

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 749 OF 2025

- | | |
|--|---|
| 1) Bhagwan Shiva Turuke |] |
| Age – 65 Years, Occu – Agri, |] |
| R/o. Uchgaon, Shinde Colony, |] |
| Tal: Karveer, Dist – Kolhapur. |] |
| 2) Sambhaji Shiva Turuke |] |
| Age – 61 years, Occu – Agri, |] |
| R/o. Uchgaon, Shinde Colony, |] |
| Tal: Karveer, Dist – Kolhapur. |] |
| 3) Dinkar Shiva Turuke |] |
| (since deceased thru Legal Heirs |] |
| (3A) Surekha Dinkar Turuke |] |
| Age – 62 years, Occu – House hold, |] |
| R/o. Sangvi, Tal: Maval, Dist : Pune. |] |
| (3B) Swapnil Dinkar Turuke |] |
| Age - 38 years, Occu – Nokari, |] |
| R/o. Sangvi, Tal: Maval, Dist : Pune. |] |
| (3C) Nisha Charudatta Pawar |] |
| Age – 40 years, Occu – Nokari, |] |
| R/o. Sangvi, Tal: Maval, Dist : Pune. |] |
| 4) Smt. Vaccala Namdev Jakhale |] |
| Age – 77 years, Occu – Agri @ |] |
| House hold, R/o. Uchgaon, Lohar Galli, |] |
| Tal: Karveer, Dist – Kolhapur. |] |
| |] |
| 5) Sou. Sushila Shivaji Dangat |] |
| Age – 70 years, Occu – Agri & |] |
| House hold, R/o. Gadmudshangi, |] |
| Khat Karkhana Road, Tal: Karveer, |] |
| Dist: Kolhapur. |] |
- ... Appellants.**

Versus

- | | |
|--|---|
| 1) Suhas Rangrao Turuke |] |
| Age – 25 Years, Occu – Cloth Business, |] |
| R/o. Uchgaon, Trimurti Gali, |] |
| Tal: Karveer, Dist – Kolhapur. |] |
| 2) Omkar Raghunath Turuke |] |
| Age- 21 years, Occu – Cloth Business, |] |
| R/o. Uchgaon, Trimurti Gali, |] |
| Tal: Karveer, Dist – Kolhapur. |] |

...Respondents

Mr. Yuvraj Narvankar a/w Mr. Rahul Patil, for Appellants.

Mr. Drupad S. Patil a/w Mr. Rugwed R. Kinkar, for Respondents.

CORAM : M. M. SATHAYE, J.**DATE : 13th March, 2026.****ORAL JUDGMENT :**

1. Heard learned counsel for the parties. The Appeal is filed by the Appellants after obtaining leave of this Court under order dated 26.11.2025 passed in Interim Application No. 7923 of 2025.
2. Admit. Taken up for final disposal by consent of learned counsel for the parties.
3. The Appeal is filed challenging the impugned Judgment and order dated 07.03.2022 passed by the 7th Civil Judge, Senior Division, Kolhapur in Civil Miscellaneous Application No. 279 of 2021. By the said impugned order, the application filed by the Respondents under Sections 276 and 278 of the Indian Succession Act, 1925 has been allowed, thereby granting probate in favour of the Respondents.

4. The present Appeal has a rather peculiar history, which can be briefly summarized as follows.

4.1 Following properties situated at Village Uchgaon, Taluka Karveer, District Kolhapur -

Sr. No.	Gat No.	Area
1.	331/4	1H 27 R
2.	331/13	OH 33 R
3.	347/2	OH 33 R
4.	347/3	OH 33 R
5.	347/5	OH 5 R

were the subject matter of dispute between the descendants of one Rau Mariyapa Turuke. The said Rau had four sons, namely Shiva Rau Turuke, Bhiva Rau Turuke, Shankar Rau Turuke and Maruti Rau Turuke. The present Appellants admittedly belong to the branch of the son Shiva, whereas the present Respondents admittedly belong to the branch of Bhiva.

4.2 In 1990, Regular Civil Suit No. 524 of 1990 was filed for partition amongst the said four brothers/branches in respect of the above suit properties. The said suit was dismissed on merits.

