



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

SECOND APPEAL NO.337 OF 2005

Appellants : 1. Parvatabai Ramrao Deosarkar
2. Sanjay Ramrao Deosarkar.
3. Sau. Meena Ratanrao Padole.
4. Jagdeorao Ramrao Deosarkar.
5. Sau. Satwashila @ Shilpa Shansunder Padole.
Nos. 1, 2 & 4 r/o Village Deosari, Tah. Umarkhed,
Distt. Yavatmal.
Nos. 3 & 5 r/o Jadgaon, Tah. Anadha,
District Hingoli.

Deleted as per order
of Registrar (J)
dated 29/08/2024.

– Versus –

Respondent : Praveen Deorao Deosarkar,
Aged about 40 years,
R/o Deosari, Tah. Umarkhed, Distt. Yavatmal.

Mr. S.D. Khati a/w Mr. J.S. Wankhade, Advocates for the Appellants.
Mr. K.S. Narwade, Advocate for the Respondent.

CORAM : **ROHIT W. JOSHI, J.**
RESERVED ON : **7th OCTOBER, 2025.**
PRONOUNCED ON : **3rd NOVEMBER, 2025.**

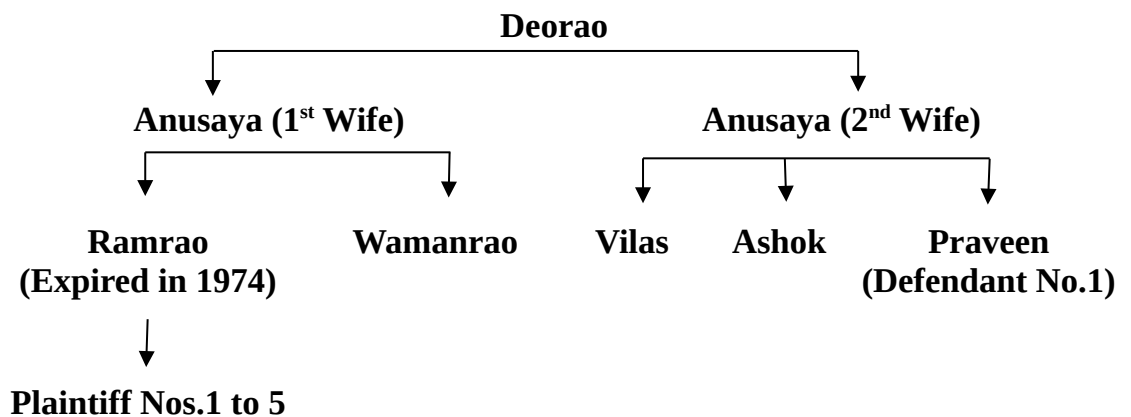
J U D G M E N T :

01. Heard the learned Advocates for the parties.
02. The present second appeal was admitted vide order dated 28th
July, 2005 on the following substantial question of law:

- *Whether the unregistered partition-deed could be admitted on record and relied on as a proof of partition in view of the provisions of Section 17 of the Registration Act?*

03. The appellants in the present appeal are original plaintiffs and the respondent is original defendant. The parties will hereinafter refer to as plaintiffs and defendant. The subject matter of the litigation is an agricultural land bearing Survey No.43/2, admeasuring 5.95 HR situated at Village Deosari, Tahsil Umarkhed, District Yavatmal. The suit property was initially owned by one Deorao Ramaji Deosarkar. He had two wives. Name of both wives is Anusaya. He has two sons from the first wife viz. Ramrao and Wamanrao and three sons from second wife viz. Vilas, Ashok and Praveen (defendant). The plaintiffs are widow, sons and daughters of deceased-Ramrao, son of Deorao.

