



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 94 OF 2025**

Namdev S/o Manchakrao Poul,  
Age: 50 Years, Occup. Agril.,  
R/o: Khandali, Tq Ahmedpur,  
District Latur.

...APPELLANT  
(Ori. Defendant No. 1)

**VERSUS**

1. Pandurang S/o Manchakrao Poul,  
Age; 47 Years, Occup. Agril.,  
R/o: Khandali, Tq Ahmedpur,  
District Latur.

...(Orig. Plaintiff)

2. Sumanbai W/o Manchakrao Poul,  
Age; 78 Years, Occ. Agril.,  
R/o: Khandali, Tq Ahmedpur,  
District Latur.

3. Parwatibai W/o Shankarrao Pawar,  
Age: 52 years, Occup. Household,  
R/o: Loha, Tq. Loha, District Nanded.

...RESPONDENTS  
(Ori. Deft Nos. 2 & 3)

...  
Advocate for the appellant : Mr. Mahesh P. Kale  
Advocate for the Respondent No. 1 : Mr. Bagal h/f Mr. B.N.  
Gadegaonkar  
...

**CORAM : MEHROZ K. PATHAN, J.**  
**DATE : 23.04.2026.**

**JUDGMENT :**

1. The appellant has filed the present appeal, thereby,  
challenging the judgment dated 07.09.2022, passed by the 3<sup>rd</sup> Joint

Civil Judge Junior Division, Ahmadpur, District Latur, in Regular Civil Suit No. 371 of 2016 and the judgment and order dated 11.12.2024, passed by the District Judge -1, Ahmedpur District Latur in Regular Civil Appeal No. 25 of 2022. (The appellant and the respondents are hereinafter referred as per their original status in the lower Court as the "Plaintiff and Defendant" for the sake of brevity).

2. The facts of the plaintiff's case are that the respondent No. 1/original plaintiff, Pandurang Poul has filed a suit against Namdeo, Sumanbai and Parvatabai for declaration of the ownership and perpetual injunction, whereas, the counter claim was filed by Parvatabai against the plaintiff Pandurang and defendant Namdev and Sumanbai. The plaintiff had sought declaration of ownership and perpetual injunction against the defendant, whereas, the counter claimant Parvatabai has sought relief of partition of ancestral Hindu joint family property and separate possession of her share, against the plaintiff and defendant Nos. 1 & 2. The suit property was agricultural land bearing Gut No. 808, ad-measuring 1 A 41 R and share in the well situated, at village Khandali, Tq. Ahmedpur, District Latur. Whereas, the counter claim was filed by Parvatabai claiming her share in the agricultural land bearing Gut No. 808, ad-measuring 3 H 82 R, situated at village Khandali, Tq. Ahmedpur, District Latur. The plaintiff Pandurang and defendant No. 1 Namdeo are the brothers, they are the sons of Manchakrao and Sumanbai. Whereas,

defendant No. 3 - Parvatabai was the daughter of Manchakrao and Sumanbai. According to the plaintiff and defendant, the suit property was ancestral property.

3. As per the plaintiff, partition took place in the year 2015 and the suit property was allotted to the share of plaintiff and he also got 1/4th share in the old well situated in disputed property Gut No. 808. Likewise, defendant Nos. 1 and 2 also got equal share like that of the plaintiff. At the time of oral partition defendant No. 3 had surrendered and relinquished her share, on her own accord, in favour of her sibling and her mother. Since the oral partition, the plaintiff is cultivating the suit property and getting benefit in the well to the extent of her share, resulting in the mutation of property in her name. Thus, the plaintiff submits that the defendants have no right or concern, whatsoever, with the suit property and the defendants in connivance with each other are trying to obstruct and interfere with the peaceful possession of the plaintiff over the suit property. The defendants denied the right of the plaintiff in the suit property on 25.05.2016 and as such, the same is the cause of action to the plaintiff to file the suit.