4.3 Original plaintiffs in the said suit filed Civil Appeal No. 382 of 1995 challenging the dismissal of the suit. During the pendency of the said Appeal, on 19.12.1995, one Rangrao Bhiva Turuke and Raghunath Bhiva Turuke, who happen to be the sons of Bhiva and his wife Annubai, executed a sale deed in favour of present Appellant Nos. 1 & 2 - Defendant Nos. 18 and 19 in that suit, to the extent of their undivided share, as specifically mentioned in the sale deed. It is material to note that the said Bagwan and Sambhaji, along with some other descendants from the branch of Shiva, are the Appellants in

the present Appeal. There is no dispute that in the said sale deed, it was specifically stated that it was executed subject to the outcome of the pending appeal and that the sale deed was in respect of the undivided share of the said Rangrao and Raghunath.

4.4 The Appellate Court remanded the said Appeal for a fresh trial.

4.5 Accordingly, the said suit was heard afresh and by Judgment and Preliminary Decree dated 29.09.2003, the said suit was decreed by fixing the shares of all parties. Each branch of the four sons of Rau was held entitled to $\frac{1}{4}$ share in the suit properties. So far as the sale deed in favour of Appellant Nos. 1 and 2 is concerned, the learned Trial Judge observed as under:

“21. XXXX I would like to state that the sale deed exh.176 is having no legal effect in the eye of law as it was executed by Defendant No. 1 and 2 pending a suit or appeal and thus the alienation would be hit by doctrine of lis-pendens. Further both the parties are at wrong. They cannot take the benefit of their own wrongs. Moreover the suit properties are agriculture lands and the partition of it by mets and bounds take effect on the basis of cess or yield. Therefore it would not proper to allow a contention of defendant No. 18 and 19 that the properties sold by defendant No. 1, 2, 15 and 16 are be treated as their share. In such circumstances it would be proper to divide the share as per provisions of law. XXXX”

4.6 Anubai, wife of Bhiva, who was the original Defendant No. 3 in the said suit, filed Civil Appeal No. 449 of 2003. The said Appeal was partly allowed by Judgment and Decree dated 23.06.2008. The Appellate Court modified the Judgment and Decree of the Trial Court. So far as the sale deed in favour of present Appellant Nos. 1 and 2 is concerned, the learned District Judge observed as under:

"36. The oral evidence of the Defendant No. 18 at Ex. 172 shows that defendant No's. 18 and 19 have purchased hissa No. 4 and 13 in the suit land Gat No.331 from the defendant No's. 1 and 2 for consideration of Rs. 1,17,000/- by registered sale deed Ex.176 dated 19-12-1995 and that they are in possession of the land purchased from the defendant No's. 1 and 2. His evidence shows that in case partition of the lands sold to them is to be effected the lands sold to them be allotted to the shares of the vendors-defendant Nos. 1 and 2 at the time of partition. In the cross-examination he has stated that he and defendant No. 19 have purchased lands of the shares of the defendant No's. 1 and 2. Sale-deed Ex. 176 also shows that the defendant No's. 18 and 19 have purchased lands as deposited by the Defendant No. 18. It is held that the Plaintiffs are entitled to partition and separate possession of the suit lands including the lands sold by the defendant No's. 1 and 2 to defendant No's. 18 and 19 in the sale-deed and the same is not binding on the shares of the Plaintiffs and other defendants in the said lands. Therefore, while making partition of the suit lands the lands which have been sold to the defendant No's. 18 and 19 by the defendant No's. 1 and 2 were required to be allotted to the share of defendant No's. 1 and 2 as they have right to sale their un-divided share in the said suit lands but the trial court did not do the same. In fact while passing the decree it was required to do the same. XXXX"

"37. XXXX So also, while decreeing the suit, the trial court did not direct to allot portions of the lands from the suit land Gat No. 311 hissa No.4 and Gat No. 311 hissa No. 13 which have been sold by the defendant No's. 1 and 2 to the defendant No's. 18 and 19 by the sale-deed Ex.176 as far as possible to the defendant No's. 1 and 2 while making partition of the suit lands. In fact in the circumstances present in the case the trial court was required to give such direction while passing the decree. XXXX."

