



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1241 OF 2021

- PETITIONERS** :- 1) Santoshkumar s/o Mohan Khumkar,
aged about 38 years occ-service,
2) Smt. Indu w/o Mohan Khumkar, aged
about 30 years, Occu. Household work,
Both R/o Belkhed, Tahsil Akot, Distt.
Akola.

At Present Both R/o Dabki Road, Ganesh
Nagar, In front of Bhikamchand
Khendalwal School, Narmada Apartment
No.3, Akola tq. and Distt. Akola

..VERSUS..

- RESPONDENTS** :- 1) Kisan Govind Manmode, (Dead)
through his LR'S Vitthal Kisan Manmode
(Son), aged adult., Occu. Agriculturist,
R/o Belkhed, Tq. Telhara, Distt. Akola.

R.2(a) is deleted as per Hon'ble
Court order dt.20.12.21.

- 2) Madhav Laxman Khumar, (Dead)
Through his LR's:
a. ~~Sulochana Laxman Khumkar~~
~~(mother), aged about 65 Yrs., Occ-~~
~~Agriculturist.~~
b. Gajanan Mahadeo Khumkar
(Son), Aged about 43 Yrs., Occ-
Agriculturist.
c. Nanda Sanjay Gaykwad
(daughter), Aged about 25 Yrs. All 2(a)
to 2(c) R/o Belkhed, Tq. Telhara, Distt.
Akola.

3. Sk. Karim S/o Ahmad (dead) through his LR's:

- (a) Abdul Jabbar Sheikh Karim, age about adult, occ-Cultivator.
- (b) Abdul Sattar Sheikh Karim, (dead) Through LR's about adult, Occ- Cultivator.

b.i to b-1Y legal heirs of respondent No.3(b) vide Court order dt.20.12.21.

- i. Abdul Gaffar Abdul Sattar (Son), age about adult, occ-Cultivator,
- ii. Abdul Sadique Abdul Sattar (Son), age about adult, occ-Cultivator.
- iii. Abdul Khalique Abdul Sattar (Son), age about adult, occ-Cultivator.
- iv. Nazimabi Abdul Sattar (daughter), age about adult, occ-nil,
All R/o Chawalmandi, Achalpur, Tq. Achalpur, Distt. Amravati.
- (c) Abdul Aziz Sheikh Karim, age adult, occ-Cultivator.
- (d) Abdul Rashid Sheikh Karim, age about adult, occ-Cultivator.
- (e) Hafizabi wd/o Sheikh Karim, (Dead) Through her LR's:
 - (i) Abdul Rasheed Sk. Karim, aged adult., Occu. Agriculturist, R/o Belkhed, Tq. Telhara, Distt. Akola.

(f) Fatimabi w/o Abdul Sattar, age about adult, occ-Household work.

3(a) to 3(f) All R/o Belkhed, Tq. Telhara, Distt. Akola.

Amendment carried out as per Court's order dt. 20.12.21.

4. Aminabi w/o Nazumuddin, age adult, Occ-Cultivator. (dead) Through LR's 4-i to 4-iii Legal heirs of Respondent No.4 vide Court order dt.20.12.21.

i. Shaikh Kamruddin Nazimuddin (Son), age about adult, occ-Cultivator;

ii. Shaikh Anis Nazimuddin (Son), age about adult, occ-Cultivator.

iii. Akilabano Nazimuddin (daughter), age about adult, occ- nil, All R/o Belkhed, Tq. Telhara, Distt. Akola

5. Shahejahanbi w/o Abdul Raheman, age about adult, occ- Household (dead) [LR's of R-5-vide order dtd.25/8/22 & 3/1/2023]

Amendment is carried out as per Hon'ble Court order dt.3/1/2023

i. Johar Bi Moh. Akil, aged about 76 years, occ-household, R/o Saryapura, Achalpur, Tq Achalpur, Distt. Amravati.

