



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4041 OF 2025**

1. Smt. Channabai W/o Shankarappa Todkar
Since Deceased through LRs
 - A. Hirabai W/o Adappa Chakote,
Since Deceased through LRs
 - A-i) Mrs. Anjali w/o Arun Nagapure,
Age: 52 Years, Occu. Household,
R/o Keshav Nagar, Latur, Tal. & Dist. Latur
 - A-ii) Mahesh S/o Adappa Chakote,
Age: 50 Years, Occu. Service,
R/o Khorli Galli, Latur
 - A-iii) Mrs. Vaishali Santosh Kalane,
Age: 48 Years, Occu. Service,
R/o. Govt. Rural Hospital, Bhoom Tal. Bhoom,
Dist. Osmanabad (Dharashiv)
 - B. Sonabai Manmathappa Gungune,
Since Deceased through LRs
 - B-i) Mrs. Shakuntala Prakash Jawale,
Age: 63 Years, Occu. Household,
R/o Radha Nagar, Latur
 - B-ii) Mrs. Sharda Kashinath Rakate
Age: 57 Years, Occu. Household,
R/o Chembhur, Mumbai
- ..Petitioners
(Original Decree-holders)
- Versus
1. Mr. Vishwanath Shankarappa Todkar
Since Deceased through LRs
 - 1-A) Mrs. Shivamma Vishwanath Todkari,
Age: 79 Years, Occu. Household,
R/o Nalegaon, Tal. Chakur, Dist. Latur
 - 1-B) Mrs. Mahadevi Manmath Bele,
Age: 59 Years, Occu. Service,
R/o Vasmath, Tal. Vasmath, Dist. Hingoli



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- 1-C) Mrs. Ranjana Sangappa Shetkar,
Age: 57Years, Occu. Household,
R/o Nilanga, Tal. Nilanga, Dist. Latur
 - 1-D) Mrs. Asha Ramesh Kiwade
Age: 55 Years, Occu. Household,
R/o Kate-Jawalga, Tal. Nilanga, Dist. Latur
 2. Mrs. Pushpabai Nagnathrao Tondare,
Age: 54 Years, Occu. Household
R/o Nalegaon, Tal. Chakur, Dist. Latur
 3. Sadashiv @ Baburao Ramrao Birajdar
Age: 48 Years, Occu. Agriculture,
R/o Nalegaon, Tal. Chakur, Dist. Latur
 4. Manik Ramrao Birajdar
Age: 46 Years, Occu. Agriculture,
R/o Nalegaon, Tal. Chakur, Dist. Latur
 5. Shankar Ramrao Birajdar
Age: 40 Years, Occu. Agriculture,
R/o Nalegaon, Tal. Chakur, Dist. Latur
 6. Smt. Shivkantabai Hawgirao Birajdar
Age: 48 Years, Occu. Household,
R/o Nalegaon, Tal. Chakur, Dist. Latur
 7. Smt. Ratnabai Sidramappa Kiwade
Since Deceased through LRs
 - 7-A) Chandrakant Sidramappa Kiwade,
Age: 57 Years, Occu. Agriculture
R/o Kate Jawalga, Tal. Nilanga, Dist. Latur
 - 7-B) Ramesh Sidramappa Kiwade,
Age: 57 Years, Occu. Agriculture
R/o Kate Jawalga, Tal. Nilanga, Dist. Latur
 - 7-C) Mrs. Sunita Shivraj Belure
Age: 50 Years, Occu. Household
R/o Pasapur, Tal. Basawakalyan,
Dist. Bidar, Karnataka State
- ..Respondents
(Respondents no. 1 to 6 are
Original Judgment Debtors
Respondent no. 7 is Original
Decree-Holder No. 1-C)



...
Mr. A. P. Bhandari, Advocate for Petitioners.
Mr. S. S. Panale, Advocate for Respondent Nos.1A to 1D.
Mr. V. D. Gunale, Advocate for Respondent No.2.
Mr. v. G. Kodale, Advocate for Respondent Nos.3 to 6.
Respondent Nos.7A to 7C are served.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 04th AUGUST, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing at admission stage.

