



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

SECOND APPEAL NO. 492/2018
WITH CROSS OBJECTION NO. 80/2024.

1. Wasudeo Mahadeo Misalkar,
since dead by L.Rs.

1-I. Smt. Vimal wd/o Wasudeorao Misalkar,
Aged 74 years, Occupation Housewife,
resident of Karala, Tq. Anjangaon Surji,
District Amravati. (Widow).

1-II. Sau. Asha w/o Haridas Kukalkar,
Aged 54 years, Occupation Housewife,
resident of Sangavi Khurd, Tq. And
District Akola. (Daughter).

1-III. Sau. Lata d/o Vinayal Asalkar,
Aged 48 years, Occupation Housewife,
resident of Bargan Pura, Tq. Anjangaon Surji,
District Amravati. (Daughter).

1-IV. Sau. Radhika w/o Rameshwar Sasankar,
Aged 42 years, Occupation Housewife,
resident of Namodkar Layout,
Mothi Umrai Akola. (Daughter).

1-V. Sau. Meena w/o Ganesh Nibokar,
Aged 40 years, Occupation Housewife,
resident of Mohala, Tq. And
District Akola. (Daughter).

2. Mohan Wasudeo Misalkar,
Aged 54 years, Occupation Agriculturist,
Resident of Karla, Tq. Anjangaon Surji,
District Amravati.

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APPELLANTS.

Ori. Defendants.

VERSUS

Muktabai Shriram Dhengekar,
Aged 74 years, Occupation – Household
resident of Karala, Tq. Anjangaon Surji,
District Amravati.

RESPONDENT.
Ori. Plaintiff.

Shri S.S. Shingane, Advocate for Appellants.
Shri A.V. Khare, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : MAY 02, 2025.

ORAL JUDGMENT.

Notice in the Second Appeal was issued vide order dated
07.10.2019 on the following substantial questions of law.

- “(i) *Whether the Courts below were justified in refusing to look into agreement /relinquishment deed dated 23.12.1983 (Exhibit-84), on the sole ground that it was not a registered document ?*
- (ii) *Whether the Courts below were justified in refusing to accept the contention of the appellants in respect of the said document at Exhibit-84 on the ground that it was*

contradictory to plea taken by the appellants concerning alleged oral partition in the year 1981 ?

(iii) *Whether upon proper application of position of law, the shares in the present case to which parties would be entitled need to be re-worked ?”*

2. The respondent has filed Cross-objection in which the following substantial question of law is framed vide order dated 11.02.2025.

“(i) *Whether the First Appellate Court was right in redefining the shares of the parties by relying upon an overruled judgment in case of **Prakash and others .vs. Phulvati and others** [AIR 2016 SC 769] without adverting to the ratio of the judgment of the Supreme Court in the case of **Vineeta Sharma Vs. Rakesh Sharma** [AIR 2020 SC 3717] ?”*

Shri Shingane, learned Counsel for the appellants/respondents in cross objection waived notice in the cross objection on 11.02.2025 after framing of the substantial question of law.

3. The respondent in the Second Appeal is the original plaintiff. She has filed a suit for partition, possession and permanent injunction being Regular Civil Suit No.64/2000

against her brother Wasudeo – defendant no.1 and son Mohan – defendant no.2. The suit property comprises of three agricultural lands. The plaintiff has filed suit for partition contending that after commencement of the Hindu Succession (Amendment) Act, 2005, she has a right in the suit properties as coparcener and is accordingly entitled to half share in the same along with her brother – defendant no.1. The defendants came up with a defence that the plaintiff had relinquished her share in the suit properties on 23.12.1983. It is further contended that on the basis of the relinquishment deed, name of defendant no.1 alone was recorded in the revenue records, as is evident from entry no.870 in the register of mutation, which is recorded on 18.01.1984, and therefore, she is not entitled to claim partition and separate possession in the suit properties.

4. It is not in dispute that the relinquishment deed is an unregistered document. It will also be pertinent to note that the relinquishment deed records that the plaintiff has relinquished her share in the suit properties in favour of her brother i.e. defendant no.1. There is no reference to any consideration for which the right is relinquished. As against

this, the case of defendant no.1 is that he has advanced certain amount to the husband of the plaintiff for purchasing some other property, and therefore, the plaintiff has relinquished her share in the suit property. The learned trial Court has passed a decree for partition and separate possession in favour of the plaintiff, granting her $\frac{1}{2}$ share in the suit properties. The learned trial Court has discarded the relinquishment deed on the ground that it is an unregistered document.