04. The following family tree will explain *inter se* relationship between the parties.



05. Deorao owned vast stretches of agricultural lands admeasuring around 180 acres. Deorao had executed a registered deed of partition with respect to his agricultural lands in the year 1954 (Exh.233). *Inter alia* partition in the agricultural land between himself and his three sons namely Ramrao, Wamanrao and Vilas. Other two sons Ashok and Praveen (defendant) were born after 1954 partition. The suit property was allotted to the share of Ramrao, predecessor of the plaintiffs as per the said partition of the year 1954. The plaintiffs have filed suit for possession against the defendant, who is step brother of Ramrao contending that he had taken forcible possession of the suit property somewhere around in the year 1988.

Correction carried out as per Court's order dated 17.11.2025.

06. The defendant entered appearance in the matter and filed written statement contending that the partition of the year 1954 was never acted upon and that despite the said partition, all the properties continued to be held jointly by all the family members. The defendant came up with a contention that there was acted partition in the family on 21/05/1983, in which the suit property was allotted to his share. The defendant has contended that two documents of partition were prepared on 21/05/1983, one pertaining to agricultural land and other pertaining to house property. The documents of partition dated 21/05/1983 are unregistered documents. The defendant has stated that the partition of 1983 is acted upon all throughout and that the parties were placed in possession of the properties which fell to their respective shares pursuant to the said partition. The

defendant has also stated that there was a loan of Rs.1.00 lakh on the family and all the family members arrived at an agreement with respect to repayment of loan on 09/06/1986, whereby each branch agreed to repay loan to the extent of Rs.20,000/-. The defendant contended that the said agreement also confirmed the fact of partition of the year 1983.

07. In view of such pleadings, the learned Trial Court framed issues in the matter and proceeded to record evidence. The plaintiffs examined plaintiff No.1, widow of Ramrao and Wamanrao, real brother of Ramrao, predecessor of the plaintiffs. The defendant entered the witness box and examined one Bhujangrao in support of his defence.

Correction carried out as
per Court's order dated
17.11.2025.

08. After hearing the rival submissions, the learned Trial Court found that the partition of the year 1954 was never acted upon and despite the said partition, the family continued to be joint. It is held that the partition had taken place in the year 1983. The learned Trail Court has held that the partition of the year 1983 was duly proved and that the defendant was in possession of the suit property since the same fell to his share in the said partition.

09. Aggrieved by the aforesaid decree dismissing the suit, the appellants/plaintiffs filed first appeal being R.C.A. No.4/2002, which was also dismissed vide judgment and decree dated 07/02/2005. Against these concurrent decrees dismissing the suit for possession, the plaintiffs have filed the present second appeal, which was admitted vide order dated 28/07/2005

on the substantial question of law pertaining to admissibility of documents of partition dated 21/05/1983 as proof of partition.

10. The case of the plaintiffs is based on the registered partition-deed of the year 1954. In the year 1954, when the said document was executed, Ramrao, husband of plaintiff No.1 and father of plaintiff Nos.2 to 5 was around 17 years of age. Apart from Ramrao, two other sons were begotten at that time to Deorao viz. Waman and Vilas and both were minor in the year 1954, when the said partition was effected. The defendant and Ashok are born after partition of the year 1954.

11. The learned Trial Court has found that the partition of the year 1954 was not acted upon and despite the said partition-deed, all the properties of the family were held jointly by the entire family of five brothers. The learned Trial Court has referred to the plaint averments, wherein it is stated that in the year 1983, there were talks in the family with respect to the partition. The learned Trial Court has found that although the plaintiffs stated that the talks did not culminate into partition, nonetheless there was an admission that compromise talks were initiated in the year 1983. With respect to the joint possession after the year 1954, the learned Trial Court has referred to the admission on the part of plaintiff No.1 that the properties were under joint cultivation even after 1954. The learned Trial Court has referred to the revenue receipts for the lands owned by the family from the years 1957 to 1984-85, which are at Exh.151 to Exh.164. It is found that all throughout

land revenue for all the properties of the family was paid jointly under a single receipt. The learned Trial Court has also referred to the evidence of plaintiff No.1 and PW-2 with respect to the house property. According to plaintiff No.1, the residential house of plaintiffs was allotted to her husband in the partition of the year 1954, as against which, PW-2, who is real brother of Ramrao, stated that the house property was allotted to the plaintiffs in the partition of the year 1983. The learned Trial Court has also referred to the fact that all the sons including Ramrao, who was the eldest son, were minors at the time of partition of the year 1954. In view of the above, the learned Trial Court recorded a finding that the partition of the year 1954 was never acted upon and the family continued to remain joint till the subsequent partition of the year 1983.

Correction carried out
as per Court's order
dated 17.11.2025.

12. As regards partition of the year 1983, it is effected by two documents dated 21/05/1983. Whereas, the contention of the plaintiffs is that the partition-deed is, in fact, a deed of demise and, therefore, compulsorily registrable under Section 17 of the Registration Act, 1908, the case of the defendant is that the documents are in the nature of memorandum or list of partition, which are not required to be registered. Alternate contention is also raised that the partition of the year 1983 is accepted by all concerned and is acted upon all throughout and, therefore, the same should not be discarded merely because it is not registered.

13. In this regard, it will be appropriate to refer to paragraph 3-A of

the plaint, wherein the plaintiffs have stated that in the year 1983, talks of settlement were initiated in the family. Having said so, it is stated that the partition was never effected. It is further stated that document of partition was scribed on 21/05/1983, however, the said document was not given effect to. This pleading certainly gives rise to inference that talks of partition were initiated in the year 1983 and that some document in that regard was written. The issue, however, is as to whether these documents are proved and whether they can be read in evidence since they are not registered.

14. In this context, it will be appropriate to refer to the findings by the learned Trial Court. The learned Trial Court has found that plaintiff No.1 and PW-2 did not admit their signatures on the documents of partition dated 21/05/1983. The learned Trial Court, therefore, compared the signatures on the documents of partition with the admitted signatures of the plaintiffs on record. The learned trial Court found that the signatures were made by the same person. Although, reference to handwriting expert was not made, a Civil Court is competent and authorized to compare signatures. The learned Trial Court has also found the version of plaintiff No.1 unbelievable, because she had gone to the extent of denying her signatures on the plaint and Vakalatnama, when the same were confronted to her in her cross-examination. The pleadings in the plaint also suggest that documents of partition were, in fact, executed on 21/05/1983. It must be stated that there are two documents of partition, one pertaining to agricultural land and other

pertaining to house property. The house in possession of the plaintiffs is allotted to them under the document of partition, which is executed on the same date, on which document of partition of agricultural land is executed. Although, the plaintiffs contended that the house property was allotted to the share of her husband in the earlier partition, her witness PW-2, who is real brother of her husband, admitted that the house property was allotted to the plaintiffs in the partition of the year 1983. What is significant is that, till the year 1983, the parties were paying taxes jointly. It must also be stated that the document of partition is further affirmed in the agreement of loan repayment executed in the year 1986. In the consent letter of the year 1987 also, the plaintiffs have admitted the partition of the year 1983. The partition of the year 1983 is thus corroborated by two subsequent documents i.e. agreement of loan repayment dated 09/06/1986 and consent letter of the plaintiffs dated 11/09/1987. It will also be pertinent to state that signature on letter of consent was admitted by plaintiff No.1 during the course of her deposition in Criminal Case No.730/1999. Certified copy of the said deposition is on record of the learned Trial Court. Likewise, PW-2 was also examined as a witness in the said criminal case. In his evidence in the said criminal case, PW-2 expressly admitted that the suit property was allotted to the share of the defendant in the partition of the year 1983. It thus appears that the partition of the year 1983 is acted upon all throughout. The plaintiffs have also failed to prove that they were ousted from the said property forcibly as alleged by them.

