



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

SECOND APPEAL NO. 143 OF 2017

1. Pravin Pandurang Dabre
Aged 46 years, Occ. – Service

2. Smt. Chabutai W/o. Pandurang Dabre,
Aged 60 years, Occ.: Household work,
Both R/o. Warwat Bakal, Tq. Sangrampur,
Distt. Buldhana.

... APPELLANTS

.. Versus ..

1. Vitthal Manaji Dabre,
Aged 58 years, Occ.: Service,
R/o. Shivkrupa Building, Near Matruseva
Sangh, Akola, Tq. & Distt. Akola.

2. Baliram Manaji Dabre through its LR's (Dead)

2.A. Mahadeo Baliram Dabre,
Aged 58 years, Occ. Agriculturist,

2.B Pralhad Baliram Dabre,
Aged 55 years, Occ.: Agriculturist,

2.C. Bhagwan Baliram Dabre,
Aged 42 years, Occ.: Agriculturist,
Nos. 2 to 4 R/o. Warwat Bakal, Tq.
Sangrampur, Distt. Buldhana.

2.D. Gajanan Baliram Dabre,
Aged 40 years, Occu.: Service
R/o. Sita Nagar, Nagpur

2.E. Janabai W/o. Ravindra Rauta, **(Dead) 28/12/2020**
Aged 52 years, Occ. – Household,
R/o. Sungaon, Tq. Jalngaon Jamod,
Distt. Buldhana.

Amendment as
per Court Order
dated:
20/09/2021

R-2-E) Janabai w/o Ravindra Raut (Dead) through LR's.

2.E.1. Aasha Wd/o Santosh Raut,

Aged - 39, Occu: Not known

2.E.2. Aaditya S/o Santosh Raut,

Aged - 18, Occu: Not known,

2.E.3. Uday S/o Santosh Raut,

Aged-15 (Minor)

2.E.4. Manisha S/o Santosh Raut

Aged -- 12 (Minor)

Nos. 3 & 4 are minors through their natural guardian
mother Smt. Aasha Santosh Raut

All R/o Sungaon, Tq. Jalgaon Jamod, District Buldhan

2.F. Rukhmabai Narayan Hage,

Aged 50 years, Occ.: Household,

R/o. Sungaon Tq. Jalgaon Jamod,

Distt. Buldhana

2.G. Dwarkabai Ramchandra Hage,

Aged 47 years, Occu.: Household

R/o. Sagoda Tq. Sangrampur,

Dist. Buldhana

2.H. Kusumbai W/o. Punjaji Raut

Aged 44 years, Occ.: Household

R/o. Sagoda Tq. Sangrampur

Distt. Buldhana.

2.I. Nirmalabai Kashiram Ghayal (Dead 12/9/2021)

Aged 48 years, Occ.: Household,

R/o. Warwat Bakal, Tq. Sangrampur

Dist. Buldhana

2(I) 1. Kashiram Vishanji Ghayal,

Aged about 65 years

2(I) 2. Wasudeo Kashirma Ghayal,

Aged about 38 years,

2(I) 3. Dilip Kashiram Ghayal,

Aged about 36 years

Amendment as
per the Court
Order dated:
16/12/2021

2(I) 4. Ashok Kashiram Ghayal,
Aged about 34 years
All R/o Varat Bakal, Tha. Saingrampur,
Dist. Buldhana.

3. Namdeo Hage,
President, Nageshwar Shikshan Sanstha,
Warwat Bakal, Tq. Sangrampur,
Distt. Buldhana.

4 Shaligram Damodhar,
Vice President, Nageshwar Shikshan
Sanstha, Warwat Bakal, Tq. Sangrampur
Dist. Buldhana

... **RESPONDENTS**

Mr. M.R.Joharapurkar, Advocate for appellants.
Ms. R.D.Raskar, Advocate for respondent(s).

CORAM : **ROHIT W. JOSHI, J.**

RESERVED ON : **15/06/2026**

PRONOUNCED ON : **04/08/2026**

JUDGMENT

Heard finally with consent of learned Advocates
for the parties.

2. The present appeal is filed in order to challenge
judgment and decree dated 23/09/2016 passed by learned
Ad-hoc District Judge-1, Khamgaon, District Buldhana in

Regular Civil Appeal No. 75/2012, whereby the learned First Appellate Court has reversed the judgment and decree dated 13/02/1996 passed by learned Civil Judge, Senior Division, Khamgaon in Special Civil Suit No. 18/1989. The appellants in the present appeal are original defendant nos. 2 and 4. The respondent no. 1 is the original plaintiff. The other respondents are original defendants. The original defendant no. 1 who was real elder brother of the original plaintiff expired while RCA No. 75/2012 was pending and since all his legal representatives were on record and his name was deleted from the array of the parties. The parties will hereinafter be referred to as the ‘plaintiff’ and ‘defendants’.

