



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14582 OF 2025

1. Rohit S/o. Sanjay Panbisare,
Age :- 21 Years, Occu. Student
R/o. C/o. Baburao Gowardhan Kasure
Tisgaon, Tq.& Dist.Aurangabad
2. Radha W/o. Sanjay Panbisare
Age :- 39 Years, Occu. Household
R/o. C/o. Baburao Gowardhan Kasure
Tisgaon, Tq.& Dist.Aurangabad

Petitioners
(Ori. Plaintiffs)

VERSUS

- 1) Sanjay S/o. Ganesh Panbisare,
Age:- 43 Years, Occu. Agri. & Business.
R/o. Khawda Dongar Chafuli,
Tisgaon, Tq. & Dist. Aurangabad.
- 2) Ganesh S/o. Ramlal Panbisare,
Age:- 61 Years, Occu. Agri.
R/o. As above.
- 3) Anil S/o. Ganesh Panbisare,
Age:- 41 Years, Occu. Agri.
R/o. Khawda Dongar Chafuli,
Tisgaon, Tq. & Dist. Aurangabad.
- 4) Sunil S/o. Ganesh Panbisare,
Age:- 39 Years, Occu. Agri.
R/o. As above.
- 5) Nitin S/o. Ganesh Panbisare,
Age:- 37 Years, Occu. Agri.
R/o. As above.
- 6) Khimanbai W/o. Ganesh Panbisare,
Age:- 57 Years, Occu. Agri.
R/o. As above

- 7)) Rajiv S/o. Kalyan Gadgul,
Age:- 34 Years, Occu. Agri.
R/o. As above
- 8) Karbhari S/o. Sakharhari Gayake,
Age:- 53 Years, Occu. Agri.
R/o. Sultanabad, Tq. Gangapur,
Dist. Aurangabad.
- 9) Hrutvik Nandkumar Kuklare,
Age:-21 Years, Occu. Agri. & Business,
R/o. Shiregaon, Tq. Gangapur,
Dist. Aurangabad.
- 10) Prabhakar S/o. Raghunath Mahalkar,
Age:- 41 Years, Occu. Agri. & Business,
R/o. Junegaon Sawata Mandir,
Ranjangaon Shenpunji,
Post: Ghanegaon, Tq. Gangapur, Dist. Aurangabad.
- 11) Ganesh Tukaram Pere,
Age:- 57 Years, Occu. Agri. & Business,
R/o. Plot No. 1, Adarsh Vidya Mandir,
Vidyut Colony, Padegaon,
Aurangabad. Respondents.

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Advocate for Petitioners : Mrs. Pooja V. Langhe

Advocate for Respondents : Mr. H.S. Adwant h/f Mr. S.V. Adwant

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CORAM	:	S. G. CHAPALGAONKAR, J.
Dated	:	April 15, 2026

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JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of parties matter is taken up for final hearing at the stage of admission.

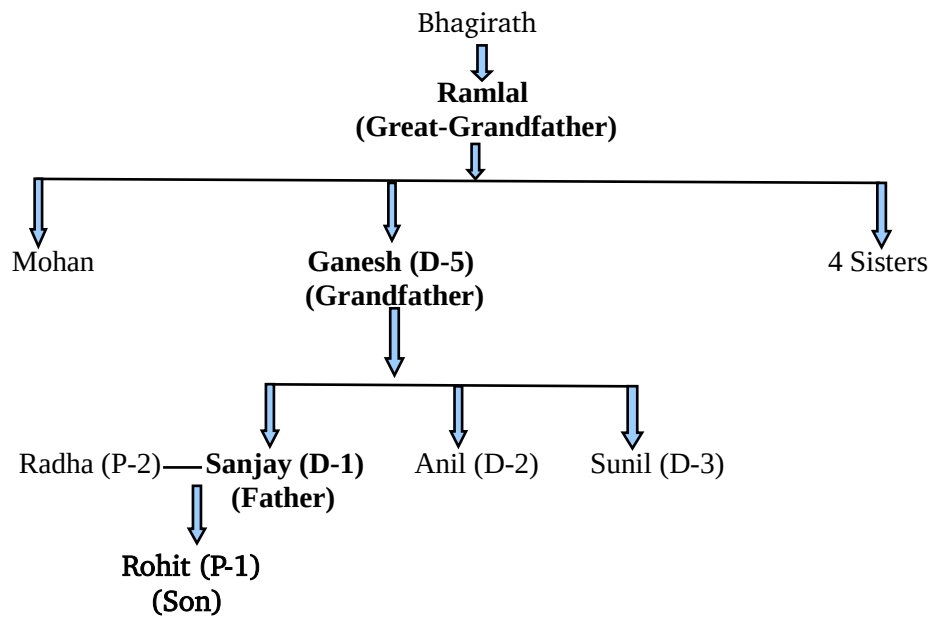
2. Present writ petition takes exception to the order dated 8.10.2025 passed by the District Court, Aurangabad in Misc. Civil Appeal No.76 of 2025, thereby reversing the order dated 21.3.2025 passed by learned Jt. Civil Judge S.D., Aurangabad below Exhibit-5 in Special Civil Suit No.126 of 2024.

