



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

SECOND APPEAL NO.709 OF 2004

APPELLANTS

(Ori. Plaintiffs)

- : 1 **Smt. Laxmibai W/o Narayanrao Golhar,**
aged about 52 yrs., Occ. Household work,
r/o. Fatteपुरa, Tq. Deoli, Dist. Wardha.
- 2 **Sau. Sarla W/o Ramkrushna Rajurkar,**
aged about 37 yrs., R/o Fathepur Tq. Deoli,
Tq. and Dist. Wardha.
- 3 **Sau. Suman W/o Kailash Katarkar,**
aged about 47 yrs., R/o Ballarpur Railway
Station Road, Tq. Ballarpur, Dist.
Chandrapur.
- 4 **Sau. Nanibai W/o Gangadhar Patil,**
aged about 42 yrs., Household work, R/o
Yeranwadi, Tq. Hinghanghat, Dist. Wardha.
- 5 **Sau. Asha W/o Hemantrao Wade,**
aged about 32 yrs., r/o Kasarkheda, Tq. Arvi,
Dist. Wardha.

Appellant No.6 deleted as per
order dated 2/7/2018.

- 6 **Smt. Tulsabai Wd/o. Chintamanrao
Sakharkar,** aged about 76 yrs., Occ.
Cultivator, R/o Rattepur, Tq. Deoli, Dist.
Wardha.

..VERSUS..

RESPONDENT

(Ori. Defendant)

- : **Khushal S/o Chintamanrao Sakharkar,**
Aged about 49 yrs., Occ. Cultivator, R/o
Satefal, Post Shirpur (Hore), Tq. Kalamb,
Dist. Yavatmal.

Mr V. G. Wankhede, Advocate for Appellants.
Mr A. V. Bhide, Advocate for Respondent.

WITH

CROSS OBJECTION NO.58 OF 2019

CROSS OBJECTORS**(Ori. Defendant Nos.2 and 3 on R.A.)**

- 1 **Mohan S/o Khushal Sakharkar,**
Aged 24 yrs.
- 2 **Arvind @ Arun S/o Khushal Sakharkar,** aged
Both No.1 and 2 are agriculturists, r/o
Satephal Post Shirpur (Hose) Tq. Kalamb.
Distt. Yavatmal.

..VERSUS..**RESPONDENTS**

- 1 **Smt. Laxmibai W/o Narayanrao Golhar,**
aged 67 Occ. Household, r/o Fatteपुरa, Tq.
Deoli, Distt. Wardha.
- 2 **Sau. Sarala W/o Ramkrushna Rajurkar,**
aged 52 yrs., r/o Sindi Meghe Ward No.3,
Hind Colony Wardha. Tq. and Distt.
Wardha.
- 3 **Sau. Suman W/o Kailash Katarkar,**
aged 51 yrs. r/o Santoshimata Ward Karwa
Road Ballarpur, District Chandrapur.
- 4 **Sau. Nanibai w/o Gangadhar Patil,**
aged 57 yrs, Occ. Household r/o Yeranwadi
Tq. Hanganghat, Distt. Wardha.
5. **Asha w/o Hemantrao Wade,**
Aged 50 yrs. r/o Kasarkheda, Tq. Arvi, Distt.
Wardha.
- 6 **Smt. Tulsabai wd/o. Chintamanrao Sakharkar,**
Aged 70 yrs. Occ. Cultivator, r/o Ratteपुर, Tq. Deoli, Distt. Wardha.

(Ori. Plaintiffs on R.A.)

7. **Khushal s/o Chintamanrao Sakharkar,**
aged 54 yrs., Occ. Agriculturist, r/o.Satephal,
post Shirpur (Hose) Tq. Kalamb, Distt.
Yavatmal.

(Ori. Defendant No.1 on R.A.)

Mr A. V. Bhide, Advocate for Cross-Objectors.
Mr V. G. Wankhede, Advocate for Respondents.

CORAM : M. W. CHANDWANI, J.
RESERVED ON : 9th MAY, 2025.
PRONOUNCED ON 20th JUNE, 2025.

JUDGMENT

1. Heard.

2. The appellants filed this appeal against the judgment and decree dated 31.08.2002 passed in Special Civil Suit No.111 of 1999 by the learned Civil Judge Senior Division, Yavatmal whereby, the suit for partition was partly decreed granting 1/7th share to each party to the litigation in the agricultural land of Gat No.1 of village Satefal and residential house and the share in agricultural field bearing Survey No.25 of village Satefal was refused, which was confirmed by the learned Additional District Judge, Yavatmal in Regular Civil Appeal No.105 of 2002.

3. It is worthwhile to mention here that the refusal of decree of partition in Survey/Gat No.25 of Mouza Satefal was mainly on the ground of non-joinder of necessary parties i.e. the respondent's sons. The appellants tried to add them as a party to the special civil suit by filing amendment application which came to be rejected alongwith regular civil appeal. The appellants challenged the order of rejection of the amendment application before this Court. This Court, by its order dated 09.07.2018 remitted the matter to the Trial Court under Order XLI Rule 25 of the Code of Civil Procedure, 1908 to consider and decide the application at Exhibit – 8 moved by the appellants before the First Appellate Court with liberty to the parties that if the Trial Court allows the application for amendment, the parties can lead their evidence only on the amended pleadings. This Court directed the Trial Court to give its finding on the amended portion of the pleadings which shall be certified by the First Appellate Court. The Trial Court allowed the amendment application of the appellants and Mohan and Arvind i.e. sons of the respondent were added as

party defendants to the proceedings. Thereafter, the Trial Court framed the issues and passed the order dated 07.03.2019 holding that the appellants are entitled for the respective shares by way of partition in the field of Gat Nos.25 and 2 of Mouza Satefal, Taluka Kalamb, District Yavatmal. The First Appellate Court, after hearing both the parties, certified/confirmed the findings recorded by the Trial Court.