5. Aggrieved by the said decree passed by the learned trial Court, the defendants preferred First Appeal being Regular Civil Appeal No.123/2007. The said appeal was partly allowed vide judgment and decree dated 06.03.2017 passed by the Adhoc District Judge-1, Achalpur. The learned First Appellate Court has held that since the father of plaintiff and defendant no.1 namely Mahadeo, has expired prior to commencement of the Hindu Succession (Amendment) Act, 2005, benefit of amended Section 6 could not be claimed by the plaintiff. The learned First Appellate Court has thereafter applied un-amended Section 6, and has granted 1/3rd share to the plaintiff in the suit property and remaining 2/3rd share is granted in favour of

defendant no.1.

6. The learned First Appellate Court has placed reliance on the judgment of Hon'ble Supreme Court in case of **Prakash and others .vs. Phulvati and others [AIR 2016 SC 769]**, for modifying the shares while allowing the appeal in part. The defendants have now filed the present Second Appeal challenging the said decree. The plaintiff has also filed cross-objection as aforesaid.

7. The learned Counsel for the appellants contends that the plaintiff had relinquished her share in the suit properties way back in the year 1983. The said fact is evident by revenue entries recorded in which entry about relinquishment was taken immediately in the year 1984. He contends that although the document is unregistered, still it can be used for co-lateral purpose for establishing exclusion of the plaintiff. Likewise, he submits that the long standing entry in the revenue record with respect to the suit properties should not be discarded. He therefore, contends that the suit deserves to be dismissed in view of relinquishment of rights.

8. Per contra, the learned Counsel for the respondent/ plaintiff argues that the document of relinquishment is disputed. He points out that the alleged relinquishment does not speak about any consideration for which the rights are allegedly relinquished, however, contrary to the said document, it is the case of the defendants that the relinquishment was in view of financial assistance allegedly granted by defendant no.1 to husband of the plaintiff. It is further contended that the document has to be compulsorily registered and therefore, even if it is assumed that it is duly executed, the same cannot be read in evidence. The last contention is that, right in favour of the plaintiff to claim partition as coparcener is conferred for the first time on 06.09.2005 by virtue of Section 6 of the Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005.

Question No.1 in Second Appeal :

9. As regards the first question with respect to registration of the relinquishment deed dated 23.12.1983 at Exh.84, it must be mentioned that the suit properties were

ancestral properties in the hands of Late Mahadeo, father of plaintiff and defendant no.1. Mahadeo has expired in the year 1983 i.e. after commencement of the Hindu Succession Act, 1956 by leaving behind Class-I legal heirs in female category i.e. his daughter/plaintiff. Since Mahadeo died after commencement of the 1956 Act, leaving behind a female Class-I legal heir, by virtue of notional partition his share has to be carved out as on the date of his demise and this share will be inherited by his Class-I heir in accordance with Section 8 read with Section 19 of the Hindu Succession Act. A property received by succession under Section 8 read with Section 19, is a separate property of the legal heirs. It is inherited as tenants in common, which implies a unity of possession and separate title. Since the property is a separate property, relinquishment of the same has to be necessarily by a registered document. It needs to be mentioned that although the relinquishment with respect to the ancestral property can be done orally or even by an unregistered document, relinquishment with regard to a separate property has to be done necessarily by a registered document, as has been held in the matter of **Gangaram Sakharam Dhuri and others .vrs.**

Gangubai Raghunath Ayare and others reported in **2007 [5] Mh.L.J. 136.**

10. Although the document is exhibited, objection with respect to registration can be raised at any stage since the objection pertains to admissibility of the document and not the mode of proof with respect to a document which is otherwise admissible in evidence, as has been held in Full Bench of this Court in case of **Hemedra Rasiklal Ghia .vrs. Subodh Mody** reported in **2008 [6] Mh.L.J. 886.** Apart from this, the document of relinquishment does not show that it is executed for any consideration. As against this, the case of defendant no.1 is that it is executed in lieu of financial assistance advanced by the defendant no.1 to the husband of the appellant.

11. The document cannot be read even for collateral purpose in view of inconsistent stand. As can be seen from the Question nos.1 and 2 framed, the defendant claims that plaintiff had relinquished her right and also that in partition in the family, a share in family properties was allotted to husband of the plaintiff. Therefore, it is not clear as to whether the defendant

claim possession on the basis of alleged relinquishment and partition. In view of aforesaid, the document cannot be read in evidence.