3. Brief facts, giving rise to the present writ petition, are as under :-

Petitioners/(original plaintiffs) filed a suit for partition and separate possession of suit property, which includes land Gat no.224 alongwith house property constructed therein situated at village Tisgaon Tq. & District Aurangabad. Plaintiffs are further seeking declaration that sale deed day book no.6021 of 2022 dated 1.9.2022 as null and void and not binding upon share of plaintiffs. Plaintiffs have further sought relief of perpetual injunction from transferring, alienating or

creating third party interest in property to the extent of share of plaintiffs.

4. The family tree depicting relationship between the plaintiffs and defendants is as under :-



5. It is contention of petitioners that plaintiffs and defendants are members of Hindu undivided joint family. The joint family is having ancestral property i.e. agricultural land in gat no.224. Ramlal i.e. great-grandfather of plaintiffs was owner of the property. He partitioned the same amongst his sons i.e. Mohan and Ganesh/defendant no.5 i.e. grandfather of plaintiffs. Petitioners grandfather i.e. Ganesh/defendant no.5 received 3H 37R from his father in partition alongwith his

brother Mohan. Till this date, there is no partition of Hindu Joint Family headed by defendant no.1/Sanjay.

6. Pertinently, plaint is silent as to date of death of Ramlal (Great-grandfather) and date when he partitioned property in name of Ganesh & Mohan. Plaintiffs grandfather is added as party in the suit, but it is not clarified as to whether property in hands of Ramlal was ancestral or self-acquired or Ganesh received it in terms of Sec. 8 or 6 of the Hindu Succession Act, 1956.

7. Petitioners/plaintiffs filed an application below Exhibit-5 claiming relief of temporary injunction against defendants to restrain them from transferring or alienating the suit property in favour of third party. Defendants contested the suit on various counts. They raised objection that suit itself is not maintainable as plaintiffs have no right to claim partition in the suit property so long as father, grandfather are alive. The Trial Court allowed application and temporarily restrained defendants from creating third party interest in suit property in any manner. Aggrieved defendant nos.1 to 5 i.e. father and grandfather of plaintiff no.1 filed Misc. Civil Appeal no.76 of 2025 before District Judge at Aurangabad, who allowed

appeal vide impugned judgment and order dated 8.10.2025 observing that plaintiffs failed to prove *prima facie* case as to existing rights in suit property during life time of father and grandfather and that there is nothing on record to hold that suit properties are joint family properties.

8. Mrs. Pooja Langhe, learned advocate appearing for petitioners submits that there is no dispute that suit properties were originally owned by Ramlal i.e. great-grandfather of plaintiff. He partitioned the same in favour of Ganesh/defendant no.5 and his brother Mohan. Therefore, plaintiffs father Sanjay and plaintiffs, being the members of coparcenery are entitled for partition and separate possession of suit properties. She would urge that Trial Court had rightly appreciated factual and legal position while granting temporary injunction against defendants, however, learned District Judge on erroneous appreciation of facts and law, allowed appeal and exceeded jurisdiction while disturbing Trial Courts order in exercise of the appellate powers under Order 43 of Civil Procedure Code.