2. The petitioners takes exception to order dated 15.01.2025 passed by Joint Civil Judge Senior Division, Latur, below Exhibit-62 in Special Darkhast No.40/2007, whereby petitioners' application for re-determination of shares as per amended provisions of Hindu Succession Act came to be rejected.

3. Brief facts giving rise to present Writ Petition can be stated as under:

One Shankarappa died in year 1953 leaving behind his widow Channabai, son Vishwanath and daughters Hirabai, Sonabai and Sunita. Channabai instituted Special Civil Suit No.29/2001 (old Special Civil Suit No.374/1997) seeking decree of partition and separate possession against Vishwanath in respect of property left behind by Shankarappa. During pendency of suit, Channabai expired. Hence, her daughters were brought on record as legal representatives. Ultimately, on 27.02.2007 suit came to be



decreed. The plaintiffs and defendants are held entitled for half share each in suit land bearing Block No.87 with half share in well situated in Block No.88 excluding land sold by Vishwanath to defendant nos.2 to 6. The decree passed in Special Civil Suit No.43/2002 has been put to execution in Special Darkhast No.40/2007. The precept was sent under Section 54 of Code of Civil Procedure to Collector, which was then transmitted to Tahsildar, Chakur. Accordingly, further process has been undertaken.

At this stage, petitioners filed application below Exhibit-62 for drawing fresh preliminary decree in deference to amendment of Section 6 of Hindu Succession Act, which has been given effect from year 2005. It is contention of petitioners that Supreme Court of India in case of ***Ganduri Koteshwaramma & Anr. Vs. Chakiri Yanadi & Anr.***¹ observed that preliminary decree determines rights and interest of parties. However, suit for partition gets disposed of only on passing of final decree on partition by metes and bounds. If, in interregnum, before final decree is passed, supervening events necessitate change in shares, preliminary decree can be appropriately amended redetermining rights and interest of parties. Accordingly petitioners acquired status of coparcener in light of Section 6 of Hindu Succession Act, as has been inserted by Amendment of 2005. Therefore, share

¹ (2011) 9 SCC 788.



needs to be augmented by amending preliminary decree by giving adherence to amended Section 6 of Hindu Succession Act.

The Executing Court rejected petitioner's application relying upon law laid down by this Court in case of ***Radhabai Balasaheb Shirke Vs. Keshav Ramchandra Jadhav and Ors.***², wherein it has been observed that daughters would not acquire any right, either limited or absolute by inheritance prior to coming into force of Hindu Succession Act, 1956 in property of deceased father, who died before 1956.

4. Mr. Bhandari, learned Advocate appearing for petitioners would submit that Amendment of 2005 declares devolution of interest in coparcenary property of joint Hindu family governed by Mitakshara law upon daughters by treating them as coparcener in same manner as son and any reference to Hindu Mitakshara coparcener shall be deemed to include daughter as coparcener. He would further urge that in case of ***Vineeta Sharma Vs. Rakesh Sharma & ors.***³, Supreme Court has ruled that daughter's right in coparcenary property under substituted Section 6 of Hindu Succession Act is available irrespective of fact that coparcener father is alive on date of commencement of amended Act. He would further submit that in case of ***Ganduri Koteshwaramma & Anr.*** (supra), Supreme Court has ruled out that it is open to modify

² 2024 SCC Online Bom 3541.

³ (2020) 9 SCC 1.



preliminary decree passed by Trial Court for purpose of augmentation of shares in light of amended Section 6 determining shares of daughters in coparcenary property. According to Mr. Bhandari, Executing Court has erroneously relied upon exposition of law of this Court in case of ***Radhabai Balasaheb Shirke*** (supra), which is based on altogether different facts. In present case, although Shankarappa died in year 1953 i.e. prior to commencement of Act of 1956, there was no partition by mets and bound between Channabai and Vishwanath. The decree of partition is passed in year 2007 in the suit instituted by Channabai in year 2002 after promulgation of Amendment of 2005. In this backdrop, application ought to have been allowed by giving effect to benevolent legislation approving coparcenary status in favour of petitioners/daughters.