4. Needless to mention that, after remanding the matter to the Trial Court, the regular civil appeal was kept pending. In wake of the subsequent findings of the Trial Court which were certified by the First Appellate Court, the grievance of the appellants was redressed. However, feeling aggrieved with the subsequent findings of the Trial Court as well as the First Appellate Court, Mohan and Arvind, the newly added defendants by filing cross-objection challenged the findings recorded by the Trial Court as well as the First Appellate Court. Since, the substantial questions of law framed in the appeal did not survive in wake of the subsequent events, therefore, what remains to be redressed is the cross-objection filed by the newly

added defendants. This Court by order dated 25.02.2025 framed the following substantial questions of law :

*“i) Whether in view of the ratio of the decision of the Apex Court in the case of **Ptrakash Vs. Phulwati**, [2016 (1) Mh.L.J. 1], the learned Trial Court was justified in holding that the appellants/plaintiffs are entitled to get share in the suit property, when partition was effected by Chintamanrao Sakharkar in 1983 and had granted the suit property to cross-objectors Mohan and Arvind ?*

ii) Whether in view of the proviso to Order 6, Rule 17 of the Code of Civil Procedure the learned Trial Court was justified in allowing the amendment to the plaint, as the facts sought to be pleaded by way of amendment were within the knowledge of the plaintiff on the date of the filing of the suit, but were not pleaded ?

iii) Whether the learned Trial Court was justified in holding that the suit against the added defendants nos.2 and 3 was within limitation when admittedly the plaintiffs were ousted from the suit property in 1983 and the amendment was done in 2019 ?”

5. The learned counsel for the cross-objectors submitted that the partition between Chintamanrao and the cross-objectors Mohan and Arvind was already effected in the year 1983. The amendment enshrining the right of daughters came into force in the year 2005. He also submitted that in wake of the explanation to Section 6 of the Hindu Succession Act, 1956 (hereinafter referred to as “the Act of 1956”) property which has already been partitioned will not be subjected to reopening.

However, this aspect has not been considered by the Trial Court as well as the First Appellate Court.

6. Let me state that both the parties have admitted that the suit property of Gat Nos.25, 1 and 2 was self acquired property of Chintamanrao, who got it from the Government in wake of his tenancy right. Therefore, the original plaintiffs are not claiming their right in the suit property on the strength of amended Section 6 of the Act of 1956. They got right by inheritance under Section 8 of the Act of 1956. That apart, since it is the case of the cross-objectors as well as the respondent Khushal that the suit property was partitioned between Chintamanrao and Khushal in the year 1978 by way of partition deed, the cross-objectors being the sons of Khushal can claim their right in the property which Khushal got in the partition in the year 1978. The grandsons can claim partition to the extent of their father's share, which Khushal had got it in the year 1978. Therefore, there was no question of partition of self acquired property of Chintamanrao between him and his grandsons in the year 1983. Even otherwise, the Trial Court as

well as the First Appellate Court gave concurrent findings that no partition took place between Chintamanrao and his grandsons i.e. Mohan and Arvind in the year 1983. Therefore, there is no substance in the point raised by the learned counsel for the cross-objectors.

7. This takes me to the submission that the Trial Court was not justified in allowing the application for amendment to the plaint. All the facts were known to the original plaintiffs on the date of filing of the written statement by the respondent. Let me state that the suit of the plaintiffs came to be dismissed on the ground of non-joinder of necessary parties who are the present cross-objectors i.e. Mohan and Arvind. The suit property was already mentioned in the plaint. The amendment application which sought to add the cross-objectors as a party alongwith necessary pleadings came to be allowed by the Trial Court. No doubt, the application for amendment to the plaint came to be filed at the appellate stage but the fact remains that an appeal is deemed to be continuation of the suit. Therefore, for proper adjudication it was necessary for the plaintiffs to add

the cross-objectors and hence, the Trial Court was completely justified in allowing the application for amendment whereby the cross-objectors were added as party defendants to the suit. Lastly, the learned counsel for the cross-objectors also raised the issue of limitation. According to him, the partition took place in the year 1983 and appellant No.6 was ousted from the suit property in the year 1983, whereas the suit came to be filed in the year 1999. Therefore, the suit is barred by law of limitation. In wake of the findings of the Trial Court that there was no partition effected between Chintamanrao and the cross-objectors in the year 1983, there is no question of ouster appellant No.6 in the year 1983. Mutation entries do not create any right, title or interest in the suit property, they only have presumptive value. Nothing has been brought on record to show that the plaintiffs were aware about the mutation in the 7/12 extract in the year 1983 itself. Therefore, there is no substance in the argument of the learned counsel for the cross-objectors that the suit is barred by limitation. No substantial question of law arises in the cross-objection. Hence, the cross-

objection has no merit and consequently, it is dismissed.

8. Needless to mention that though, initially the Trial Court partly decreed the suit and granted 1/7th share to each one of the plaintiffs in Gat No.1 of village Satefal as well as in the residential house at village Satefal, however, after remittance of the matter to the Trial Court for deciding the amendment application, the Trial Court further granted 1/7th share in Gat Nos.25 and 2 of the agricultural land to each plaintiff which was again confirmed by the First Appellate Court certifying the order dated 07.03.2019 of the Trial Court. In view of the subsequent findings of both the Courts below, the appeal does not survive as it became infructuous. The Trial Court to draw the composite decree.

(M. W. CHANDWANI, J.)