



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 30 OF 2024

1. Smt.Anusaya w/o Anandrao Borkar
aged about 69 years, Occ:Household
R/o Nachanbhatti Tah.Sindewahi,
Dist. Chandrapur
2. Jitendra Anandrao Borkar
aged about 49 years, Occ:Cultivation
R/o Nachanbhatti Tah.Sindewahi,
Dist. Chandrapur

.. Petitioner

Versus

1. Smt.Kamal Anandrao Borkar
Aged about 59, Occ : Cultivation
R/o% Rakesh Borkar type-II,
Sector 5, Quarter No.59-B,
Ordinance factory Chanda,
Tah. Bhadrawati, Dist. Chandrapur
2. Kantikumar Anandrao Borkar
Aged about 44, Service
R/o% Rakesh Borkar type-II,
Sector 5, Quarter No.59-B,
Ordinance factory Chanda,
Tah. Bhadrawati, Dist. Chandrapur
3. Rakesh Anandrao Borkar
Aged about 42, occu. Service
R/o% Rakesh Borkar type-II,
Sector 5, Quarter No.59-B,
Ordinance factory Chanda,
Tah. Bhadrawati, Dist. Chandrapur
4. Ku.Archana Anandrao Borkar
Aged about 39 Nee. W/o Manohar
Meshram
R/o C/o Manohar Meshram,
Rashtrawadi Nagar, Near Sai iTI,
Chandrapur
5. Ku.Manta Anandrao Borkar,
aged about 38 years, household
R/o% Rakesh Borkar type-II,

.. Respondents

Sector 5, Quarter No.59-B,
Ordnance factory Chanda,
Tah. Bhadrawati, Dist. Chandrapur

WITH

SECOND APPEAL NO. 356 OF 2025

- | | | |
|--|---|-----------------------|
| 1. Smt.Kamal Anandrao Borkar
Aged about 49, Occ : Cultivation | } | .. Petitioner |
| 2. Kantikumar Anandrao Borkar
Aged about 31, Occ : Cultivation | | |
| 3. Rakesh Anandrao Borkar
Aged about 29, Occ. Educaiton &
Cultivation | | |
| All R/o Trimurti Nagar, Haveli Garden
Near Akashwani Centre, Chandrapur,
Tah. & District – Chandrapur | | |
| 4. Ku.Archana Anandrao Borkar
Aged about 26 years Occ.Household,
Now W/o Manohar Meshram
R/o Rashtrawadi Nagar, Near Sai
I.T.I., Chandrapur | } | .. Respondents |
| 5. Ku.Mamta Anandrao Borkar,
Aged about 25 years, Occ.Education
R/o Trimurti Nagar, Haveli Garden,
Near Akashwani Centre, Chandrapur
Tah. and, District - Chandrapur | | |

VERSUS

- | | |
|--|---|
| 1. Anusaya Anandrao Borkar
Aged about 54 years, Occ:Household | } |
| 2. Jitendra Anandrao Borkar
Aged about 36 years,Occ:Cultivation | |
| Both R/o Nachanbhatti
Tah.Sindewahi, Dist. Chandrapur | |

Mr. V.N.Morande, Advocate for appellants in S.A.No.30/2024 and for respondents in S.A.No.356/2025.

Mr. R.L.Kadu, Advocate for respondents S.A.No.30/2024 and for appellants in S.A.No.356/2025.

CORAM : ROHIT W. JOSHI, J.

DATED : FEBRUARY 18, 2026

ORAL JUDGMENT

(1) Both these appeals arising out of a suit for partition and separate possession filed by the appellants in Second Appeal No.30/2024 being R.C.S.No.07/2006. The said suit came to be decided vide judgment and decree dated 23/06/2010 passed by the learned Civil Judge Junior Division, Nagbhid.

(2) The plaintiffs filed suit with respect to following properties :-

A	(1)	Bhumapan	:-	306	0.64 HR
	(2)	Bhumapan	:-	435	0.38 HR
	(3)	Bhumapan	:-	436	0.44 HR
	(4)	Bhumapan	:-	437	0.11 HR

B	(1)	Bhumapan	:-	223	0.72 HR
	(2)	Bhumapan	:-	256	0.59 HR

C		Plot No.	:-	04	2000 sq.ft.
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(3) The appellants in Second Appeal No.30/2024 will be referred as plaintiffs and respondents in the said appeal will be referred as defendants. The plaintiff Nos.1 and 2 filed a suit for partition and separate possession inter alia claiming that plaintiff No.1 is wife of Late Anandrao and plaintiff No.2 is son of plaintiff No.1 and deceased Anandrao. It is claimed that the defendant Nos.2 to 5 are children of Anandrao begotten from defendant No.1. The plaintiffs claimed that defendant No.1 is not wife of deceased Anandrao.