9. Per contra, Mr. Advant, learned advocate appearing for respondents would supports order impugned contending that statutory scheme under 1956 Act contemplates that the property inherited by the heirs loses its coparcenary character and vests as individual and self acquired property in the hands of the heirs. Plaintiff no. 1 being grandson of defendant no.5 has no locus to file suit for partition against him during life time of his father much-less claim reliefs in the suit. Grandfather being exclusive owner of the suit properties alongwith his brother Mohan, enjoys absolute domain over the same. Hence, suit *sans* cause of action. As such, application for temporary injunction cannot be entertained. The Appellate Court has rightly applied law in facts of this case and allowed appeal by setting aside trial courts order.

10. Having considered submissions advanced by learned advocates appearing for respective parties, it can be observed that, there is no dispute that suit properties were originally owned by Ramlal i.e. great-grandfather of plaintiffs and on partition effected by him, those have been received by grandfather i.e. Ganesh/defendant no.5 and his brother Mohan. Undisputedly, there is no partition between defendant

no.5 and defendant no.1. Plaint is absolutely silent on material particulars about date of death of petitioners great-grandfather Ramlal or date of partition between sons of Ramlal i.e. Ganesh/defendant no.5 and Mohan. Plaint is also silent on the point as to whether the suit properties were ancestral properties of Ramlal or those were his self acquired properties. In absence of aforesaid particulars, assuming that Ganesh/defendant no.5 received suit property from his father i.e. Ramlal, *prima facie* it has to be assumed that he had acquired right under section 8 of the Hindu Succession Act.

11. Section 4 of the Hindu Succession Act overrides Hindu Law in-force immediately before commencement of the Act, which has been brought into force for the purpose of regulating law relating to intestate succession amongst Hindus. Section 6 of the Hindu Succession Act deals with devolution of interest in coparcenary property. Section 8 deals with the general rules of succession in case of males. It stipulates that property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter i.e. firstly upon heirs being relatives as specified in class-1 of Schedule and, secondly, if there is no heir of class-1, then relatives specified in

class-2 of the Schedule. Schedule of Class-1 heirs depicts that son, daughter, widow, mother are included in exclusion of grandson of the living son.

12. In case of **Uttam Vs. Saubhag Singh and others** reported in **(2016) 4 SCC 68** the Supreme Court of India after considering relevant provisions of law and its exposition under various judgments, summarized effect of section 4, 8 and 19 of Hindu Succession Act so far as it applies to the joint family property governed by Mitakshara School prior to the amendment of 2005. The relevant observations are as follows :-

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi). On conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

13. In case of **Arshnoor Singh Vs. Harpal Kaur and Ors.** reported in **AIR 2019 Supreme Court 3098**, the Supreme Court

after considering the law laid down in case of **Yudhister Vs. Ashok Kumar (1987) 1 SCC 204**, observed in para no.7.5 and 7.6 as under:

7.5 After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post – 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

7.6 If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-a-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.

14. It is therefore evident that on discontinuance of coparcenary, property ceases to be joint family property and succeed to respective sharers as tenants in common. The property devolves upon them *per stripes* with right to alienate the share, particularly, when the properties are partitioned and entries are made in the revenue record.

15. In the present case, petitioners grandfather/defendant no.5 received the property from his father i.e. Ramlal. However, plaintiffs have not pleaded whether property in the hands of grandfather/defendant no.5 was ancestral property. Therefore, at this stage, it will have to be presumed that in terms of Section 8 of Hindu Succession Act, 1956 defendant no.5 became exclusive owner of the property and holds right to dispose it. Plaintiffs have therefore failed to show their existing right in the suit property during the lifetime of father i.e. defendant no.1.

16. Learned District Judge has rightly analyzed legal and factual aspects of matter and held that after applying provisions of section 6(3) and 8 of Hindu Succession Act, 1956 as long as father is alive, plaintiff no. 1 cannot maintain a claim or have cause of action to seek reliefs as claimed. Plaintiffs do not fall in any of the categories of class-1 heirs of late Ramlal as prescribed under section 8 of Hindu Succession Act. The inheritance right through father/defendant no.1 has not opened up as he is very much alive. There is no question of intestate succession at this stage.

17. In result, writ petition sans merit, hence **dismissed**. Rule discharged.

(S. G. CHAPALGAONKAR)
Judge

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