4.7 The operative part of the modified decree is as under :

ORDER

1. The appeal is partly allowed.
2. The impugned decree dated 29-9-2003 passed by the 3rd Jt. Civil Judge J. D., Kolhapur in Regular Civil Suit No. 524/1990 is substituted with the following modified decree.

(a) Suit is decreed with costs.

(b) It is hereby declared that the plaintiff No. 1 has 1/ 4th share, the plaintiff No's. 2, 3 and defendant Nos. 9 to 13 have 1/ 4th share together, the defendant No's. 1,2,3,14 and 15 have 1/ 4th share together and the defendant No's. 4,5,6 and 16 have 1/ 4th share together in the suit lands described in plaint paragraph No. 1 situated at Uchgaon Tq. Karvir District Kolhapur and the plaintiffs are entitled to partition and separate possession of their shares as above in the suit lands.

(c) Defendant No's. 1 to 6 and 9 to 16 are entitled to separate possession of their shares as above in the suit lands on payment of necessary court fees.

(d) Partition of the suit lands be effected through Collector Kolhapur or it's Subordinate Gazetted officer appointed by him, as per Section 54 of the Civil Procedure Code.

(e) The portions of the lands from the suit Gat No. 331 hissa No. 4 and Gat No. 331 hissa No. 13 which are sold by the defendant No's 1 and 2 to the defendant No's. 18 and 19 shall as far as possible be allotted to the shares of the defendant No's. 1 and 2 at the time of partition of the suit lands.

(f) An enquiry as to mesne profits regarding plaintiffs share in the suit lands from the date of institution of the suit till delivery of possession of their shares, to them, be made as per Order 20 Rule 12 (i) (c) of Civil Procedure Code.

(g) Decree be drawn up accordingly.

3. Parties shall bear their own costs of the appeal.

4. Decree be drawn up accordingly."

4.8 Thereafter, Regular Darkhast No. 9 of 2010 was filed as a Final Decree Application and precepts were sent to the concerned Collector for effecting partition. It is not disputed that the partition of the suit properties is pending

as of today. It is also not disputed that Judgment and Decree dated 23.06.2008 is not challenged further and has attained finality between parties.

4.9 During the pendency of execution proceedings, on 09.03.2020, Annubai wife of Bhiva, executed a Will in favour of the present Respondent Nos. 1 and 2, who are the sons of Rangrao and Raghunath (who had executed the said sale deed)

4.10 It is in this factual matrix that the parties stand *vis-à-vis* each other and the present Appeal is filed by the purchasers *pendente lite* on one side and the legatees under the said Will on the other side.

SUBMISSIONS

5. Learned counsel Mr. Narvankar, appearing for the Appellants, submitted that the alleged Will bears thumb impression of the testatrix indicating that Annubai was illiterate who could not have read or understood the typed contents of the Will. He further submitted that the Will was executed in the absence of any medical certificate or doctor's report. He also submitted that the deceased Annubai has died on 20.07.2020 which is within four months of executing the said Will, which itself shows that the deceased Annubai was not mentally and physically in a sound state of mind to understand the contents of the said Will. He further submitted that the Trial Court simply accepted the Will at its face value. He also submitted that the requirement of publishing a citation in newspaper was not complied with in conformity with the legal requirement that such newspaper must have wide circulation. He further submitted that since the property bequeathed by

Annubai did not belong to her, as it had already been sold by Rangrao and Raghunath in favour of Appellant Nos. 1 and 2, the legacy stood adeemed as provided under Section 152 of the Indian Succession Act and therefore the same cannot take effect. Lastly, he submitted that the Respondents applied for probate without disclosing the aforesaid history of litigation between the parties.

