

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.359 OF 2022
WITH
INTERIM APPLICATION NO.2569 OF 2022**

1. Sou. Vimal Ramchandra Mohite
Age : 49 years, Occ : Household
R/o. Mahadevwadi, Tal : Walwa,
District : Sangli.

2. Sou Shobha Vasant Patil
Age : 44 years, Occ : Household,
R/o.: Sagaon, Tal: Shirala,
Dist : Sangli.

Shri. Nivas Vasant Patil,
Age : 26 years, Occ : Labour,
R/o: Sagaon, Tal: Shirala,
Dist : Sangli.

...Appellants

V/s.

1. Smt. Shakuntala Baburao Jadhav,
Age : 51 years,
Occu : Agirculturist & Household,
R/o: Punvat, Tal: Shirala, Dist : Sangli.

2. Sou. Ujwala Rangrao Galugade,
Age : 46 years, Occ : Household,
R/o: Nigadi, Tal : Shirala, Dist : Sangli.

3. Sou. Archana Rajaram More,
Age : 36, Occu : Household,
R/o: Satve, Tal : Panhala,
Dist : Kolhapur.

... Respondents

Adv. Vikrant Anand Desai i/b. Adv. S. M. Kamble, Advocate for Appellant.

Adv. Rushikesh Gajanan Patil, Advocate for Respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 8th DECEMBER 2025

FINAL ORDER:

1. Present appeal takes exception to judgment and decree dated 21st October 2021 passed by District Judge, Islampur in Regular Civil Appeal No. 111 of 2016, thereby upholding judgment and decree dated 24th November 2016 passed by Civil Judge, Junior Division, Shirala in Regular Civil Suit No. 033 of 2015, by which suit filed by respondents for partition, possession and perpetual injunction has been decreed.

2. Appellants are original defendant nos. 1, 4 and 5. Respondent no. 1 instituted Regular Civil Suit No. 033 of 2015 seeking relief for partition and possession, contending that suit properties are owned by joint family. Vitthal, i.e., father of plaintiff, was owner and after his demise name of Parvati was mutated in record of rights. Parvati died on 28th August 2014. When plaintiff asked for partition of suit property, defendants denied plaintiffs' right. Hence, he filed the suit.

3. Defendant nos. 4 and 5 refuted plaintiffs' claim. According to them, property bearing Block No.542/2/2 is self-acquired property of defendant no.4. She purchased it from Sadashiv Mahadev Sapkal under a registered sale deed dated 25th April 2005 and accordingly mutation has been effected. The house property No.304/A is also self-acquired property of defendant no. 4 and she is in possession as exclusive owner.

4. Trial Court framed issues based on pleadings of parties, recorded evidence and concluded that suit properties are ancestral properties of plaintiff and defendants, hence plaintiff is entitled for 1/5 share along with defendants.

5. Aggrieved defendants filed Regular Civil Appeal No.111 of 2016 before District Judge, Islampur, which came to be dismissed on 21st October 2021, thereby upholding judgment and decree as passed by Trial Court. Hence, this Second Appeal.

6. On 19th August 2023, when Second Appeal was taken up for admission, learned Advocate appearing for appellants, on written instructions from appellant no.3, submitted that except suit property described in plaint paragraph no. 2(A)(1), i.e., Block No. 542/2/2, and house property described in plaint paragraph 2(B),

i.e., house property No.304/A, appellants are accepting judgment and decree passed by Trial Court and have confined Second Appeal only to the extent of aforesaid properties.

7. Mr. Vikrant Desai, learned Advocate appearing for appellant, submits that Block No.542/2/2 as well as house property No.304/A are self-acquired properties of defendant no.4. Defendant no.4 purchased 30 R land from Block No.542/2/2 vide registered sale deed dated 25th April 2005, accordingly mutation entry has been effected in her favour. He, therefore, urges that said properties cannot be considered as joint family properties. Apart from that, he points out that house property is also standing in the name of defendant no.4 and she is continuously in possession of the same.

8. Apparently, aforesaid contentions have been elaborately considered by Trial Court as well as Appellate Court. Trial Court observed that Block No.542/2/2 admeasures 4 acres and 27 R and only 16 R portion out of said Gat number stands in the name of Parvati, i.e., mother of plaintiff and defendants. Defendant no. 4 purchased 30 R portion from Gat No.542/2/2, which is independent of land standing in the name of Parvati. Therefore, for

the purpose of present suit for partition, only 16 R portion standing in the name of Parvati is the subject matter, and defendants cannot assert that said 16 R portion is self-acquired property under registered sale deed dated 25th April 2005. Appellate Court has also concurred with the aforesaid finding of Trial Court.

9. This Court does not find any infirmity or error in aforesaid finding of fact. Essentially, suit for partition has been filed in respect of lands which were owned by Parvati or Vitthal. Therefore, so far as 16 R portion of land standing in the name of Parvati is concerned, defendant no. 4 cannot assert any right on basis of her sale deed, which pertains to a different portion of 30 R land from Block No.542/2/2.

10. So far as house property No.304/A is concerned, defendant no. 4 is trying to assert a right only on basis of a mutation entry. Trial Court as well as Appellate Court observed that defendant no. 4 has not pleaded that she purchased said property out of her own income. On other hand, evidence on record shows that house property was originally owned by Vitthal. As such, merely on basis of a mutation entry and electricity bills, defendant no.4 cannot

assert exclusive right over suit house property. Appellate Court observed that defendant witness no.1, Vasant, has categorically admitted that house was owned by Vitthal Aswale and after his death it was inherited by Parvati. As such, defendant no. 4 failed to prove her exclusive ownership and possession over both properties. This Court do not find any infirmity in the aforesaid findings of fact. No substantial question arises for consideration in this appeal.

11. In result, Second Appeal sans merit, hence dismissed.

12. In view of dismissal of Second Appeal, pending Interim Application also stands disposed of.

(S. G. CHAPALGAONKAR, J.)