

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.159 OF 2025

1. Manisha @ Bharati Dhanaji Kolekar,
Age: 34 yrs. Occ. Housewife/Agri.,
R/o. Tambave, Tal. Malshiras, Dist. Solapur.
 2. Smt. Sonabai Sukhdev Lavate,
Age: 53 yrs., Occ: Labour,
R/o. Tambave, Tal. Malshiras,
Dist. Solapur.Appellants
- Vs.

1. Shri. Shivaji Kashinath Lavte,
Age: 68 yrs., Occ: Agriculture,
2. Shri. Devrao Kashinath lavte,
Age: 63 yrs., Occ: Agriculture,
3. Shri. Dattu Kashinath Lavte,
Age: 58 yrs. Occ: Agriculture,
R/o. Tambave, Tal. Malshiras,
Dist. Solapur.
4. Shri. Rangnath Dhula Lavte,
(Since deceased through L.R.s)
- 4A. Smt. Padmini Rangnath Lavte,
Age: 40 yrs., Occ: Household,
- 4B. Shri. Tatyasaheb Rangnath Lavte,
Age: 40 yrs., Occ: Household,
- 4C. Smt. Shardabai Vasant Madane,
Age: 45 yrs., Occ: Household,
All R/o Ganeshgaon, Tal. Malshiras,

Dist. Solapur.

- 4D. Sou. Sunanda Vilas Tirange,
Age: 35 yrs., Occ: Household,
R/o. Redni, Tal. Indapur, Dist. Pune
- 5. Shri. Arjun Rangnath Lavte,
Age 44 yrs., Occ: Agricultature,
R/o Ganeshgaon, Tal. Malshiras,
Dist. Solapur.
- 6. Shri. Lalasaheb Rangnath Lavte,
(Since deceased through L.R.s)
- 6A. Smt. Kaamina Lalasaheb Lavte,
Age: 49 yrs., Occ: Household,
- 6B. Shri. Amol Lalaso Lavte,
Age: 32 yrs., Occ: Agriculture,
Both R/o Ganeshgaon, Tal. Malshiras,
Dist. Solapur.
- 6C. Sou. Ashwinin Ashok Rupnar,
Age: 29 yrs., Occ: Household,
R/o Kalewadi, Tal. Aatpadi,
Dist. Sangli.
- 7. Kashinath Dhula Lavte,
(Since deceased through L.R.s)
- 7A. Rajabai Bharat Kolekar,
Age: Adult, Occ: Agriculture,
- 7B. Smt. Baydabai Navnath Kolekar,
Age: Adult, Occ: Agriculture,
Both r/o. Tambave, Tal. Malshiras,
Dist. Solapur.
- 7C. Sou. Changunabai Dadaso Shingade,
Age: Adult, Occ: Agriculture,
R/o. Katewadi, Tal. Baramati,

Dist. Pune

- 7D. Tulsabai Kashinath Lavte,
Age: Adult, Occ: Agriculture,
R/o. Katewadi, Tal. Baramati,
Dist. Pune.
8. Rakhmabai Sakharam Kolekar,
Age: Adult, Occ: Agriculture,
9. Shri. Dashrath Kisan Lavte,
Age: 68 yrs., Occ: Agriculture,
Both r/o. Tambave, Tal. Malshiras,
Dist. Solapur.
10. Shri. Kondiba Namdeo Shedge,
Age: 63 yrs. Occ: Agriculture,
R/o. Ganeshgaon, Tal. Malshiras,
Dist. Solapur.
11. Kundlik Ganpat Deshmukh,
Age: 48 yrs., Occ: Agriculture,
R/o. 61 Phata, Malshiras,
Dist. Solapur.

.....Respondents

Mr. Vishwanath Talkute, with Mr. Mahesh Bhosale, and Mr. Pratik Bhojane, for the Appellants.

Mr. Bhushan Walimbe, with Mr. Vaibhav V. Arage, for Respondent Nos.1 to 7.

CORAM : MRS. VRUSHALI V. JOSHI, J.

DATED : 28th JANUARY 2026

Judgment:-

1. The Appellants have preferred the present Appeal challenging the judgment and decree dated 30th January 2023 passed by the District Judge-1, Malshiras, in Regular Civil Appeal No. 40 of 2014.