3. The plaintiff filed a suit for partition and separate possession being, Special Civil Suit No. 18/1989. It is the case of the plaintiff that the suit properties devolved upon him and his elder brother, defendant no. 1, by virtue of Will dated 18/07/1960 executed by their father, Late Manaji, who expired in the year 1962. The suit properties comprise of agricultural land bearing Gat No.48, admeasuring 16.29

Acres situated at village Ringanwadi, agricultural land bearing Gat No. 393, admeasuring 1.09 Hectare and Gat No.293, admeasuring 2.11 Hectare both situated at village Warwatbakal, house property within the limits of Grampanchayat Warwatbakal, and a Tractor, three Electric Motor Pumps, a pair of Bullocks, one Buffalo and other agricultural implements. The plaintiff contended that the defendant no. 1 had taken a loan of Rs.1,00,000/- from the State Bank of India, Rs.90,000/- for purchase of Tractor and Rs.10,000/- towards crop loan, which was not repaid as a consequence of which the bank had instituted a civil suit for recovery of money. The plaintiff contended that although there was no partition *inter se* between him and defendant no. 1, defendant no. 1 had obtained his signature on blank stamp paper and by acting in collusion with Talathi, got the suit property mutated in his name. The plaintiff has further averred that he had issued a notice dated 21/11/1988 to the defendant no. 1 seeking partition and separate possession, in response to which, the defendant no. 1 issued a false reply

and did not partition the properties as demanded by the plaintiff.

4. During the pendency of the suit, certain alienations were made by defendant no. 1 in favour of the other defendants, as a consequence of which, the other defendants came to be arrayed as parties to the suit. The defendant no. 1 (brother) and defendant no. 2 (wife of defendant no. 1) filed written statement opposing the suit contending that the plaintiff and defendant no. 1 had mutually partitioned the properties and accordingly a document of partition dated 12/09/1987 was reduced into writing in order to incorporate the terms of the said partition.

5. Based on the rival pleadings, issues were framed in the suit on which the parties led their respective evidence. The learned Trial Court dismissed the suit accepting the case of defendant no.1 with respect to partition deed dated 12/09/1987. The learned Trial Court has discarded the defence of defendant no. 1 that the partition deed was a memorandum of partition, which did not require registration.

It is held that the document of partition is a deed of partition, which is compulsorily registrable. However, the learned Trial Court has placed reliance upon the notice for partition dated 21/11/1988 issued by the plaintiff to arrive at conclusion that there was indeed a partition between the brothers viz. the plaintiff and defendant no. 1 on 12/09/1987 as contended by defendant no. 1 and accordingly, the suit came to be dismissed. The learned Trial Court has held that the plaintiff had failed to establish that the document got executed by defendant no.1 by misleading him.

6. Being aggrieved by the aforesaid judgment and decree dismissing the suit for partition and separate possession, the plaintiff preferred an appeal which came to be registered as Regular Civil Appeal No. 75/2012. The learned First Appellate Court has allowed the appeal and passed a decree for partition and separate possession by quashing and setting aside the judgment and decree delivered by the learned Trial Court. It is held that the plaintiff and defendant no. 1 are entitled to half share each in the suit

properties and accordingly, the decree for partition and separate possession is passed. The learned First Appellate Court has held that the partition deed dated 12/09/1987 is inadmissible in evidence for want of registration in view of Section 49 of the Registration Act. It is further held that the defendant no.1 had failed to produce the original document on record. The explanation of the defendant no.1 that original partition deed was in custody of the plaintiff, and the defendant no.1 had retained a photocopy thereof, is not accepted by learned First Appellate Court on the ground that since the defendant no.1 got more properties in his share under the partition, his version that original document was retained by the plaintiff is not acceptable. The learned First Appellate Court has considered the contents of legal notice dated 21/11/1988, at Exhibit 175, issued by the plaintiff and has treated it to be an admission of partition. However, it is held that the contents of the notice will not result in transfer of immovable property. It is held that, since the document is inadmissible, the decision of the learned Trial Court to

dismiss the suit for partition, based on the said legal notice, is incorrect. The learned First Appellate Court also recorded that the defendant no. 1 also did not honour his obligation under the agreement to discharge liability of bank loan.