15. Although an unregistered document, which is required to be registered compulsorily under Section 17 of the Registration Act, cannot be read in evidence as proof of transaction recorded therein in view of Section 49 of the said Act, the document can certainly be read for other collateral purposes. When a person is in possession of an immovable property, in order to determine the nature or right of his possession, an unregistered document, which is otherwise required to be registered, can be read in evidence for collateral purpose of explaining the nature of possession. In the present case, admittedly, the defendant is in possession of the suit property. The plaintiffs have failed to prove forcible dispossession. The unregistered document of partition dated 21/05/1983 can, therefore, be read in evidence to determine the nature of possession. The defendant is claiming to be in possession of the property as owner on the ground that the same is allotted to him in partition between the family members. The document can be read in evidence to decide as to whether the defendant is in possession of the property as rightful owner or as a trespasser. The last paragraph of the document pertaining to the agricultural land indicates that the parties had already taken possession of the lands allotted to the share of each party. It is also recorded that all parties should make a note of the lands allotted to them which goes to suggest that the document is a memorandum of partition that has already taken place. It will be pertinent to note that the document does not recite that the property is being given to the share of any particular party under the document. It rather records that the properties were given to the shares of the parties. The tense

of the document also assumes significance. It suggests that it is in the nature of a memorandum.

16. The document is also corroborated by the agreement for loan repayment executed in the year 1986, whereunder the parties have reaffirmed the partition of the year 1983. It is further corroborated by the consent letter issued by the plaintiffs in the year 1987. In the considered opinion of this Court, the document of partition can be read for collateral purpose of explaining the possession of the defendant. Both the learned Courts have rightly considered the said document and have placed reliance on the same in order to dismiss the suit.

17. As stated above, the plaint averments indicate that talks of partition were initiated in the family in the year 1983. PW-2 has stated that the plaintiffs have received their residential house under the partition of the year 1983. Although plaintiff No1 states that the house was received under earlier partition, there is no material on record to substantiate the same. The plaintiffs have accepted the benefit of the partition of the year 1983. The plaintiffs have further admitted in the cross-examination that all the parties are in possession of the properties allotted to their shares in the partition of the year 1983. As stated above, the agreement of the year 1986 and consent letter of the year 1987 affirmed the partition of the year 1983. Thus, it is clear that all the parties have all throughout acted on the partition of the year 1983. It will be pertinent to mention here that although the document is

titled as partition-deed, perusal of the document will indicate that there was a dispute in the family with respect to the property and that the said dispute was set at rest by the partition effected in the year 1983. In that sense, the transaction can also be termed to be a family settlement under which disputes were amicably resolved by the family members.

18. In the light of above evidence, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of **Kale and others vs. Deputy Director of Consolidation and others – 1976(3) SCC 119**, wherein it is held that when settlement of dispute between parties is settled by virtue of document and parties are derived benefit under the said document, then it is not open for them to challenge the document for want of payment of adequate stamp duty or on the ground that the document is not registered. The said case pertains to a family settlement. The ratio of the said case will be applicable in the present matter as well inasmuch as the partition of all the properties in the family appears to be effected in the year 1983. The plaintiffs have also received properties in their respective shares, including the house property. This house property was not the subject matter of earlier partition of the year 1954. The partition is further accepted by the parties for the purpose of repayment of loan. Although the partition with respect to the house property and agricultural land is incorporated under two separate documents, both the documents are simultaneously executed on the same date and are, accordingly, a part of the same transaction. The learned First

Appellate Court has reconsidered the evidence in the light of the findings recorded by the learned Trial Court and has recorded concurrence with the said findings. It will be pertinent to state that the learned Trial Court has dealt with the evidence in great detail.

19. In the considered opinion of this Court, the plaintiffs are estopped from questioning the partition of the year 1983. Both the learned Courts have rightly considered the controversy involved in the matter and have not erred in placing reliance on the document of partition of the year 1983. The substantial question of law, therefore, needs to be answered in favour of the respondent/defendant and against the appellants/plaintiffs. The second appeal is, therefore, liable to be dismissed and is dismissed with no order as to costs.

(Rohit W. Joshi, J.)