

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

SECOND APPEAL NO.45/2026

Pratap Vitthalrao Khairkar and another
...Versus...
Chhabu @ Sumitra Govindrao Mundane and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. U.J. Deshpande, Advocate for appellants

CORAM : ROHIT W. JOSHI, J.
DATE : 03/02/2026

1. Suit for partition and separate possession filed by respondent Nos.1 to 4 came to be decreed. The appellants are original defendant Nos.2 and 6. Other respondents are also original defendants. Appellant No.1 and respondents are related to each other as brothers and sisters. Appellant No.2 is son of appellant No.1.
2. Suit for partition and separate possession is decreed by the learned Trial Court, granting 1/9th share each to the plaintiffs and defendant Nos.1 to 5. The learned first Appellate Court has confirmed the decree passed by the learned Trial Court.
3. Mr. Deshpande, learned Advocate for the appellants/original defendant Nos.2 and 6 contends that the plaintiff's witness No.1 categorically admitted that there was partition in the family in the year 1979 between deceased father late Vitthalrao and his sons-defendant Nos.1 to 5 and that plaintiff was aware about the said partition. In view of the

aforesaid admission, Mr. Deshpande contends that the suit for partition filed in the year 2008 was hopelessly barred by limitation.

4. The father- Vitthalrao has expired on 14/08/1995. After his demise, all his Class-I legal heirs will be entitled to inherit his share in the suit property, which devolved upon him in the partition of the year 1979. It is not in dispute that father died intestate on 14/08/1995 after the said partition of the year 1979. In the partition of the year 1979, suit property bearing Survey No.164/2 was allotted to the share of the father. Likewise, the house properties bearing Nos.667 and 671 are the properties of the father. In view of the aforesaid, learned Trial Court has granted $1/9^{\text{th}}$ share each to plaintiff Nos.1 to 4 and defendant Nos.1 to 5 in the aforesaid suit properties bearing Survey No.164/2 and house properties bearing Nos.667 and 671.

5. The contention of Mr. Deshpande that the suit is barred by limitation cannot be accepted, in view of the fact that the father expired in the year 1995 after the 1979 partition and the decree is with respect to the properties allotted to the share of father in the said partition and the properties, which are his self acquired property. No substantial question of law arises for consideration in the present appeal. Second Appeal is, therefore, dismissed with no order as to costs.

(ROHIT W. JOSHI, J.)