(4) The defendants opposed the suit claiming that the defendant No.1 who is second wife of deceased Anandrao and the defendant Nos.2 to 5 are children begotten by Anandrao from his marriage with defendant No.1 are not entitled to inherit his property since the second marriage is void. The learned trial Court held that the defendant No.1 is second wife of deceased Anandrao and defendant Nos.2 to 5 are children begotten by Anandrao from the said marriage. The suit was filed claiming that all the suit properties are ancestral properties of Anandrao and plaintiffs and that the defendants do not have any share in the same.

(5) The respondents opposed the contention that the suit properties were ancestral properties. They claimed that Anandrao was a Government Servant and that he had a separate source of income from which suit properties were acquired.

(6) Based on rival pleadings issues were framed on which the parties were led their respective evidence. The learned trial Court held that suit properties bearing Bhumapan 306 (A-1), Bhumapan 223 (B-1) and Bhumapan 256 (B-2) are ancestral properties and granted a decree for partition and separate possession in favour of plaintiffs with respect to the said properties holding that they were entitled to 1/3rd share each, 2/3rd share in entirety in the aforesaid suit properties and were entitled to partition and separate possession thereof. The suit was dismissed with respect to other properties.

(7) Being aggrieved by the aforesaid judgment and decree dated 23/06/2010 to the extent of which relief of partition and separate possession with respect to other properties was denied, the plaintiffs preferred an appeal being R.C.A.No.105/2010. Likewise, the defendants also preferred a separate appeal being R.C.A.No.99/2010 challenging the decree to the extent of granting relief of partition and separate possession with respect to aforesaid three properties.

(8) R.C.A. No.105/2010 came to be decided by Learned Principal District Judge, Chandrapur vide judgment dated 14/07/2023. Learned first appellate Court has held that the suit properties except Plot No.4 (Property – C and Gat No.211/2) were self acquired property of deceased Anandrao and other properties were his ancestral

properties. It is further held that the plaintiffs were entitled to a decree for partition and separate possession with respect to properties described at Items 'A' and 'B'. Having held so, learned first appellate Court dismissed the appeal. Second Appeal No.30/2024 is filed by the original plaintiffs challenging the aforesaid judgment and decrees to the extent to which share in other properties is denied to them.

(9) R.C.A.No.99/2010 filed by the original defendants came to be dismissed vide judgment and decree dated 13/07/2024. Although two separate judgments are delivered, the reasons in both the judgments are the same, likewise both the appeals arise out of the same civil suit, therefore, the same are taken up for hearing together and are being decided by common judgment.

(10) The contention of Mr.V.N.Morande, learned counsel for the appellants in Second Appeal No.30/2024, who are the original plaintiffs, is limited to the extent that although the learned first appellate Court held properties at items 'A' and 'B' to be ancestral properties of Anandrao, share was erroneously not awarded to the plaintiffs in the said properties accepting the three properties. The learned counsel contends that since the defendant No.1 is not legally wedded wife, the defendants cannot claim any share in the ancestral properties. He therefore, contends that the properties at items 'A' and

'B' which are ancestral properties should be allotted to the share of plaintiffs entirely.

(11) As against this, Mr.R.L.Kadu the learned counsel for the defendants, who are appellants in Second Appeal No.356/2025 argues that the father had a separate source of income, he was a government servant working in Revenue Department on the post of Revenue Inspector, he therefore argues that the properties which were purchased by the father in his own name were rightly held by the learned trial Court to be his self-acquired properties. He further states that in view of Section 16 of the Hindu Marriage Act, 1955, children of second wife i.e. defendants No.2 to 5 will have to be considered as legitimate children and therefore, the Courts ought to have granted share to the defendants No.2 to 5 in the ancestral properties as well.

(12) Following substantial questions of law are framed in Second Appeal No.30/2024 vide order dated 22/02/2024 :-

(i) Whether the Appellate Court committed perversity by not granting the plaintiffs 1/3rd share each in the properties described in category A & B from Table-1 of the judgment in the backdrop of the finding that these properties are ancestral properties of Anandrao ?

(ii) Whether the Appellate Court has failed to properly appreciate the oral and documentary evidence and therefore the judgment and decree has rendered perverse?

(13) Following substantial question of law is framed in Second Appeal No.356/2025.

(i) Whether the learned Appellate Court has erred in holding that suit properties purchased by the father in his name were not his self-acquired properties ?

(14) Mr.Morande, learned counsel for respondents in Second Appeal No.356/2025 stated that this substantial question of law framed today be decided forthwith and that he was ready for final haring of the appeal on the aforesaid question. Mr.Kadu, learned counsel for appellants also expressed readiness to argue the question finally today itself.