2. The Appellants are the original Plaintiffs. The suit was filed by the Appellants before the Civil Judge, Senior Division, Malshiras, seeking partition and separate possession of their 1/3rd share in the suit property, along with a declaration that the sale deeds dated 23rd June 1993 and 31st August 1994 are not binding upon them.

3. The Defendants filed their written statement. Defendant No.9, who is the purchaser, contended that he has paid valid consideration. The defence of the Defendants is that the husband of the Plaintiff is alive and, during his lifetime, the wife cannot be treated as a coparcener and is therefore not entitled to claim partition. It is further contended that Plaintiff No.1 is a married daughter.

4. According to the Defendants, a partition had already taken place in the year 1994 between Sukhdev and Defendant Nos.1 to 5, and the same was recorded in Mutation Entry No.582, in the name of Sukhdev, the husband of Plaintiff No.2.

5. The suit was partly decreed in favour of the Plaintiffs, holding that Plaintiff No.1 is entitled to a 1/3rd share in Gat Nos. 175/2, 171 and 170, while the claim of Plaintiff No.2 was rejected.

6. Being aggrieved by the said judgment, the Defendants preferred Regular Civil Appeal No. 40 of 2014 before the District Court, Malshiras. The Appellate Court set aside the judgment passed by the Trial Court and allowed the Appeal. Being aggrieved by the said order, the Appellants have preferred the present Appeal.

7. The Appellants have raised substantial questions of law contending that the Appellate Court failed to consider the evidence led by Plaintiff No.2, the mother of Plaintiff No.1. It is further contended that the Appellate Court did not consider the plea of civil death of the husband of Plaintiff, who has been missing for more than seven years. Despite the fact that a missing complaint was lodged and an offence under Section 363 of the Indian Penal Code was registered against the Defendants, the said aspects were not considered by the Appellate Court. Hence, the Appellants have preferred the present Second Appeal.

8. I have heard the learned counsel for both the parties. Upon perusal of the record, it appears that the main contention of the Plaintiff is that she has claimed partition on the premise that her husband has neither been heard of nor seen by anyone for the last

seven years and, therefore, upon his civil death, she is entitled to seek partition in the suit property. It is further contended that her evidence in this regard has not been considered.

9. Mr. Vishwanath Talkute, learned counsel appearing for the Appellants, submitted that the Appellate Court has discarded the evidence of Plaintiff No.2, i.e., the mother of Plaintiff No.1, solely on the ground that no power of attorney was executed in her favour. It is contended that Plaintiff No.2 herself is a party to the suit and was fully aware of the facts of the case and, therefore, her evidence ought to have been considered.

10. The declaration of civil death is not required, as in view of the proved facts and circumstances on record, she has filed a complaint against the Defendants alleging that they abducted him.

11. These are the two main substantial questions of law as framed by the Appellant. The learned counsel appearing for the Respondent submits that it is necessary to prove civil death by a declaration of the competent Court, as no such declaration has been granted. It is further contended that even though the Appellant claims that the

prayer was amended to seek a declaration, Sukhdev was not impleaded as a party. Therefore, the suit was filed even before the expiry of seven years by merely assuming his death, and the Trial Court granted partition on such assumption. Hence, the Appellate Court has rightly set aside the order passed by the Trial Court. It is submitted that no substantial question of law arises for admitting the Appeal, as the questions framed by the Appellant do not alter the legal position. Consequently, the Second Appeal deserves to be dismissed at the admission stage.

12. Heard both the parties.

13. The substantial question of law raised pertains to civil death. In the absence of a declaration of civil death by a competent Court, it cannot be presumed even after the lapse of seven years—that the person is no more, and no benefit can be claimed on such presumption. Therefore, a declaration from the competent Court is mandatory. Without such declaration, a claim for partition is not maintainable. In the present case, the suit was filed on 7th August 2000, even prior to the completion of seven years. Hence, no substantial question of law arises for consideration.

14. The Appeal stands **dismissed**.

(MRS. VRUSHALI V. JOSHI, J.)