Question No.2 in Second Appeal :

12. As regards the second substantial question of law is concerned, perusal of record indicates that there is absolutely no material in order to establish the alleged oral partition. It needs to be mentioned that the alleged oral partition of the year 1981 when father was alive, and it is stated that share was given to the husband of the plaintiff in the said oral partition. Husband of plaintiff is obviously not a member of the family and obviously not a coparcener. The contention with respect of oral partition in the year 1981 and subsequent suit being barred in view of the said partition, is therefore, liable to be rejected.

Question No.3 in Second Appeal and Cross objection:

13. The issue with respect of entitlement of daughter to claim partition as a coparcener even if the father is alive as on 06.09.2005, on which date the Hindu Succession (Amendment) Act, 2005 came into force is no longer *res intergra*, as

conclusively settled by the Hon'ble Supreme Court in case of **Vineeta Sharma Vs. Rakesh Sharma [AIR 2020 SC 3717]**, wherein it is held that a daughter is entitled to claim share in coparcenary property as per amended Section 6, even if the father has expired prior to 06.09.2005 i.e. the date of commencement of the Hindu Succession (Amendment) Act, 2005. In that view of the matter, no fault can be found with the share, as are worked out by the learned trial Court. The share allowed by the learned First Appellate Court by placing reliance on the judgment of Hon'ble Supreme Court in case of Prakash (supra), cannot be sustained, since the said judgment is overruled by the judgment in the case of Vineeta (supra).

Limitation and Long Standing Entry.

14. The appellants have filed Civil Application No.412/2025 seeking permission to incorporate additional substantial questions of law. With consent of the learned Counsel for the parties, the said application is also taken by for hearing.

15. As regards the proposed substantial questions of law

at Sr.No.1, the suit cannot be said to be barred by limitation, in as much as, the right to claim partition in the capacity of coparcener is conferred on a daughter for the first time from 06.09.2005 on commencement of the Hindu Succession Amendment Act, 2005. Although a right is granted by conferring the status of coparcener from the date of birth of the daughter, the conferment of right is on 06.09.2005. This right is created after filing of the suit, although the suit is filed prior to commencement of the Hindu Succession Amendment Act, 2005, benefit of said provision cannot be deprived to the plaintiff in view of the judgment of Hon'ble Supreme Court in case of **Ganduri Koteswaramma .vrs. Chakiri Yanadi** reported in **2011 [9] SCC 788**. In the said matter, a preliminary decree for partition, which has attained finality was modified in view of the amended provision. In that view of the mater, the relinquishment deed at Exh.84 stated to be executed in the year 1983 will not foreclose the right of the plaintiff to seek partition as a coparcener and the suit also cannot be dismissed as barred by limitation on that count.

16. The second substantial question of law which is

proposed to be raised is with respect to the document of relinquishment dated 23.09.1983 at Exh.84, being acted upon in view of the entry in the register of mutation [Exh.96], which is recorded in the year 1984. Although the relinquishment deed cannot be read for a particular purpose of proving relinquishment, according to Shri Shingane, this document should be taken into consideration for co-lateral purpose for execution and commencement of limitation. The said contention could have been appreciated and probably accepted had the Hindu Succession Amendment Act, 2005 not intervened. The contention is liable to be rejected since the relinquishment is prior to the commencement of the 2005 Act.

17. As regards the proposed substantial question of law at Sr.No.3, it is the contention of the learned Counsel for the appellant that the arrangement between the parties with respect to their share in the property which was settled way back in the year 1983, could not have been reopened by filing a suit for partition in the year 2000. This contention also deserves to be rejected in view of the commencement of the Hindu Succession Amendment Act, 2005 on 06.09.2005, which confers a right on

a daughter to claim partition as a coparcener.

18. In view of above, the Second Appeal No.492/2018 is dismissed by recording findings on the substantial questions of law as aforestated, and the Cross objection No.80/2024 is allowed by quashing and setting aside the decree dated 06.03.2017 passed by the learned Adhoc District Judge-1, Achalpur and confirming the decree for partition and separate possession passed by the learned Civil Judge, Junior Division, Anjangaon Surji dated 31.07.2007 in Regular Civil Suit No.64/2000. In the facts of the case, the parties to bear their own cost.

JUDGE