7. Aggrieved by the said reversing decree passed by the learned First Appellate Court, the defendant nos. 2 and 4 have filed the present Second Appeal which came to be admitted vide order dated 28/08/2017 on the following substantial questions of law:-

“(1) Whether the appellate Court was legally justified in reversing the judgment of the trial Court in the light of contents of notice at Exhibit-175 issued by the plaintiff dated 21-11-1988?”

“(2) Whether the plaintiff was estopped from denying the partition?”

8. Although it is stated in the plaint that the defendant no. 1 had obtained signature of the plaintiff on a blank stamp paper and, on the basis of same, fraudulently got a document of partition prepared, the said averments are contrary to the contents of the legal notice issued by the plaintiff. It is relevant to state that the plaintiff has not

disowned the legal notice. Rather, there is a pleading with respect to legal notice in the plaint. Perusal of the legal notice will indicate that a reference is made to three agricultural lands and house property which form subject matter of the suit. The plaintiff contends that he has half share in each of the suit properties, which are referred in the legal notice. The plaintiff has thereafter stated that the defendant no.1 had agreed to clear the bank loan individually and in lieu thereof, the plaintiff had surrendered his rights in the residential house and suit property bearing Gat No. 48 of village Ringanwadi in favour of the defendant no.1 by accepting the suit property bearing Gat No. 393 of village Warwatbakal which was allotted to his share. The plaintiff has thereafter demanded half share in the suit properties in the legal notice and has stated that he will take responsibility of making payment of half of the loan amount only when he is given possession of his half share in the suit properties.

9. Perusal of the legal notice will indicate that the execution of partition deed dated 12/09/1987 is not disputed

by the plaintiff. It is rather admitted, however with a rider regarding defendant no.1 agreeing to take over the entire loan liability.

10. It will be pertinent to state that the defendant no. 1 has stated in the written statement itself that the original partition deed dated 12/09/1987 was with the plaintiff and he was in possession of a photocopy thereof. Likewise, the plaintiff has admitted his signature on the partition deed when a photocopy thereof was confronted to him in the cross-examination. The plaintiff has set up a case of fraud in the plaint, which is contrary to the contents of legal notice. The plaintiff, as stated above has pleaded that the defendant no.1 created the document dated 12/09/1987 by misusing a blank stamp paper signed by the plaintiff, which was signed at the behest of defendant no.1, who had obtained signature representing that he would make payment of entire loan amount. The contents of the plaint are contrary to the contents of legal notice. In the opinion of this Court, the finding by the learned Trial Court with respect to

execution of partition deed is just and proper. The learned First Appellate Court has erred in not confirming the said finding.

11. Having held that the execution of partition deed is established, it will be appropriate to answer the substantial questions of law framed in the appeal, which pertain to admissibility of the partition deed for want of registration and estoppel in view of the legal notice dated 21/11/1988.

12. Both the learned Courts have rejected the contention of the defendants that the partition deed is merely a memorandum. The said findings are proper and do not warrant any interference. There is no evidence to remotely suggest that the agreement with respect to partition was arrived at orally prior to 12/09/1987 and the terms agreed upon were reduced into writing on 12/09/1987. The contents of reply notice issued by the defendant no.1 also clearly indicate that the partition has taken place as per document dated 12/09/1987 and the said document is indeed a deed of

partition and not a memorandum of partition arrived at earlier.

13. The document is clearly a compulsorily registrable document as per Section 17(1)(b) of the Registration Act, 1908, which reads as under:-

“17. Documents of which registration is compulsory:-

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(a)

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

14. The consequences of non-registration of a document which is compulsorily registrable under Section 17(1) are provided under Section 49, which reads as under:-

“49. Effect of non-registration of documents required to be registered

No document required by Section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power; unless it has been registered:”

¹[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) 2,3 or as evidence of any collateral transaction not required to be effected by registered instrument.]*

15. The suit property will not be affected by the partition deed for want of registration in view of mandate of Section 49(a). Likewise the partition deed cannot be received in evidence as a proof of the transaction of partition in view of Section 49(c). However in the light of proviso to Section 49, the said document can be read in evidence as a proof of any collateral transaction which is not required to be effected by a registered document.

