

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 497 OF 2025

Popat Shivram Sonawane Since Deceased ..Appellants
Through Legal Heirs
Versus
Shevantabai Popat sonawane and Ors ...Respondents

WITH
INTERIM APPLICATION NO. 7715 OF 2025
IN
SECOND APPEAL NO. 497 OF 2025

Mr. Balasaheb Deshmukh, for the Appellant.
Mr. Abhijeet Dixit, with Vivekanand Krishnan and Chaitali Bhogale,
for the Respondent.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 25th MARCH 2026
PRONOUNCED ON : 6th APRIL 2026

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JUDGMENT:

1. This Second Appeal is directed against a judgment and decree passed in RCA No. 33 of 2023 dated 11th March 2023, whereby the Appeal preferred by the Appellants-original Defendants against a judgment passed by the learned Civil Judge, Senior Division, Niphad, in SCS No. 142 of 2010, came to be dismissed by affirming the decree passed by the trial Court.

2. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they were arraigned before the trial Court.

3. The background facts can be summarized in brief as under:

3.1 Shevantabai Popat Sonawane, Plaintiff No.1, is the wife of Popat Shivram Sonawane, Defendant No.1. Plaintiff Nos. 2 to 4 are the daughters born to Shevantabai by Defendant No.1. In the wake of marital discord, the Plaintiffs were turned out of the matrimonial home by Defendant No.1. Thereafter, it is alleged, Defendant No.1 married Kantabai, Defendant No.2. Defendant Nos. 3 and 4 are the children born to Kantabai by Popat.

3.2 The Plaintiffs instituted a suit seeking the partition and separate possession of their share in the joint family properties. It was asserted that the agricultural land bearing Gat No. 16/5, situated at Gavandgaon, Tal. Yeola, District Nashik, described in para 1(a), and the land bearing Gat No. 400 and Gat No. 403, situated at Andarsul, Tal. Yeola, District Nashik, described in para 1(b), and the House premises bearing House No. 932, situated at Andarsul Gram Panchayat area, described in para 1(c) of the Plaint, were the ancestral properties devolved on Defendant No.1

3.3 To defeat the rights of the Plaintiffs, Defendant No.1 had transferred the land bearing Gat No. 16/5 under a sham and bogus Sale

Deed, purportedly for a consideration of Rs.8,45,000/-, without, in fact, having received any consideration and without their being any legal necessity. Thus, the Plaintiffs prayed for partition and separate possession of their 1/5th share each in the suit properties and a declaration that the Sale Deed executed by Defendant No.1, in favour of Defendant No.3 in respect of land bearing Gat No. 16/5 was illegal, null and void and did not bind the interest of the Plaintiffs in the suit properties.

3.4 The Defendants resisted the suit. It was *inter alia* contended that the land bearing Gat No. 16/5 was sold for a legal necessity. The suit was bad for non-joinder of necessary parties, as the co-sharers in the land bearing Gat Nos. 400 and 403 (property 1(b)) were not impleaded as party-Defendants to suit for partition. Shevantabai (P1) had no right to seek partition during the lifetime of Popat (D1). It was also contended that the reliefs was barred by law of limitation.

3.5 After appraisal of the evidence adduced by the parties and the material on record, the learned Civil Judge returned a finding that the suit properties were the joint family properties of the Plaintiffs and Defendant No.1. The Defendants failed to prove that the transfer of land bearing Gat No. 16/5 was for a legal necessity. The learned Civil Judge, however, held that the suit was bad for non-joinder of necessary parties, on account of non impleadment of the co-shares in the land

bearing Gat Nos. 400 and 403 to the extent of the suit property described in para 1(b) of the Plaint and, therefore, the suit came to be decreed in respect of the suit properties described in para 1(a) and 1(c) only. It was declared that the Plaintiffs and Defendant No.1 had 1/5th share each in the suit properties described in paras 1(a) and 1(c). The Suit for partition and separate possession of the properties described in para 1(b) of the Plaint, came to be dismissed.

3.6 Being aggrieved, the Defendants preferred an Appeal before the District Court. In the said Appeal, Chandrakala Popat Sonawane (D5) came to be added as a party, as Chandrakala (D5) asserted that Popat (D1) had solemnized marriage with her also.

3.7 The learned District Judge, however, found no fault with the decree passed by the trial Court and the Appeal came to be dismissed concurring with the view of the trial Court.

3.8 Being further aggrieved, the Appellants have preferred this Appeal.

4. I have heard Mr. Balasaheb Deshmukh, the learned Counsel for the Appellants and Mr. Abhijeet Dixit, the learned Counsel for the Respondents. The learned Counsel took the Court through the pleadings and the material placed on record.

