

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

SECOND APPEAL NO. 131/2014

with

SECOND APPEAL (ST) NO. 10400/2021

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SECOND APPEAL NO. 131/2014

1. Ravindra s/o Bhimrao Pande,
aged about 53 yrs., Occ. Agriculturist,
2. Sau. Kamal w/o Ravindra Pande,
Aged about 48 yrs., Occ. House wife,
3. Ashish s/o. Ravindra Pande,
Aged about 24 yrs., Occ. Student,
4. Vaibhav s/o Ravindra Pande,
aged about 22 yrs., Occ. Student,

All above Nos. 1 to 4 are R/o. Jamgaon
(Khadka), Tq. Warud, Dist. Amravati.

...APPELLANTS

Original Defendants
(On R.A.)

VERSUS

1. Sau. Kusum w/o Ambadas Gohad,
aged about 65 yrs., Occ. Housewife,
R/o. Loni, Tq. Warud, Dist. Amravati.
2. Sau. Pushpa w/o. Shridhar Ingole,
aged about 62 yrs., Occ. House wife,
R/o. Kawatha, Tq. Chandur Rly,
Dist. Amravati.

3. Harihar s/o Bhimrao Pande,
aged about 50 yrs., Occ. Agriculturist,
R/o. Jamgaon (Khadka), Tq. Warud,
Dist. Amravati.

RESPONDENTS
Original Plaintiffs
(On R.A.)

Mr. V.G. Bhamburkar, Advocate with U.P. Dable, Advocate for appellants.

Mr. N.A. Waghmare with P.B. Patil, Advocate for respondent Nos. 1 and 3.

with

SECOND APPEAL (ST) NO. 10400/2021

1. Ravindra s/o Bhimrao Pande,
aged about 61 yrs., Occ. Agriculturist,
2. Sau. Kamal w/o Ravindra Pande,
Aged about 54 yrs., Occ. House wife,
3. Ashish s/o. Ravindra Pande,
Aged about 35 yrs., Occ. Agriculturist,
4. Vaibhav s/o Ravindra Pande,
aged about 29 yrs., Occ. Agriculturist,

All Nos. 1 to 4 are R/o. Jamgaon
(Khadka), Tah.. Warud, Dist. Amravati.

...APPELLANTS
Original Defendants
(On R.A.)

VERSUS

1. Sau. Kusum w/o Ambadas Gohad,
aged about 65 yrs., Occ. Housewife,
R/o. Loni, Tah. Warud, Dist. Amravati. Ori. Plaintiff
On R.A.
2. Sau. Pushpa w/o. Shridhar Ingole,
aged about 62 yrs., Occ. Housewife,
R/o. Kawatha, Tah. Chandur Railway,
Dist. Amravati. Ori. Plaintiff
On R.A.
3. Harihar s/o Bhimrao Pande,
aged about 50 yrs., Occ. Agriculturist,
R/o. Jamgaon (Khadka), Tah. Warud,
Dist. Amravati. Ori. Defd.No.3.

RESPONDENTS

Mr. T.U. Tathod, Advocate for appellants.
Mr. N.A. Waghmare with P.B. Patil, Advocate for respondent Nos. 1
and 3.

CORAM : ROHIT W. JOSHI, J.
DATED : 28/04/2025.

MCA 147/2021 IN SECOND APPEAL NO. 131/2014

Heard.

2. For the reasons mentioned in the application, application for
restoration of second appeal No. 131/2014 is allowed and disposed of.

CAS 840/2021 IN SECOND APPEAL (ST) NO. 10400/2021

1. Heard.
2. For the reasons mentioned in the application, application for condonation of delay in filing second appeal is allowed and disposed of.

JUDGMENT :

1. Heard.
2. The respondents in these appeals are original plaintiffs. They are real sisters. They have filed suit for partition and separate possession against their father deceased Bhimrao Pande and their brothers Ravindra and Harihar who were arrayed as defendant Nos. 2 and 3 in the suit. The case of original plaintiffs is that the suit properties were ancestral properties, in which they had 1/5th share each along with defendant Nos. 1 to 3. The defendants opposed suit on various counts including on the grounds that there was earlier partition in the year 1983 *inter se* between defendant Nos. 1 to 3 i.e. father defendant No.1 and his two sons defendant Nos. 2 and 3. It is

stated that the said partition is a registered partition. Based on said partition, it is contended that the plaintiffs who are sisters were all the time aware about the said registered partition and as such, suit which is filed after a period of 22 years therefrom, was barred by limitation. Concededly, this document of alleged partition of the year 1983 is not placed on record.

3. Learned Trial Court passed a decree for partition and separate possession in favour of the plaintiffs, *inter alia* granting them 6/20th share each in the suit property. The defendants preferred an appeal against said decree for partition and separate possession being Regular Civil Appeal No.225/2008. The plaintiffs also filed an appeal aggrieved by the shares allotted by learned Trial Court. It is the contention of the plaintiffs that they should have been allotted equal share in the suit properties in view of Section 6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act, 2005. The said appeal came to be registered as Regular Civil Appeal No. 217/2008.

4. Both these appeals came to be decided together by common judgment dated 04.05.2012. Learned First Appellate Court has dismissed appeal preferred by defendant Nos. 1 to 3 i.e. father and brothers and has allowed appeal preferred by the original plaintiffs i.e. sisters. Placing reliance on Section 6 of the Hindus Succession Act as amended by the Hindu Succession (Amendment) Act, 2005, a decree for 1/5th share each is passed in favour of plaintiff Nos. 1, 2 and defendant Nos. 1 to 3 each.

5. Being aggrieved by said decrees passed by learned First Appellate Court, present second appeals are preferred by original defendant No. 2 Ravindra and his wife and two sons. Learned counsel for appellants contends that the defendants had clearly averred in their written statement that the father and brother had executed a registered partition deed in the year 1983 as a consequence of which the sisters could not have claimed any share in the suit properties. He places reliance on Section 6(5) of the Hind Succession Act to contend that the sisters could not have claimed a decree for partition since the suit properties were already partitioned by a registered deed of partition

prior to 20.12.2004. He also contends that in view of said partition, the suit for partition and separate possession was barred by limitation.

6. As regards the first contention, admittedly the document of alleged partition of the year 1983 is not on record. In absence of said document, it has to be held that the defendants have failed to prove their case of alleged partition in the year 1983. The first contention is therefore, liable to be rejected.

7. As regards the second contention of the suit being barred by limitation, the said contention is also raised in view of said partition which is not filed on record. The plaintiffs who are daughters in the family were conferred right to claim partition of ancestral properties in their independent rights as coparceners for the first time vide the Hindu Succession (Amendment) Act, 2005 which has come into force with effect from 06.09.2005. The defence of ouster is not proved since the documents of alleged partition is not filed on record. The contention with respect to limitation is therefore liable to be rejected. Since ouster is not proved the suit is obviously within limitation, and therefore no prejudice is caused to the appellants on the ground that

point for determination with respect to limitation was not framed by learned First Appellate Court.

8. In view of reasons above, no substantial question of law arises for consideration in these appeals. Appeals are dismissed with no order as to costs.

(ROHIT W. JOSHI, J)

Gohane