ii. Noorjahanbi Noorhasam, aged about 66 years, occ-household, R/o Belkhed, tq. Telhara, Distt. Akola. LR's of R-5-ii-i] vide Court's order dtd.11/05/25. Added LR's of R-5-ii] vide Court's order 11/08/25

5.ii.i Mohd. Nazim Mohd. Nurahasan, aged about 38 years, occ-auto

Amendment is carried out as per Hon'ble Court order dated 11.08.2025
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- driver R/o Belkhed, tq. Telhara, Distt. Akola.
- ii. Mohammad Nisar Nurhasan, aged about adult, occ-auto driver R/o Belkhed, tq. Telhara, Distt. Akola
 - iii. Shaikh Nurhasan Momin, aged about 35 years, occ-auto driver R/o Belkhed, tq. Telhara, Distt. Akola.
 - iv. Nikhar Bano Abdul Sajid, age about 29 years, occ-household R/o Momin pura, chawal mandi, Achalpur, Distt. Amravati.
 - v. Mohd. Illiyas Nurhasan Momin age about 31 years, occ- -auto driver R/o Belkhed, tq. Telhara, Distt. Akola.
 - iii. Rahisabanoo Abdul Razak, aged about 62 years, occ-household, R/o Mominpura, Achalpur, Tq. Achalpur, Distt. Amravati.
 - iv. Ruksanobano Sh. Noormohamood, age about 55 years, occ-household, R/o Belkhed, tq. Telhara, Distt. Akola.

Correct address of Res No. 6(a) to 6(e) is supplied in view of order dt. 20.12.21.

6. Abdul Masjid S/o Sk. Karim (dead) through his LR's
 - a. Rashidabi W/o Masjid Ansari, aged about adult, occ-agriculturist.
 - b. Juber Ansari S/o Masjid Ansari, aged about adult, occ-agriculturist.

- c. Mohd Shakil Ansari S/o Masjid Ansari, aged about adult, occ-agriculturist,
- d. Nishant Ansari S/o Masjid Ansari, aged about adult, occ-agriculturist,
- e. Adil Ansari s/o Masjid Ansari, aged about adult, occ-agriculturist.

6(a) to 6(e) All R/o ~~Belkhed, Tq. Telhara, Distt. Akola~~

All R/o Mominpura, Fullari Galli, Akola Tq. And Distt. Akola.

- 7. Sunita Suresh Kshirsagar, aged adult, occ-household, R/o Belkhed, tq. Telhara, Distt. Akola.
- 8. Gajanan S/o Devidas Dhanbar, aged adult, occ-cultivator, R/o Belkhed, tq Telhara, Distt. Akola.
- 9. Sangarshkumar Prabakarrao Sawarkar, aged about 45 years, occ-service, R/o Belkhed, tq. Telhara, Distt. Akola
- 10. Rajeshwar S/o Shantaram Khumkar, aged about 46 years, occ-agriculturist, R/o Belkhed, tq. Telhara, Distt. Akola.
- 11. Ashish S/o Shantaram Khumkar, aged about 40 years, occ-agriculturist, R/o Belkhed, tq. Telhara, Distt. Akola.

(Amendment carried out as per Court order dt. 3.1.23.)

Mr. S.A. Mohta, Advocate for Petitioners.

Mr. A.R. Deshpande, Advocate for Respondent No.1.

Mr. V.A. Lohia, Advocate for Respondent Nos.5(ii) and LRs. of Respondent No.7

Mr. P.S. Gawai, Advocate for Respondent No.9.

Mr. A.S. Mehadia, Advocate for LR's. of Respondent Nos.1, 2(b), (c),3(a), 3(c), 3(d), 3(e-i), 3(f), 6(a).

Mr. V.B. Bhise, Advocate for Respondent Nos.4(i) to 4(iii).

CORAM : ROHIT W. JOSHI, J.

DATE : 17/11/2025

ORAL JUDGMENT :

1. Heard.

2. The present petition takes exception to the order dated 15.02.2021, passed by the learned Civil Judge Senior Division, Akot, in M.J.C. No.1 of 2018. The said M.J.C. was filed by the present petitioners for sending precept for execution of decree pertaining to agricultural lands. In this proceeding, the respondent Nos.7, 8 and 9 had filed objections below Exhs.26 and 36 against the order dated 06.09.2019, passed by the Tahsildar, Telhara, in Revenue Case No.SRV-43/Belkhed/03/2017-2018. The said objections are allowed vide the impugned order.

3. Initially, a suit for partition and separate possession was filed by the petitioners against one Mohan S/o Mahadeo Khumkar and others. The petitioner No.1 is the son and the petitioner No.2 is the widow, of the said Mohan. The said suit was registered as Special Civil Suit No.30 of 1982.

4. In the said suit, apart from the petitioners and deceased Mohan, some other persons who had purchased different portions of the suit properties from deceased Mohan were also arrayed as defendants. The said suit was decided vide judgment and decree dated 31.07.1984. The learned trial Court directed defendant Nos.2 to 12 in the said suit to deliver possession of the suit properties to the plaintiffs i.e. the present petitioners. Leave was granted to the defendant Nos.2 to 12, who had purchased properties from defendant No.1 in the said suit (deceased Mohan) to file a suit seeking declaration that they had acquired the undivided interest of their vendor (Mohan) in the suit properties and that they were entitled to have their interest ascertained by way of partition. The learned trial Court granted stay to the execution of the decree for a limited period in order to enable the purchasers to file a suit for partition.

5. Accordingly, defendant Nos.2, 5, 6 and 7 in the said suit (respondent Nos.1 to 4) filed suit for partition and separate possession, being Special Civil Suit No.82 of 1984. The present petitioners who were plaintiffs in the earlier suit for partition (Special Civil Suit No.30 of 1982) and their predecessor Mohan

were arrayed as defendants in the said suit. Other persons who had purchased land from Mohan were arrayed as defendant Nos.4 to 10.

6. The said suit for partition and separate possession was decreed by the learned trial Court vide judgment and decree dated 27.04.1989. The learned trial Court passed decree for partition with respect to 33 Acres of land from Survey Nos.102/1, 209, 10 and 539. The learned trial Court declared that the defendant Nos.1 to 3 had 1/3rd share each in the said properties i.e. 11 Acres of land. It was further directed that the share of defendant No.3/Mohan to the extent of 11 Acres be given to him from land bearing Survey No.102/1 and the same be allotted to the share of plaintiffs i.e. respondent Nos.1 to 4 in the present petition.

7. An appeal, being Regular Civil Appeal No.10 of 1990, was filed by the petitioners challenging the said decree for partition which was partly allowed by the learned 2nd Additional District Judge, Akola, vide judgment and decree dated 13.07.1994. The decree passed by the learned trial Court was modified and it was held that, the defendants Nos.1, 2 and 3 were entitled for 1/3rd share each in the land bearing survey No.102/1, 10 and 539 and that the

plaintiffs were entitled to 7 Acres and 5 Gunthas from survey No.102/1 from the share of defendant No.3 (deceased Mohan).

8. Two separate Second Appeals were filed challenging the aforesaid decree passed by the learned First Appellate Court. Second Appeal No.94 of 1995 is filed by the present petitioners and Second Appeal No.177 of 1988 is filed by respondent Nos.1 to 4 in the present petition. Both the Second Appeals came to be decided vide judgment and decree dated 29.02.2012. This Court has confirmed that the defendant Nos.1 to 3 had $1/3^{\text{rd}}$ share each in the suit properties; however, the total area of land available for partition is recorded as under :-

*(i) Survey No.102/1 (16 Acres 20 Gunthas),
(ii) Survey No.209 (6 Acres 30 Gunthas),
(iii) Survey No.10 (1 Acres 10 Gunthas) and
(iv) Survey No.539 (4 Acres),
Total 28 Acres 20 Gunthas."*

Respondent Nos.1 to 4/the plaintiffs filed M.J.C. No.01 of 2018 for sending precept for partition of suit properties which are agricultural lands to the competent revenue authority.