4. The defendant No. 1 Namdeo had contested the suit and claimed that 82 R land out of Gut No. 808 was allotted to the share of Manchakrao, who had sold the share of defendant No. 3 on

13.02.1992, for the expenses of marriage of defendant No. 3. After the marriage of defendant No. 3, partition took place between the plaintiff, defendant No.1 and their mother defendant No. 2, in the year 2000. The plaintiff and defendant No. 1 got half share in the disputed property and in the well too. Defendant No. 2 - mother Sumanbai had surrendered her share in favour of plaintiff and defendant No. 1, and they have taken care of defendant No. 2 - mother and also cultivating their respective shares since the partition took place in the year 2000. The suit is barred by the limitation, Thus, defendant No. 1 Namdeo, who is real brother of plaintiff Pandurang, prayed for dismissal of the suit.

5. The defendant No. 2 – mother Sumanbai appeared in the suit and contested the same by filing her Written Statement. She claimed that on 30.07.1995 the property was mutated in the name of defendant No. 1 Namdeo. After the demise of head of the family, the mutation to that effect was effected vide mutation entry No. 495 as the defendant No. 1 was the elder son. He further contended that there was no partition effected between the parties. The disputed property is ancestral property bearing Gut No. 808 and as such, neither the plaintiff nor defendant No. 1 was allotted any such property during the life time of the common ancestor.

6. Defendant No. 3 the Counter Claimant – Parvatabai had

appeared and contested the suit and denied all the contentions raised by the plaintiff and defendant No. 1. She further contended that the mutation entry Nos. 495 in the name of defendant No. 1 were taken in respect of the disputed property on 30.07.1995, as the defendant No. 1 was elder son of the family. However, there was no partition ever took place in between the family members. The suit property was ancestral property and as such the Counter Claim was filed thereby seeking partition of 1/4th share in the disputed property. It was further claimed in the Counter Claim that the plaintiff has concocted false story and filed a false suit against her, after demise of their father. She further claimed that they were members of Hindu Undivided Family and thus are governed by the 'Mitakshara School' of law. She further claimed that she demanded partition on 31.10.2016, which came to be refused by the plaintiff and as such after receipt of notice in the suit, she had filed her Counter Claim.

7. Respondent No. 1 - Counter Claimant i.e. the plaintiff - Pandurang has filed his written statement vide order dated 12.04.2018. The Counter Claimant defendant No. 1/respondent No. 2 Namdeo Poul has filed his written statement and denied all contentions made in the counter claim and stuck to his defence in written statement filed in the Civil Suit that partition took place in the year 2000 and prior to that Manchakrao had sold the share of the 82 R out of Gut No. 808 of the Counter Claimant to perform her

marriage, and since then the Counter Claimant respondent No. 3, defendant No.1 Namdev and the plaintiff Pandurang were taking care of the property and cultivating their respective shares. The Counter Claimant, respondent No. 3 – mother Sumanbai had reproduced the contents of her written statement below Exh. 22, filed in the suit bearing No. 371 of 2016 and prayed for decreeing the Counter Claim of the Counter Claimant.

8. The learned trial Court has considered that as per Section 6 of the Hindu Succession Amendment Act, 2005, the daughters have rights in the co-parcenary property. They have become the co-coparceners in the same manner as that of the sons, hence the provisions of Section 6 of the Hindu Succession Act, 2005 are applicable.

9. After appreciating the evidence laid by the plaintiff as well as defendant and the Counter Claimant, the trial Court has decreed the suit filed by the plaintiff. The counter claim filed by defendant No. 3 Parvatibai came to be decreed. The Counter Claimant was declared 1/4th share in the disputed property bearing Gut No. 808, ad-measuring 3 H and 82 R, situated at village Khandali, Tq. Ahmadpur, District Latur and the Counter Claim of respondent Nos. 1 to 3 i.e. the Pandurang, Namdeo and Sumanbai they would also get 1/4th share each in the above mentioned disputed property.

10. The Original Defendant No. 1 -Namdeo Poul, being aggrieved by the decree passed by the learned trial Court had filed an appeal before the learned District Judge, Ahmadpur bearing Regular Civil Appeal No. 25 of 2022. The learned appellate Court had dismissed the appeal vide judgment and order dated 11.12.2024. Being aggrieved by the said judgment and order passed by the First Appellate Court dismissing appeal filed by the defendant No. 1-appellant herein, the appellant has filed the present Second Appeal.

11. After hearing the learned counsel Mr. Kale for the appellant and the learned counsel Mr. Bagal h/f Mr. Gadegaonkar, appearing for respondents and after going through the judgments and orders of the learned trial Court as well as the first appellate Court, the following substantial questions of law appears to be involved in the present Second Appeal, which are as under :

(A) Whether the findings arrived at by both the learned lower Courts below are perverse to the evidence laid by the plaintiff and defendant.

(B) Whether the Counter Claimant – respondent No. 3 Parvatabai, was entitled to equal share as co-parcener, being the daughter, having right in the co-parcenary property as per Section 6 of the Hindu Succession Amendment Act, 2005.

12. The perusal of the record would show that the common

ancestor Manchakrao had alienated 82 R land out of Gut No. 808 by executing the sale deed in favour of defendant No. 4. The claim that the said land was alienated by Manchakrao during his life time for meeting the marriage expenses of the Counter Claimant Parvatabai was denied by her. The evidence laid by the defendants and the plaintiff proved that the disputed property was joint family property and 82 R land was sold to Sambhaji More by way of registered sale deed in the year 1992. Defendant No. 3 – Parvatabai being the daughter, at the relevant time was not co-parcener of the joint family. Except general statement made by the plaintiff and defendant No. 1 Namdev, no documentary evidence was brought on record to show the partial partition had taken place in between the parties. After the death of Manchakrao the disputed property became joint family property. The sale deed Exhibit – 17 was executed by Manchakrao in favour of Sambhaji More for various reasons as such for education of children, for development of other land and for marriage of defendant No. 3. Merely mentioning of daughter's marriage as one of the reason for executing the sale deed, cannot by itself infer that land sold was from the share of the daughter. No believable evidence was brought on record to show that there was ever any partition took place in between the family members. The revenue record does not indicate that the partition was effected and the mutation entry was taken. After death of Manchakrao it was recorded in the name of defendant No. 1 Namdeo as stated by mother Sumanbai, being the eldest son of

the family. Mere mutation entry in the name of defendant No. 1 itself would not declare defendant No. 1/ appellant herein to be exclusive owner of the suit property.

13. Thus, there is no error in the findings arrived at by the learned lower Courts below. The findings as against the contentions of the plaintiff and defendant No. 1/appellant herein that there was no partition taken place earlier in the family, does not appear to be perverse in connection with the evidence led on record. I do not find any perversity in the findings arrived at by both the lower Courts below on the point that there was no partition taken place in the joint family property. Thus, the substantial question of law as to perversity of findings recorded by the learned lower Courts below is answered in the negative.

14. Insofar as, another substantial question of law as regards the claim of the Counter Claimant - Parvatabai being the daughter of the family, whether she is entitled to have equal share as per the amended Hindu Succession Act, 2005 is concerned, both the learned lower Courts below have rightly considered the judgment of the Hon'ble Supreme Court in the case of **Vineeta Sharma V. Rakesh Sharma & Ors. - AIR 2020 SC 3717, Airoline 2020 SC 676 (Full Bench)**, wherein it is held that as per Section 6 of the Hindu Succession Amendment Act, 2005, the daughters have equal right in

co-parcenery property as like that of the sons. The daughters now have same right in the co-parcenary property as they would have being the sons. The provisions of Section 6 of the Hindu Succession Amendment Act, 2005 was thus held to be rightly applicable to the Counter Claimant i.e. defendant No. 3 Parvatabai, wherein she is declared to be entitled for 1/4th share. Defendant No. 1 Namdev, the plaintiff Pandurang and their mother Sumanbai are also held to be entitled for holding 1/4th shares in the suit property. Thus, the substantial questions of law (B) is also answered accordingly.

15. No other substantial question of law appears to have involved in the present appeal, therefore the Second Appeal is devoid of substance on merits and is, therefore, liable to be dismissed and is hereby dismissed.

**( MEHROZ K. PATHAN, J. )**

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