As to Substantial Question of Law in S.A.No.356/2025 :-

(15) It is not in dispute that Anandrao was working as Revenue Inspector with the State Government. He had separate source of income. Although the family had ancestral agricultural lands, evidential record is not sufficient to establish that adequate nucleus was generated from the said ancestral properties in order to purchase suit properties bearing Bhumapan No.435, 436 and 437. In view of the aforesaid, the said properties cannot be said to be ancestral properties. The learned trial Court has rightly held that the said properties are self-acquired properties of Anandrao. The learned first appellate Court has erred in law in reversing the said findings recorded by the learned trial

Court. Substantial question of law in Second Appeal No.356/2025 is therefore answered in favour of appellants/original defendants. It is held that suit properties bearing Bhumapan No. 435, 436 and 437 are self-acquired properties of Anandrao.

As to Substantial Question of Law No.1 in S.A.No.30/2024 :-

(16) It is duly proved that plaintiff No.1 is legally wedded wife of Anandrao. Plaintiff No.2 is his son begotten from plaintiff No.1. The defendant No.1 is second of wife of Anandrao. Her marriage with Anandrao is not legal. Therefore, she cannot claim to be a legal heir of deceased Anandrao. However, as regards defendants No.2 to 5, it is well settled that children begotten from illegal marriage can claim share in the properties of their father in view of Section 16 of the Hindu Marriage Act, 1955. However, children begotten from illegal marriage who are considered to be legitimate children for the purpose of inheritance of property of their father cannot claim right in the ancestral property of the father. The right of children begotten from illegal marriage, in ancestral properties of their father is restricted to inherit the separate share of their father in the ancestral properties. The Hon'ble Supreme Court has recently clarified legal position in this regard in the case of **Revanasiddappa vs. Mallikarjun** reported in **(2023) 10 SCC 1.**

(17) In view of the aforesaid, it must be held that on demise of Anandrao in the year 1990, he had $1/3^{\text{rd}}$ share in the ancestral properties along with plaintiff No.1 his first wife and plaintiff No.2 son begotten from first wife. The defendants cannot claim any independent share in the ancestral properties. However, in view of Section 16 of the Hindu Marriage Act, 1955 the defendants No.2 to 5 being Class-I heirs of deceased Anandrao will be entitled to inherit his share in the ancestral properties. The plaintiffs No.1 and 2 and defendants No.2 to 5 will have $1/6^{\text{th}}$ share in each, in the $1/3^{\text{rd}}$ share of Anandrao in the ancestral properties. Thus, defendants No.2 to 5 will have $1/18^{\text{th}}$ share each in the ancestral properties bearing Bhumapan Nos.306, 223 and 256. Share of plaintiff Nos.1 and 2 in the ancestral properties will be $7/18^{\text{th}}$ each [$1/3 + 1/18$].

(18) As regards, self-acquired properties bearing Bhumapan Nos.435, 436 and 437, the plaintiffs and defendants No.2 to 5 shall have $1/6^{\text{th}}$ share each. Substantial question of law No.1 in Second Appeal No.30/2024 is answered accordingly.

As to Substantial Question of Law No.2 in S.A.No.30/2024 :-

(19) The learned first appellate Court ought to have appreciated that the learned trial Court had erred in not granting decree

for partition and separate possession with respect to self-acquired properties. The learned first appellate Court held that all the properties except in property at item 'C' were ancestral properties of Anandrao. In view of such finding decree for partition should have been passed in favour of plaintiffs. However, the learned first appellate Court dismissed the appeal. The learned first appellate Court clearly erred in law. The learned first appellate Court ought to have allowed the appeal preferred by the plaintiffs by granting decree with respect to Bhumapan No.435, 436 and 437. Substantial question of law No.2 is answered accordingly.

(20) The defendant No.1 being a second wife, who married during the subsistence of first marriage, is not legally wedded wife and therefore, she will not be entitled to any share in the suit properties.

(21) The plaintiffs did not press the appeal with respect to suit properties bearing plot No.4.

(22) In the light of reasons recorded above, both appeals are partly allowed in the following terms :-

I. Plaintiff Nos.1 and 2 shall have $7/18^{\text{th}}$ share each in the suit properties bearing Bhumapan Nos.306, 223 and 256 and $1/6^{\text{th}}$ share each in suit properties bearing Bhumpapan Nos.435, 436 and 437.

II. Plaintiff Nos.1, 2 and defendant Nos.2 to 5 shall have 1/18th share each in the suit properties bearing Bhumapan Nos.306, 223 and 256 and 1/6th share each in suit properties bearing Bhumpapan Nos.435, 436 and 437.

III. The suit is dismissed with respect to suit property bearing Plot No.4.

IV. Parties to bear their own costs.

[ROHIT W. JOSHI, J.]

KOLHE