



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.551 OF 2025**

Vijay Govind Kudke ... Appellant
versus
Pramilabai Bandu Khare and Ors. ... Respondents

WITH
INTERIM APPLICATION NO.12066 OF 2025
WITH
SECOND APPEAL NO.552 OF 2025

Shakuntala Bhagwat Kudke (deceased)
through legal heirs Sanjay Bhagwat
Kudke and Ors. ... Appellants
versus
Pramilabai Bandu Khare and Anr. ... Respondents

WITH
INTERIM APPLICATION NO.12071 OF 2025

Mr. Vikram A. Sathaye i/by Mr. Hrishikesh Shinde for Appellants.

CORAM: N.J.JAMADAR, J.

DATE : 8 OCTOBER 2025

ORDER :

1. Heard the learned Counsel for the Appellants.
2. These Second Appeals are directed against the judgments and decrees in Regular Civil Appeal No.117 of 2023 dated 8 August 2025 and Regular Civil Appeal No.8 of 2024 dated 8 August 2025, whereby the appeals preferred by the appellants / Defendants against the judgment and decree dated 2 May 2023 passed by the learned Civil Judge in Regular Civil Suit No.49 of 2009 came to be dismissed by affirming the said decree.

3. Khemu Yesu Kudke was the common ancestor. Khemu passed away on 22 July 1957, leaving behind Respondent No.1 – Plaintiff, a daughter, and two sons, Govind, father of Appellant in Appeal No.551 of 2025, and Bhagwat Kudke, predecessor in title of the Appellants in Appeal No.552 of 2025.

4. Khemu had left behind agricultural lands bearing Gat Nos.1650 and 1717 situated at Village Nagarsul, Ta. Yeola, Nashik (the suit properties). The Respondent instituted a suit with the assertions that, after the demise of her father Khemu, she called upon her brothers Govind and Bhagwat to partition the suit properties and give her share therein. They went on assuring the Respondent that the suit properties would be partitioned. As the suit properties were not partitioned, the Respondent instituted a suit for partition and separate possession of her share in the suit properties.

5. The Defendants resisted the suit by filing Written Statement. It was contended that, after the demise of Khemu, there was partition of the joint family properties and the names of the Defendants were mutated to the record of rights of the suit properties. The Plaintiff had never raised any objection to the exclusive possession and cultivation of the suit lands by the Defendants in accordance with the shares which were allotted to the Defendant Nos.1 and 2.

6. Learned Civil Judge returned a finding that the suit properties were the ancestral properties. The Plaintiff had 1/3 undivided share in the suit

properties. Defendant No.2 failed to prove that the Plaintiff had relinquished her share in the suit properties. Hence, the decree for partition and separate possession came to be passed.

7. Being aggrieved, the Defendants preferred appeals before the District Court. By the impugned judgments and orders, the learned District Judge dismissed the appeals by affirming the decree passed by the Civil Judge in Suit No.49 of 2009.

8. Mr. Sathaye, learned Counsel for the Appellants, would urge that the trial Court as well as the Appellate Court committed grave error in law in passing a decree for partition and separate possession when the suit was clearly barred by limitation. Khemu Kudke passed away in the year 1957. Yet the suit was instituted in the year 2009. The Courts below erred in not framing the issue of limitation, despite the suit being ex-facie barred by limitation. Secondly, there was clear waiver of her rights by the Plaintiff. Partition of the joint family properties was to the knowledge of the Plaintiff as the names of the predecessor-in-title of the Defendants came to be mutated to the respective portions of the suit properties on the basis of the statements given by the parties before the revenue authorities. Lastly, the suit for partial partition was not tenable. These issues give rise to substantial questions of law, urged Mr. Sathaye.

9. I have perused the material on record, and, considered the submissions

canvassed by Mr. Sathaye. The bar of limitation to the institution of the suit sought to be canvassed by Mr. Sathaye, is not at all attracted. No case of ouster of the Plaintiff was made out. In the absence of clear pleading and proof of ouster, the possession of one co-owner is for and on behalf of all the co-owners. Therefore, the submission that the suit was barred by limitation does not merit acceptance.

10. In the case of **Darshan Singh and Ors. V/s. Gujjar Singh (dead) by LRs and Ors.**¹, the Supreme Court expounded the legal position, as under :

“9. In our view, the correct legal position is that possession of a property belonging to several co-sharers by one co-sharer shall be deemed that he possesses the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue records in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of the other co-sharers was denied.”

11. The theory of prior partition is also far from proved. No evidence could be adduced to establish the factum of prior partition. Mere mutation entries in the record of rights which are made for fiscal purposes do not make or unmake title. Defendant No.2 failed to prove the factum of relinquishment of her share by the Plaintiff in favour of her brothers.

12. Mr. Sathaye made an endeavour to urge that the suit was not at all

1 (2002) 2 SCC 62

tenable as all the joint family properties were not brought in the hotchpot. In the cross-examination of Ravindra Khare (P.W.1), power of attorney of the Plaintiff, it was brought out that the house property was not included in the suit. Thus, the courts below could not have entertained a suit for partial partition.

13. Learned Civil Judge as well as the learned District Judge negated the said challenge for the reason that the Defendants had not raised the defence in the written statement that certain properties were not brought in the common hotchpot. Indeed, the Defendants had not raised the ground that one of the properties was not included in the suit. In the absence of such specific ground in the pleadings, and the foundation having been laid for the same, the Courts below were justified in not entertaining the objection that one of the joint family properties was not included in the common hotchpot.

14. It is pertinent to note that the Plaintiff has been deprived of her legitimate share in the joint family properties. The case of a prior partition so as to defeat the rights of a daughter, cannot be readily acceded to. A profitable reference in this context can be made to a judgment of the Supreme Court in the case of **Vineeta Sharma V/s. Rakesh Sharma and Ors.**², wherein the Supreme enunciated the law as under :

“137.5 In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be

2 (2020) 9 SCC 1

accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a Court. However, in exceptional cases where plea of oral partition is supported by public document and partition is finally evinced in the same manner as if it had been effected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

15. For the foregoing reasons, this Court finds that no substantial question of law arises for consideration.

16. Hence, the Second Appeals stand dismissed.

17. In view of the dismissal of the Second Appeals, Interim Applications also stand dismissed.

(N.J.JAMADAR, J.)