16. Since the case pertains to partition, it will be appropriate to consider the steps that are involved in the

process of partition. A Five-Judges Bench of the Andhra Pradesh High Court in the case of **Chinnappareddigari Peda Mutyala Reddy V/s. Chinnappareddigari Venkata Reddy & others**, reported in **AIR 1969 AP 242** has held that the process of partition involves three steps viz. severance of status, division of property by metes and bounds and possession of shares allotted. It is held that in a suit for partition, an unregistered partition deed is admissible in evidence for collateral purpose to prove severance of title and to determine nature of possession of the parties. It is, however, held that for the primary purpose i.e. division of joint property by metes and bounds, the document is not admissible. The said decision is expressly approved by the Hon'ble Supreme Court in the case of **Yellapu Uma Maheswari and another V/s. Buddha Jagadheeswararao and ors.** reported in **(2015) 16 SCC 787**. Paragraph 16 of the judgment is reproduced herein below for ready reference:-

“16. Then the next question that falls for consideration is whether these can be used for

any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds.

17. In view of the aforesaid legal position, the partition deed dated 12/09/1987 will be admissible in evidence for the purpose of proving severance of joint status of the plaintiff and defendant no.1 and also to prove the nature of possession.

18. Severance of status which is the first step in partition need not be effected by a registered document of partition. Even intention to separate is enough to create severance of status. Reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in the cases of **Nani Bai v/s. Gita Bai Kom Rama Gunge** reported in **AIR 1958 SC 706** and **Mst. Rukhmabai V/s. Lala**

Laxminarayan and ors reported in AIR 1960 SC 335.

19. It may, however, be stated that mere severance of status does not bring about complete partition. Severance of status, as has been held by the Hon'ble Supreme Court, only results in altering the manner in which the property is held together. Severance merely brings about a change from holding the property as joint tenants to holding the same as tenants in common. Joint tenancy implies a singular possession and a singular title. As against this, tenancy in common implies unified single possession with separate title. The partition is not complete merely by severance of status. Division of property by metes and bounds is an essential step in completing the partition and not a collateral transaction. It is a main transaction recorded in a document of partition. The partition deed dated 12/09/1987 by itself is inadmissible as proof of division of property by metes and bounds in view of statutory bar under Section 49(c) of the Registration Act.

20. Although in the absence of registration, evidence with respect to partition by metes and bounds cannot be

proved on the basis of the document, in a given case, it may well be that the parties, acting on the document actually separate and occupy separate portions allotted to them in terms the partition deed. In such cases, document will be admissible to determine nature of possession of parties, as to whether it is joint possession or separate possession. When such evidence is led, inference with respect to actual partition can be drawn and for the limited purpose of determining nature of possession, which is a collateral purpose, unregistered partition deed will be admissible in evidence. It is well settled that the nature of possession of parties is also a collateral purpose for which an unregistered partition deed can be read in evidence. When evidence is led with respect to actual possession of the parties to an unregistered partition deed, the document is admissible to the limited extent of correlating it with actual physical possession. When evidence establishes separate physical possession, which is a step subsequent to demarcation of shares by metes and bounds and the last step in partition, the

document can be read for collateral purpose of the purpose of examining the nature of physical possession of respective parties.

21. However, in the present case, there is no evidence on record to indicate that the plaintiff was placed in possession of the property which is allotted to his share under the partition deed. Rather, the 7/12 extract of the suit property shows the possession of mother of the plaintiff and defendant no.1 over property allotted to the plaintiff. In this 7/12 extract name of plaintiff is recorded in the ownership column and that of his mother is recorded in the possession column. The document of partition does not recite that the property allotted to the share of the plaintiff would be in possession of the mother. The document does not indicate that the mother was conferred right of maintenance or right to receive profits of the land allotted to the plaintiff under the partition deed. Thus the revenue record with respect to the property which is allotted to the plaintiff is not in accordance with the partition deed.

22. It will also be pertinent to mention that although the partition deed is dated 12/09/1987, mutation of the residential house in the name of defendant no.1 is recorded on the basis of application dated 11/09/1987. It is stated that the house property was mutated in the name of defendant no.1 on the basis of partition deed between the plaintiff and defendant no.1. Likewise, perusal of Mutation Entry No. 184, will also indicate that the said entry was recorded on the basis of an application dated 11/09/1987 whereas the partition deed is dated 12/09/1987. The entry is recorded on 26/09/1987. The document indicates that the mutation entry was recorded in the presence of defendant no.1 and in the absence of the plaintiff. Thus, on the basis of possession or subsequent mutation entries, it cannot be said that the document is acted upon by the parties. The defendant no.1 has also failed to establish that the parties are placed in separate possession of their respective shares on the basis of partition deed. It must also be stated that the partition deed is dated 12/09/1987 and the suit for partition is filed on

04/08/1989 after issuing notice for partition dated 21/11/1988. The plaintiff has also challenged the entries of mutation by filing the appeal(s) under the Maharashtra Land Revenue Code. The document is not acted upon by the plaintiff. These facts establish that the plaintiff has not accepted or acquiesced to the partition.