5. Per contra, Mr. Panale, learned Advocate appearing for respondent nos.1A to 1D supports impugned order contending that in present case rights of parties would be governed by Hindu Mitakshara law that was prevailing before passing of Act of 1956. In that regime, daughters had no right in property left behind by father, who died leaving behind son and widow apart from daughters. He would justify reliance of Executing Court on law laid down by this Court in case of ***Radhabai Balasaheb Shirke*** (supra).



6. Having considered submissions advanced by learned Advocates appearing for respective parties, this Court finds mute question that arises for consideration before this Court is “whether Hindu Succession (Amendment) Act, 2005 would apply in cases where Hindu male governed by Mitakshara law died leaving behind widow, son and daughters prior to commencement of Hindu Succession Act, 1956, particularly when preliminary decree is passed in year 2007?”

7. Undisputedly, Shankarappa died in year 1953 leaving behind his widow Channabai, son Vishwanath and petitioners/daughters. Upon death of Shankarappa, succession opened. As per law of succession prevailing at relevant time, property of deceased, including his interest in coparcenary property, would devolve upon his legal heirs, namely, his son and widow, who were left behind by him. The Supreme Court in case of *Eramma Vs. Veerupana & Ors.*⁴ held that 1956 Act would have no application to situation where male Hindu died before commencement of Act.

8. In light of aforesaid exposition of law, present case would governed by law as it was standing as on death of Shankarappa. Neither Act of 1956 nor its Amendment of 2005 would have effect on rights of parties those accrued immediately on death of Shankarappa.

⁴ AIR 1966 SC 1879.



9. If we look to Amendment of 2005, particularly proviso under sub-clause (1) of Section 6 contemplates that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20th day of December, 2004. It is true that, sub-clause (5) of Section 6 and its explanation only recognized partition made by execution of registered deed of partition or partition effected by decree of Court. However, said wordings can be read in reference to rights of parties governed by Act of 1956.

10. In case of ***Arshnoor Singh Vs. Harpal Kaur & Ors.***⁵, Supreme Court observed that “*if succession opened under the old Hindu law, i.e. prior to commencement of Hindu Succession Act, 1956, parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-a-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.*” It is, therefore, evident that if succession opened prior to 1956, provision of Act of 1956 would not be applicable.

⁵ (2020) 14 SCC 436.



11. In backdrop of aforesaid exposition of law, Hindu Succession (Amendment) Act, 2005 cannot be construed to relate back to succession opened prior to commencement of parent Act i.e. Hindu Succession Act, 1956, operates prospectively from date of promulgation.

12. In present case, although decree determining rights of widow and son of Shankarappa who died in year 1953 are declared in year 2007, it would not be governed by Act of 1956 or its Amendment of 2005. The term decree is defined under Clause (2) of Section 2 of Code of Civil Procedure which means formal expression of an adjudication which, so far as regards Court expressing it, conclusively determines rights of parties with regard to all or any of matters in controversy in suit and may be either preliminary or final. Apparently, partition decree does not create rights, but it only confirms or declares existing rights. In present case, since succession opened in year 1953, property left behind by Shankarappa was devolved upon Vishwanath and Channabai in deference to law that was prevailing during pre 1956 regime. Therefore, petitioners/daughters cannot claim augmentation of shares on the basis of Amendment Act of 2005.

13. Pertinently, while Special Civil Suit No.43/2002 was pending, petitioners were brought on record as legal representatives of Channabai. The decree is passed in their presence in year 2007.



They did not raise any claim or independent right on the basis of Amendment of 2005. As such, it is not open for them to raise claim during course of execution of decree on the basis of Amendment of 2005. The Executing Court has rightly relied upon exposition of law in case of ***Radhabai Balasaheb Shirke*** (supra), which decides that daughter would not have any right either limited or absolute by inheritance prior to coming into force of Hindu Succession Act, 1956 in property of her deceased father, who died prior to 1956. In that case, daughter and widow left behind by person governed by Hindu Mitakshara law and died before 1956 has been decided and it has been ruled that before commencement of Hindu Succession Act, 1956 daughters had no share in property as long as he left behind widow or any other coparcener apart from daughter. In the present case, situation, so far as rights of daughter are concerned, is similar

14. In result, Writ Petition sans merit. Hence, dismissed.

15. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE