2. Yuvraj S/o. Vishwanath Tat,
Age: 67 years, Occu. Agriculture
R/o. Apegaon, Tq. Ambajogai, Dist. Beed.
3. Kamalbai W/o. Yuvraj Tat,
Age: 60 years, Occu: Household,
R/o. Apegaon, Tq. Ambajogai, Dist. Beed.
4. Nanasaheb S/o. Vishwanath Tat,
Age: 75 years, Occu; Agriculture
R/o. Apegaon, Tq. Ambajogai,
Dist. Beed.
5. Parimalabai W/o. Bhagwantrao Shinde,
Age: 80 years, Occu: Household,
R/o. Apegaon, Tq. Ambajogai, Dist. Beed.

....(Orgi. Plaintiff)

....(Res. No.2 to 4 are
Ori. Def. No.1 to 3)

....RESPONDENTS
(Res. No.5 is Orig. Def. No.6)

Mr. Khadap Rahul Dattoba, Advocate for Appellant
Mr. Abhijit G. Choudhari, Advocate for Respondent No.1-(Caveator)

....

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 07.05.2025

ORDER :-

. The appellant/original defendant Nos. 4 & 5 impugn the judgment and decree dated 23.07.2024 passed by the District Judge-2, Ambajogai, in Regular Civil Appeal No. 47 of 2022, thereby upholding the judgment and decree dated 08.07.2022 passed by the Civil Judge, Senior Division, Ambajogai, District Beed, in Regular Civil Suit No. 79 of 2012 by which suit filed by Respondent No. 1/original plaintiff for partition and separate possession came to be decreed.

2. The plaintiff filed suit contending that she is daughter of defendant Nos. 1 and 2. The other defendant Nos.3 and 6 are brother and sister of defendant No.1 and defendant Nos.4 and 5 are the sons of defendant No.3. Defendant No.2 is the wife of defendant No.1. For the purpose of brevity, the relationship between parties is given as under:

Vishwanath

!

!	!	!
Nanasaheb (Son)	Yuvraj (Son)	Parimalabai(daughter)
(deft No.3)	(Deft. No.1)	(Deft. No.6)

!

!

!	!	!	!
Prabhakar	Bhausahab	Kamalbhai	Uma
(Son) Deft.4	(Son) Deft.5	(Wife) Deft.2	(daughter)pltf.

3. According to plaintiff, during lifetime of Vishwanath, suit properties were joint family properties. However, after death of Vishwanath, his son Nanasaheb became *Karta* of joint family and purchased some properties in the names of his sons. The plaintiff alleges that Defendant No. 3, in collusion with revenue officers, effected Mutation Entry No. 453, depicting partition between Defendant Nos. 1 and 3. According to plaintiff, she married on 04.06.2002. Her father i.e., defendant No.1 was habitual to drink liquor and failed to maintain defendant No.2. Plaintiff asked for 1/3 share in share allotted to defendant No.1; however, he refused. Therefore, she filed the suit seeking decree of partition, separate possession, and injunction.

4. The defendants refuted the plaintiff's claim, contending that Vishwanath died on 22.11.1989. During his lifetime, he

partitioned the suit properties and distributed them among Defendant Nos. 1 and 3, whereas his daughter, Parimalabai (Defendant No. 6) relinquished her share. It is further pleaded that Defendant No. 1 again effected partition between himself and Defendant No. 3. Accordingly, Mutation Entry No. 620 has been sanctioned. According to defendants, lands in Block No. 90/3 and Block No. 90/1 are self-acquired properties of Defendant Nos. 4 and 5.

5. The Trial Court framed issues, recorded evidence of the parties, and partly decreed the suit of the plaintiff, upholding her claim that she, along with Defendant Nos. 1 and 2, have 1/3 share each in the land Survey Nos. 90/1, 90/3, and house properties bearing Nos. 63 and 66. The aforesaid decree was subjected to challenge in Regular Civil Appeal No. 47 of 2022 by Defendant Nos. 4 & 5. The learned District Judge dismissed appeal, upholding decree passed by the Trial Court.

6. Mr. Khadap vehemently submits that Defendant No. 1 was the exclusive owner of his share after partition between himself and his brother. The plaintiff, who is the daughter of Defendant No. 1, cannot claim partition. He relies upon the observations of the Supreme Court of India in case of *Angadi Chandranna Vs. Shankar*

and Others, in Civil Appeal No. 5401 of 2025, decided on 22.04.2025. He would further submit that the lands in Survey Nos. 90/2 and the house properties bearing Nos. 63 and 66 has to be treated as self-acquired properties of Defendant No. 1 hence plaintiff cannot assert any right during his lifetime. He would also submit that Defendant No. 1 has transferred suit lands from Survey Nos. 90/4 and 90/2 in favour of Respondent Nos. 4 and 5, vide Mutation Entry No.620. The transfer was made for consideration to satisfy his legal necessity. Hence, he urges to admit appeal.

7. Per contra, Mr. Choudhary, learned Advocate appearing for Respondent (Caveator) supports the judgment and decree passed by the courts below.

8. According to Mr. Khadap, defendant No.1, i.e., father of plaintiff, had received property in a partition effected by his father, Vishwanath. As such, defendant No.1 became absolute owner of his share. In support of his contention, he relies upon observations recorded in paragraph No.17 of the judgment in case of **Angadi Chandranna Vs. Shankar and Others 255 SCC OnLine SC 877**, which reads thus:

“17. It cannot be disputed that the 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 the self-acquired properties of the respective sharers.”

9. There cannot be dispute over the aforesaid preposition of law. Although a coparcener, who receives property in a partition enjoys his share as an absolute owner, this position is not static. So long as the ancestral property remains in hands of a single person, it can be treated as separate property. But if a son is born, the property becomes coparcenary property, and son would acquire interest in it and become a coparcener.

10. In view of amendment to the Hindu Succession Act, a daughter also enjoys status of coparcener. Therefore, a son or daughter born to the person would have a birth right in coparcenary property. At this stage, reference can be given to the observations of Supreme Court of India in case of ***Rohit Chauhan Vs. Surinder Singh and Others, Civil Appeal No.5475 of 2013*** which are based on the observations in earlier judgment in case of ***M. Yogendra V, Leelamma N., (2009) 15 SCC 184***, which reads thus:

“It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property, same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives.”

11. In light of aforesaid observations, the contention of Mr. Khadap that defendant No.1, after receiving his share in the partition from his father, was absolute owner, cannot be accepted. After birth of plaintiff, she acquired share in coparcenary ancestral property received by her father from his father.

12. Mr. Khadap raises second contention that defendant No.1 admitted that land survey Nos. 90/4 and 90/2 were partitioned by defendant No.1 in favour of his nephews, i.e., defendant Nos. 4 and 5. According to him, mutation entry No. 620, Exhibit-37, clearly demonstrates such partition, and therefore, the plaintiff is not entitled to raise any claim in that property. However, learned District Judge rightly observed that mutation entry No.620 has been effected on 30.10.2010 which is not preceded by any registered document of transfer of title. Apparently, defendant No.1 was not free to transfer property by partition in favour of defendant Nos.4 and 5 particularly when the plaintiff and her mother were having existing right in that property.

13. There is nothing on record to show that plaintiff relinquished her right in property or consented for transfer of property in favour of defendant Nos.4 and 5. Therefore, on the basis of mutation entry No.620, no title can pass in favour of defendant Nos.4 and 5 or defendant No.1 cannot frustrate right of plaintiff on basis of mutation entry depicting transfer by partition in favour of defendant Nos.4 and 5. Learned District Judge rightly rejected claim of defendant that land survey Nos.90/4 and 90/2 were not available for partition. Even assuming that the transfer of property under mutation entry No.620 was given effect, the fact remains that defendant No.1 has no right to transfer suit property ignoring plaintiff's right.

14. In that view of the matter, such transfer would not bind the right of plaintiff in the coparcenary joint family property. In result, no substantial question of law arises for consideration in this appeal. Hence, the Second appeal is dismissed. In view of dismissal of the appeal, the civil application stands disposed of.

[S. G. CHAPALGAONKAR, J.]