23. The learned Advocate for the appellants has contended that since the terms of partition deed are expressly admitted in the legal notice, the plaintiff is estopped from contending that the properties are not partitioned, and further from instituting the suit for partition. The learned Advocate also contends that the document of partition is duly acted upon inasmuch as mutation entries are recorded in terms of the partition arrived at between the plaintiff and the defendant no. 1. The learned Advocate has placed strong reliance on the judgment of the Hon'ble Supreme Court in the case of **Kale & ors. V/s. Deputy Director of Consolidation & ors**, reported in **AIR 1976 SC 807**. Per contra, the learned Advocate for the respondent

no. 1/plaintiff contends that the question of estoppel will not arise in the facts of the present case since the document is not acted upon. Referring to the documents of mutation, the learned Advocate contends that the mutation entries have been recorded without prior notice to and in the absence of the plaintiff. She contends that the mutation entries were recorded clandestinely and in undue haste.

24. As recorded above, the mutation entries with respect to the properties allotted to the share of the defendant no. 1 are recorded one day prior to the date of execution of the partition deed. The mutations are recorded on 11/09/1987 and the partition deed is executed on 12/09/1987. Perusal of the documents clearly indicate that the mutation entries are recorded in absence of the plaintiff. There is no material to infer that the notices were issued to the plaintiff before mutation entries were recorded. As regards, the property which is allotted to the share of the plaintiff, although in the ownership column, the name of the plaintiff is recorded, the name of mother of the parties is recorded in the possession

column. This is contrary to the terms of document of partition. The mutation entries do not corroborate the fact of partition for two reasons, one, the same are recorded a day prior to execution of the document and secondly, the possession of mother over the property allotted to the plaintiff, is not in accordance with the partition deed. There is no evidence on record to indicate that the plaintiff was placed in separate possession of the suit property, which was allotted to his share under the partition deed. It, therefore, cannot be said that the plaintiff has acted upon the partition deed.

25. The contention with respect to estoppel can be accepted only if it is proved that the parties have acted upon the document of partition and that the plaintiff is trying to retract from it. The argument of estoppel could have been accepted if it was proved that the parties acted upon the partition by occupying portions allotted to them under the partition. As recorded above, the evidence on record does not establish that parties have taken physical possession of their

respective shares in the suit properties as enumerated in the partition deed.

26. Apart from this, case of estoppel could be made out by the defendant by establishing that acting upon the document of partition he has repaid bank loan. However, the defendant has not led positive evidence with respect to payment of loan by him. The admission in the legal notice issued by the plaintiff with respect to execution of the partition deed is not an unqualified admission. Although the plaintiff has admitted the execution of partition deed in the said legal notice, he has stated that he had executed the said document on a representation by the defendant no.1 that the entire liability of making payment of bank loan will be taken over by him. The plaintiff has also stated that the defendant no.1 had disowned the obligation to clear the entire loan liability and therefore, he was demanding his half share in the suit properties by way of partition. The plaintiff has also stated that he would share the burden of repaying the loan only if a half share in the suit properties was given to him.

The admission in the legal notice with respect to execution of partition cannot be read in isolation. The entire notice will have to be taken into consideration. Argument of estoppel based on the said legal notice cannot be accepted in the absence of any evidence from the defendant no.1 that based on the unregistered partition deed he has acted on the document to his detriment by discharging the loan liability or by proving that both sides, acting upon the document, occupied their respective shares as allotted in the partition deed. Evidence on both these aspects is wanting.

27. In the case of **Kale** (*supra*), the Hon'ble Supreme Court has held that just like provisions of the Stamp Act and the Registration Act, the rule of estoppel is also statutorily recognized and when it comes to the proof of documents, which have all throughout been acted upon by the parties, the same should not be discarded for want of registration or non-payment of requisite stamp duty. The ratio of said judgment cannot be made applicable to the facts of the present case, since there is no cogent evidence to infer

that the plaintiff acted upon the document of partition. The material also indicates that the defendant no.1 got the properties mutated in his name behind the back of the plaintiff. Since the plaintiff has not acted upon the document, he cannot be estopped from seeking his share in the suit properties. Likewise, rule of estoppel will also not apply since defendant has also not acted to his detriment in view of the partition deed.

28. In view of the above, both the substantial questions of law are answered in favour of the respondent no. 1/original plaintiff. Second Appeal is **dismissed** with no order as to costs.

[ROHIT W. JOSHI, J.]