

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
SECOND APPEAL NO.590 OF 2022
WITH
INTERIM APPLICATION NO.17444 OF 2022**

SHAMRAO KHASHABA MOHITE (DEAD) THR LRS AND ORS.
VERSUS
VILAS RAMRAO MOHITE AND ORS.

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Mr. A. M. Kulkarni a/w Mr. A. A. Kulkarni, Advocate for Appellants.
Mr. A. A. Ghadge, Advocate for Respondents.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 11th SEPTEMBER, 2025.**

FINAL ORDER:-

1. The present Second Appeal impugns judgment and decree dated 31.03.2022 passed by District Judge-4 and Additional Sessions Judge, Sangli in Regular Civil Appeal No.106/2018, thereby upholding judgment and decree dated 25.01.2018 passed by learned Civil Judge Junior Division, Kadegaon in Regular Civil Suit No.274/2012.
2. The appellants are original plaintiffs. They instituted suit seeking partition and separate possession of suit properties mentioned in paragraph no.1A of plaint, which includes agriculture land as well as house properties situated at village Wadgaon, Taluka Kadegaon. The contention of plaintiffs is that one Tatoba Mahadu Mohite was original owner of suit properties. Tatoba had son namely Khashaba. Khashaba was given in adoption on 06.07.1939 and known as Shankar in his adoptive family. Before adoption of Khashaba, his son Ramrao was born. After adoption of Khashaba, plaintiffs were born. The suit

properties were originally owned by Tatoba i.e. natural father of Khashaba. According to plaintiffs, after demise of Khashaba, properties were recorded in the name of Ramrao as predecessor of plaintiffs. According to them, suit property is joint family property of plaintiffs and defendants. Hence, they are entitled for $1/6^{\text{th}}$ share each.

3. The defendants denied claim of plaintiffs contending that suit property was owned by Tatoba Mahadu Mohite. His son Khashaba has married to Anandibai. Ramrao is son of Khashaba. After birth of Ramrao, Khashaba was given in adoption to Kasabai Aba Sapkal under registered adoption deed executed on 06.07.1939. Since date of adoption Khashaba @ Shankar was residing with Kasabai Aba Sapkal. The plaintiffs were born after adoption of Khashaba. In the year 1990, plaintiffs got their surname changed as Mohite. The plaintiffs have already received property of adopted family of Masuchiwadi and they are unconcerned with properties belonging to original family of Khashaba.

4. The Trial Court framed issues based on pleading of parties, recorded evidence and concluded that suit property was not joint family property of plaintiffs and defendants as claimed and plaintiffs cannot claim right and interest in suit property. Eventually, dismissed suit of plaintiffs vide judgment and decree dated 25.01.2018. Aggrieved plaintiffs filed Regular Civil Appeal No.106/2018 before

learned District Judge at Sangli, who dismissed Appeal vide judgment and order dated 31.03.2022. Hence, this Second Appeal.

5. Mr. Kulkarni, learned Advocate appearing for appellants would submit that adoption deed dated 06.07.1939 is unilateral. It does not bear signature of Tatoba nor it bears signature of Khashaba and, therefore, deed of adoption dated 06.07.1939 is invalid. Further there is no evidence to show actual giving and taking in adoption of Khashaba. In absence of mandatory requirement of valid adoption, Courts could not have presumed validity of adoption. He would, therefore, urge that judgment and decree passed by Courts below are unsustainable in law.

6. Perusal of reasoning in judgment and decree of Trial Court shows that plaintiffs failed to lead any evidence. They have simply relied upon documents and cross-examination of defendants' witnesses. The Trial Court considered contents of registered document dated 06.07.1939, so also documents at Exhibits 50 to 53, which shows that Khashaba was known as Shankar after adoption. Similarly, decree passed in Regular Civil Suit No.151/1949 is placed at Exhibit-56, wherein Shankar Aba Sapkal @ Khashaba has accepted that he is unconcerned with family of Tatoba Mahadu Mohite after adoption. There are several revenue entries indicating that Khashaba was enjoying property of his adoptive family in name of Shankar Aba Sapkal. The Appellate Court also relied upon decree in Regular Civil

Suit No.151/1949 passed by Civil Judge Senior Division at Sangli. It was suit filed by Shankar Aba Sapkal (Khashaba), wherein findings in favour of adoption has been recorded and his adoption is held to be valid. In that view of matter, objections raised to validity of adoption of Khashaba under registered document dated 06.07.1939 are liable to be rejected.

7. Second aspect of matter is that plaintiffs are claiming right in suit properties through Khashaba. Admittedly, after adoption of Khashaba, suit properties owned by his natural family would go to his descendant i.e. Ramrao, who is born before adoption. The plaintiffs received property from adoptive family of Khashaba and now they are trying to set up right over property, which was originally belonging to Tatoba i.e. natural family of Khashaba. Even after death of Khashaba, his name was not recorded to properties of Tatoba. Khashaba continued to enjoy properties of his adoptive parents.

8. In these circumstances, no infirmity can be found in concurrent judgment and decree passed by Courts below. No substantial question of law arises for consideration in this Second Appeal. Hence, Second Appeal stands dismissed.

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

(S. G. CHAPALGAONKAR)
JUDGE