5. Mr. Deshmukh, the learned Counsel for the Appellants submitted that the learned Civil Judge as well as the learned District Judge

committed a gross error in law in passing a decree for partition, despite recording a categorical finding that the suit was bad for non-joinder of the necessary parties, especially, in respect of the suit property described in para 1(b) of the Plaint. Secondly, an endeavour was made to demonstrate that in the first place, Defendant No.2, Kantabai was entitled to have a share in the partition along with Plaintiff No.1 and Defendant Nos. 3 and 4 though considered to be the children born to Defendant No.1 out of a void marriage were nonetheless entitled to a share in the property of Popat. These aspects were not at all delved into by the trial Court and the Appellate Court also committed a manifest error in not correcting the mistake committed by the trial Court, submitted Mr. Deshmukh.

6. Mr. Abhijeet Dixit, the learned Counsel for the Respondents-Plaintiffs initially sought to support the impugned decree. However, realising the issues that crop up for consideration, Mr. Dixit submitted that the matter may be remanded back to the trial Court for a fresh adjudication.

7. Having heard the learned Counsel for the parties, the following substantial questions of law arise for consideration.

- Q1 Whether the trial Court could have passed the decree for partition after having recorded a categorical finding that the suit was bad for non-joinder of the necessary parties qua the property described in para

1(b) of the Complaint?

Q2 Whether the Courts below in error in not granting a share in the property of Popat (D1) to Defendant Nos. 3 and 4, the children born to Kantabai (D2) by Popat (D1)

8. Incontrovertibly both the Courts have recorded a categorical finding that the suit was bad for non-joinder of necessary parties qua the properties described in para 1(b) of the Complaint as apart from Defendant No.1, his three brothers and Yashodabai, Thakubai and Chandrabhagabai were the co-sharers in the suit properties. Though Defendant No.1 and his brothers were cultivating the portions of the said land separately, yet, the factum of a partition amongst the Defendant No.1 and other co-sharers in the said land could not be proved by Plaintiffs. Therefore, the suit in respect of the said land was bad for non-joinder of necessary parties. In view of the aforesaid finding, the question as to whether the suit for partition could have been partially decreed while dismissing the suit in respect of the suit land described in para 1(b) of the Complaint, had not been adverted to by the Courts below.

9. On the second count as well, this Courts finds that once the land bearing Survey No. 16/5 was held to be exclusively belonging to Popat (D1), and if it was allotted in partition to Popat (D1), then, in view of

the provisions contained in Section 8 of the Hindu Succession Act 1956, the said property would assume the character of individual property in the hands of Popat (D1) (**Commissioner of Wealth Tax Vs Chander Sen¹** and **Yudhishter Vs Ashok Kumar²**)

10. If this position is conceded, then after the demise of Popat (D1), during the pendency of the Appeal before the District Court, the question of the right of Defendant Nos. 3 and 4 to inherit to the property of Popat (D1), even if it is assumed that they were born of a void marriage, was required to be considered. In view of the provisions contained in Section 16 of the Hindu Marriage Act, 1955, the children born out of a void marriage or a voidable marriage, which is annulled, are entitled to have a share in the property of their parents. A useful reference can be made to the decision of the Supreme Court in the case of **Revanasiddappa And Anr Vs Mallikarjun and Ors³**

11. In view of the aforesaid legal position and the nature of the adjudication by the trial Court, which has been affirmed by the learned District Judge, without delving into the aforesaid questions that arise for consideration, the impugned decree cannot be sustained.

12. The suit is, therefore, required to be remanded back to the trial court for a fresh determination, after providing an opportunity to the

1 (1986) 3 SCC 567.

2 (1987) 1 SCC 204.

3 (2023) 10 SCC 1.

Plaintiffs to implead the co-sharers in the suit property 1(b) as party Defendants to the Suit, and to the parties to the suit to lead further evidence.

13. Hence, the following order:

: O R D E R :

- (i) The Appeal stands partly allowed.
- (ii) The impugned judgment and decree in RCA No. 33 of 2023 and decree passed in SCS No. 142 of 2010 by the Civil Judge, Senior Division, Niphad, stand quashed and set aside.
- (iii) The SCS No. 142 of 2010 stands remitted back to the Court of Civil Judge, Senior Division, Niphad, for fresh decision in accordance with law.
- (iv) The Plaintiffs are at liberty to file an application to implead the persons, who are entitled to partition in suit properties described in paragraph 1(b) of the Plaint.
- (v) The trial Court shall permit the parties to lead further evidence and shall adjudicate the suit on the basis of the evidence already adduced and the evidence which may be

adduced by the parties, as expeditiously as possible, in accordance with law.

(vi) During the course of the pendency of the Suit, Appellant No. 3/Defendant No.3 shall not create any third party interest in the suit property described in paragraph 1(a) of the Plaint.

(vii) Parties shall bear their respective costs throughout.

(viii) In view of the disposal of the Second Appeal, IA No. 7715 of 2025 stands disposed.

[N. J. JAMADAR, J.]