6. On the other hand, learned counsel Mr. Patil, appearing for the Respondents, submitted that the present Appellants belong to a parallel branch of Shiva and as such, they have no direct caveatable interest in the suit property. He further submitted that admittedly the present Appellants were parties to the aforesaid suit and appeal and the effect of the sale deed executed by the fathers of the Respondents, namely Rangrao and Raghunath, has been considered by the Court of competent jurisdiction which has granted the decree of partition. He submitted that the partition decree, which has been put into execution, was passed way back in June 2008 and therefore the rights of Annubai stood crystallized *vis-à-vis* the effect of the sale deed, and consequently the Will executed in March 2020 will only affect the rights as held by Annubai on that date. He invited the Court's attention to clause (e) of the operative part of the partition decree and submitted that the said clause sufficiently safeguards the interest of Appellant Nos. 1 and 2.

REASONS AND CONCLUSIONS

7. I have considered the rival submissions and perused the record.

8. At the outset, it is necessary to note that in a probate application, substantive rights of the parties cannot be decided. However, since this Court has granted leave to the Appellants to challenge the order granting probate, the contentions of the Appellants are required to be considered.

9. First and foremost, it is necessary to note that admittedly Appellants belong to the parallel branch of Shiva and therefore they can not have direct right to succeed in the share of Bhiva, which is a separate/parallel branch, to which the deceased Annubai (testatrix) belonged. Bhiva has class-I heirs excluding all others. Therefore Appellants will not have any share even if intestate succession is to be assumed. In such peculiar facts, the Appellants cannot claim any caveatable interest. Therefore the submissions regarding the alleged Will bearing a thumb impression, its execution without a doctor's report, death of Annubai within a short period after execution of the Will, or publication of citation in proper newspaper etc. cannot be considered at the instance of parties like the Appellants who do not have a caveatable interest.

10. So far as the argument about non-disclosure of the history of litigation between parties is concerned, it is already indicated above that after hearing the Appellants as well as Respondents in the said suit along with other parties, the effect of sale deed in favour of Appellant Nos. 1 and 2 is already considered by the Civil Court having competent jurisdiction to decide the rights amongst parties. The Appellate Court has already held that the portions of lands from Gat No. 331/ Hissa No. 4 and Gat No. 331/ Hissa No. 13 which were sold by Rangrao and Raghunath to present Appellant Nos. 1 and 2, shall, as far as possible be allotted to the share of Rangrao and Raghunath at the time of partition.

11. I have perused the Judgment of the Appellate Court dated 23.06.2008 which has been put to execution and which has admittedly attained finality. From clause (b) of the operative part it is clear that the branches of Shiva, Bhiva, Shankar and Maruti are each held entitled to $\frac{1}{4}$ share. Therefore, if

the branch of Bhiva is considered, deceased Annubai would have a 1/5th share within that ¼ share. Consequently, deceased Annubai, under the decree of the Court, which has attained finality, has a 1/20th share in the suit properties which were subject matter of the said suit. Since this crystallization of rights has taken place after hearing the Appellants, it is obvious that on the date of the Will i.e. 09.03.2020 the rights of Annubai stood restricted and limited to such share in the suit property arising out of the aforesaid litigation. Therefore Annubai could not have bequeathed more than such restricted share.

12. Having said that, it goes without saying that what Annubai did not hold, could not have been passed on to the present Respondents by way of said Will. Therefore, the Respondents herein are clearly not entitled to claim more than the share of Annubai in the suit properties arising from the said litigation. Once this position appears to be clear from the record, the objection that the history of litigation was not disclosed, stands redressed in as much as the said history has now been considered pursuant to the leave granted by this Court.

13. At this stage, learned counsel Mr. Narvankar submits that so far as Appellant Nos. 1 and 2 are concerned, it may be clarified that what Appellant Nos. 1 and 2 have received under the sale deed from Rangrao and Raghunath is over and above their share as received from the branch of Shiva under the decree of partition. Needless to mention that this position cannot be disputed by the Respondents, because admittedly both the sale deed as well as the Will were executed from the branch of Bhiva.

14. In the aforesaid facts and circumstances, there is no reason to interfere with the impugned order. **The Appeal is disposed of with the aforesaid observations.** No order as to costs.

15. Pending Civil/Interim Applications, if any, are also disposed of in above terms.

16. All concerned to act on duly authenticated or digitally signed copy of this order.

[M. M. SATHAYE, J.]

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SHUBHAM
ASHOKRAO

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