9. Perusal of the judgment delivered in the suit for partition and separate possession filed by the present respondent Nos.1 to 4

bearing Special Civil Suit No.82 of 1984 will demonstrate that the present respondent Nos.7 to 9 are not parties to the said litigation.

10. The respondent No.9 had purchased 6 Gunthas lands in Survey No.10 (Gat No.918) from legal representatives of late Shantaram Mahadeo Khumkar (brother of defendant No.3/Mohan). Respondent Nos.7 and 8 had purchased land admeasuring 1.70 H.R. under two separate sale deeds (each pertaining to 0.85 H.R.) vide sale deeds dated 03.09.1992 and 07.06.2000 from Sanjay Dyandeo Khumkar who in turn had purchased the same from Shantaram (brother of Mohan). The respondent Nos.7 to 9 are not parties to the civil suit. They have not purchased the property from any person who was a party to the Special Civil Suit No.82 of 1984. They are claiming independent right over the suit property. The decree for partition passed in Special Civil Suit No.82 of 1984 will therefore not be binding on them. However, perusal of the order dated 06.09.2019, passed by the learned Tahsildar, will demonstrate that reference is made to the properties purchased by the respondent Nos.7 to 9 and the said properties have been made subject matter of partition.

11. In this backdrop, the respondent Nos.7 to 9 filed two separate objections at Exh.26 and Exh.36 before the learned Executing Court in M.J.C. No.01 of 2018. The learned Executing Court has allowed the objections filed at Exh.26 and Exh.36 vide order dated 15.02.2021. Perusal of the order will demonstrate that the learned Executing Court has observed that since the respondent Nos.7 to 9 were not parties to the Special Civil Suit No.82 of 1984 and do not claim properties through any persons who were parties to the suit, the decree for partition will not be binding on them.

12. The respondent Nos.7 and 8 have purchased land admeasuring 1.70 H.R. from one Sanjay Khumkar vide sale deeds dated 03.09.1992 and 07.06.2000. This Sanjay Khumkar, vendor of respondent Nos.7 and 8, purchased the said property from Shanataram (brother of Mohan). Likewise, the respondent No.9 has purchased 0.06 H.R. land from Survey No.10 from the legal heirs of Shantaram (brother of Mohan). Admittedly, the respondent Nos.7 to 9 who have raised objection vide Exhs.26 and 36 are not parties to the Special Civil Suit No.82 of 1984 in which decree for partition was passed. Likewise, their vendors are also not parties to the said suit. Thus, therefore, obvious that while adjudicating Special Civil

Suit No.82 of 1984 rights of respondent Nos.7 to 9 are not adjudicated. Judgment and decree passed in the said suit is not binding on them.

13. In that view of the matter, no fault can be found with the impugned order dated 15.02.2021, passed by the learned Civil Judge Senior Division, Akot, on application at Exh.26 and Exh.36 in M.J.C. No.01 of 2018. It is clarified that, it will be open for the petitioners to take legal recourse against the respondent Nos.7 to 9 and if such proceedings are initiated the same shall be decided in accordance with law. The adjudication of civil suit will not be binding on the respondent Nos.7 and 9 since they and/or their vendors are not parties to the civil suit.

14. It is clarified that the order passed by the Tahsildar to the extent of share of the respondent Nos.1 to 4 (plaintiffs in Special Civil Suit No.82 of 1984) is not subject matter of the present petition and the appeal preferred by the said plaintiffs against the order passed by the Tahsildar be decided on its own merits in accordance with law.

Writ Petition is **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate