

मे दिवाणी न्यायालय व.स्तर, पुणे

अर्जट / साधा -

अर्ज आला तारीख: 05/7/2019.

अर्जाची पुर्तता तारीख: 11/10/2019

अर्ज क्रमांक: 7505/19.

एकुण पाने: 22

फी प्रत्येकी: 4. रु. प्रमाणे

एकुण: रु. 88. /-

आज नक्कल श्री-----

यांना दिली तारीख:

अभिलेखपाल

दिवाणी न्यायालय, पुणे.

4 NOV 2019

नक्कल मिळाल्याची तारीख: 06/11/2019

नक्कल तयार तारीख: 06/11/2019

अभिलेखपाल

दिवाणी न्यायालय, पुणे.

सहायक अधीक्षक

दिवाणी न्यायालय, पुणे

4 NOV 2019

FOR COURT.

Decree

Exh. 1 (C)

AMENDED PLAINT

IN THE COURT OF CIVIL JUDGE (SENIOR DIVN.) PUNE

Received on-18/10/2010.
Registered on-26/10/2010.
Decided on-15/06/2019.

AT PUNE

SPECIAL CIVIL SUIT NO.2304/2010

Exh.168

SHRI.HARSHKUMAR POPATLAL BAMB

Age about 59 years, Occu: Business

R/at 36, Kohinoor Planet,

S.No.13/6, Aundh, Pune 411004. --PLAINTIFF

VERSUS

1. SHRI.KUNDANLAL CHUNILAL KHIVANSARA

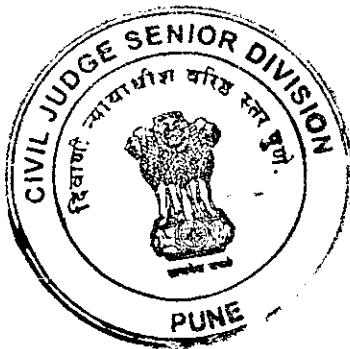
Age about 76 years, Occu: Business

R/at 446/3, "Pratiksha", Gokhale

Cross Road, Pune 411 016.

2. MRS.SUSHILA ISHWARDAS BAMB

Age about 72 years, Occu: Not known



011 Vile Desai Road, Anandoli (W),
Mumbai 400 058

6. MRS.SONALI RAHUL LALWANI ✓

Age about 36 years, Occu: Not known

R/at 2, Panini Society, Santnagar,

Aranyeshwar, Pune 411 009.

7. SHRI.SURYAKANT BHIKAMDAS BAMB ✓

Age about 66 years, Occu: Business

R/at Nandi Society, Flat No.9,

125, Nana Peth, Pune 411 002

8. MRS.SUMANBAI SHASHIKANT BAMB

Age about 70 years, Occu: Not known

R/at Nilesh Apartment, 426/6,

Gokhale Cross Road, Pune 411016

9. SHRI.BHAGWANDAS GANGADHAR PARTANI

Age about 75 years, Occcu: Nil

R/at Row House No.4, "Friends Park"

Senapati Bapat Road, Pune 411 016.

UP - 10

10.MRS.SUSHILA DINKAR DESAI

since deceased through her
legal heirs

10A.SHRI.DINKARRAO RANCHHODJI DESAI

aged about 87 years, occu: business,
residing at Flat No.21/22 Kalpataru
Residency Tower-B, Kamani Marg,
Sion (E) Mumbai 400022.

10B.MR.CHETAN DINKARRAI DESAI

aged about 54 years, occu: business,
residing at Flat No.21/22 Kalpataru
Residency Tower-B, Kamani Marg,
Sion (E) Mumbai 400022.

10C.MS.DAKSHA DINKARRAI DESAI

aged about 58 years, occu: service,
residing at 604, Alaknanda Co-
operative Housing Society Ltd.,
7th Road, Rajawadi, Ghatkopar (E),

(amendment carried out as per order
below application dated 27.11.2013
on Exhibit 39)

11.M/s.DHANRAJ PROPERTIES,

A partnership firm, registered
under the Indian Partnership Act
1932, having its office at A-6,
First Floor, "SHIVSAGAR APARTMENTS"
above UCO Bank, Ganesh Khind Road,
Pune 411 016. By its partners:

1) Shri.BALCHAND DHANRAJ CHORDIA

aged about 61 years, occu: business,

2) Mr.VAIBHAV MADAN CHORDIA

aged about 33 years, occu: business,

both residing at "VISHAL",

Plot No.5, Survey No.80/3,

Baner Road, Aundh, Pune 411 007.

(amendment carried out as per
order dated 29.12.2012 below
application at Exhibit 41 on
03.01.2013)

12) M/s. BUNTRY PROPERTIES UNIT NO. (XI)

A partnership firm, having its
registered office at 37, Sagar
Complex, Kasarwadi, Pune 411034
through its partner:

Mr. MAHENDRA RAMKARANDAS AGARWAL

age 48 years, occu: business
at 37, Sagar Complex, Kasarwadi,
Pune 411034

(amendment carried out on
20.02.2014 as per order
dated 17.02.2014 below

application at Exhibit 81)

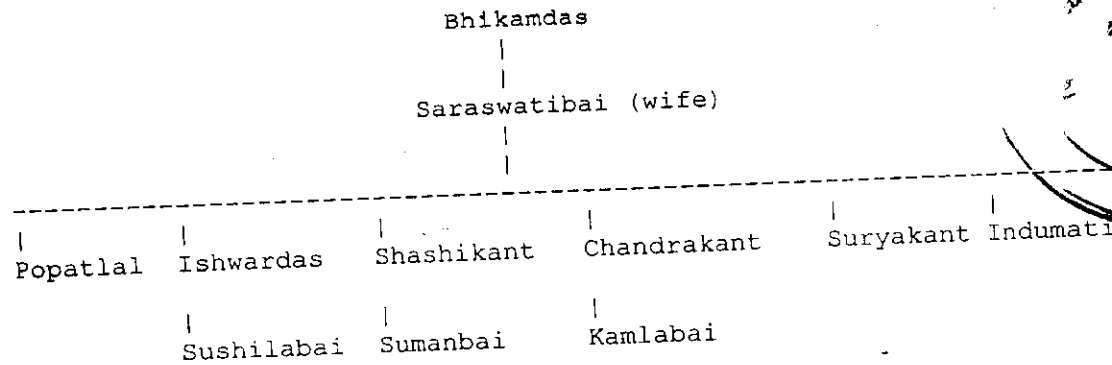
-- DEFENDANTS

Dist-Pune and within the local limits of Pune
Municipal Corporation and bounded as follows: -

Sr. No.	S. No.	East	South	West	North	Area Acre/ Gunthas & Hector Are	Assess- ment Rs.
01	50/1	50/2	50/5	Odha	48, 49	01.19 00H 59R	2.10
02	50/2	50/3	50/6	50/1	49	01.15 00H 55R	3.00 -
03	50/4	50/1	50/5 & Odha	Odha	50/1	00.3 00H 03R	0.12
04	50/6	Panand	50/9+10	50/5	50/2+ 3	01.19 00H 59R	3.00
05	50/7+3	50/9	50/11	Odha	50/5	02.20 01H 02R	4.06
06	50/10+11 2/2	Uruli Marg	54	Odha	50/7, 8, 9	06.13½ 02H 53.5R	06.15

The above described lands/properties are
hereinafter referred to as "THE SUIT LAND".

2) The Plaintiff says that the geneology of joint family of Bhikamdas Balaram Bamb is as follows: -



Plaintiff says that, in the year 1954 Shri. Popatlal, Ishwardas and Shashikant were separated from joint family and at that time Shri. Chandrakant and Suryakant were minor. Bhikamdas expired on 22.09.1961.

3) The Plaintiff says that the suit land was agreed to be purchased by five persons viz.

- (a) Smt. Sushilabai Ishwardas Bamb - Deft No.2
- (b) Smt. Sumanbai Shashikant Bamb - Deft No.8

Bhikamdas Bamb-deceased,

Pune at Serial No.2363 of 1966 (hereinafter for brevity's sake referred to as "the agreement").

4) The Plaintiff says that, on 10th August, 1967, except Shri.Bhagwandas Gangadhar Partani, rest of the claimants of Agreement and one Mrs. Sushila Dinkar Desai entered into registered partnership viz. "M/s.Bamb & Company". The Plaintiff further says that, in the said partnership and in partnership property i.e. suit land, each partner is holding 20% share. Partner Chandrakant was holding 20% share as karta--of joint family of Bhikamdas Balaram Bamb. In other words in 20% share of Chandrakant is belonging to the members of joint family of Bhikamdas Balaram Bamb.

5) The Plaintiff says that on 10th August 1967 the sale-deed of the suit land was executed in the name of one of the partners' viz. Shri.

Chunilal Lacchiram Khivansara. The sale-deed was registered in the Office of the Sub-Registrar, Haveli No.1, Pune at Serial No.2392 of 1967 (hereinafter for the sake of brevity referred to as "the sale deed")

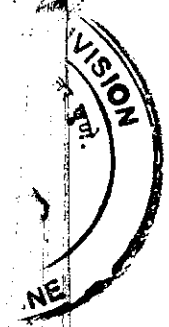
6) The Plaintiff says that, Bhikamdas Balaram Bamb joint family was consist of Chandrakant, his brother Suryakant and mother Saraswatibai and each one was holding $1/3^{\text{rd}}$ undivided share in joint family property including 20% share in partnership i.e. M/s.Bamb & Company. The Plaintiff further says that Chandrakant expired on 11th March 1991 intestate and his legal heirs were/are entitled to his $1/3^{\text{rd}}$ undivided share in joint family properties.

7) The Plaintiff says that Saraswatibai

land was standing in his name in revenue record, actually he had no right, title and interest in the suit land except 20% undivided share. Despite this declaration and actual fact, Shri.Chunilal Lacchiram Khivansara illegally and without any authority made arrangement for rest of the shares in the suit land which were admittedly not belonging to Shri.Chunilal Lacchiram Khivansara. It appears that after death of Shri.Chunilal Lacchiram Khivansara, his son Shri.Kundanlal Chunilal Khivansara applied to the Talathi office to enter his name in respect of the suit land and the then Talathi relying upon the said disputed Codicil and without any notice to rest of co-owners, wrongly entered and recorded only the names of Shri.Kundanlal Chunilal Khivansara and Mrs.Sushila Ishwardas Bamb in the Revenue

Record. The Plaintiff says that, after death of Chunilal Khivansara, the then Talathi ought to have recorded the name of Kundanlal i.e. the Defendant No.1 to the extent of 20% share of Chunilal Khivansara in the suit land. The Plaintiff further says that said Chunilal had also no legal right and any authority to deal with entire suit land and further partitioned the suit land only among himself and Mrs. Sushila Ishwardas Bamb i.e. Defendant No.2. The Plaintiff says that the said revenue record is null and void and not binding on the Plaintiff and suit land. The Plaintiff says that the right of Chunilal Khivansara to bequeath the property was restricted only to 20% share in the suit land and it cannot and will not extend to the remaining 80% share of the other co-sharers. The Plaintiff...

Bamb and Company.
claiming his right on the basis of Codicil
dated 18.10.2001 executed by Shri.Chunilal
Lacchiram Khivansara, who was signatory of the
registered agreement as well as partner of M/s.
Bamb and Company. Defendant Nos.3 to 6 are
legal heirs of late Chandrakant who had also
executed registered agreement and holding 20%
share in the partnership firm viz. M/s.Bamb and
Company and members of Bhikamdas Balaram Bamb
joint family. Defendant No.7 is member of
Bhikamdas Balaram Bamb joint family, who is
entitled to 1/3rd share in the joint family of
Bhikamdas Balaram Bamb. The Plaintiff says
that, if any of the Defendants admit the claim
of the Plaintiff then they need not take part
in the present suit proceedings and in that
event the Plaintiff shall not be responsible
for their cost.



10) The Plaintiff says that, he came across with the public notice dated 1st July 2010 appeared in daily Prabhat on 2nd July 2010 issued by Advocate Shri.Vivek Nanekar in respect of the said suit land for verification of right, title and interest of Shri.Kundanlal Chunilal Khivansara and Mrs.Sushila Ishwardas Bamb. The Plaintiff has raised his objection by his public reply dated 8th August 2010. The Plaintiff says that the Plaintiff has 6.66% undivided share in the suit land and he is in joint possession of the suit land alongwith the Defendants. It is under these compelling circumstances, the Plaintiff is required to file the present suit.

11) The Plaintiff says that, the Defendant Nos.1 and 2 are taking undue advantage of their

will be caused. In the above facts and circumstances, the balance of convenience is in favour of the Plaintiff only. The Defendant Nos.1 and 2 are required to be restrained by an order of preventive injunction.

11A) The Defendant Nos.1 and 2 pending the present suit in the Court have sold, conveyed, transferred the suit lands to and in favour of the Defendant No.11 for total consideration of Rs.29,93,59,000/- by executing Deed of Sale dated 03.09.2011 and registered the said Deed of Sale with the Office of the Sub-Registrar, Haveli No.19 at Sr. No.8555/2011 on 06.09.2011. The Plaintiff states that, the said transaction of sale of the suit lands by the Defendant Nos.1 and 2 to the Defendant No.11 and the execution of sale deed dated 03.09.2011

(06.09.2011) is illegal, null and void and not binding on undivided share of the Plaintiff. The said transaction of sale of the suit lands by the Defendant Nos.1 and 2 to the Defendant No.11 during the pendency of the present suit is hit by sec.52 of the Transfer of Property Act 1882 as principle of lis pendens is applicable to said transaction. The Plaintiff further states that no valid and legal title has been transferred to and in favour of the Defendant No.11 in respect of undivided share of the Plaintiff in the suit lands. It has, therefore, become just and necessary to get declaration that the transfer of title so far as the undivided share of the Plaintiff in the suit lands by the Defendant Nos.1 and 2 to the Defendant No.11 is void, null and illegal and not binding upon undivided share of Plaintiff.



share in the jeopardy and cause waste and the same shall be compensated in any terms and further it shall result in multiplicity of the litigations. It has, therefore, become just and necessary to restrain the Defendant No.11 by an order of injunction not to transfer, sell, convey, assign and to create any third party interest in the suit lands pending the final decision of the suit. The Plaintiff states that, the Defendant No.11 will not suffer any loss nor it shall cause any prejudice by passing an order of injunction against the Defendant No.11, as the Defendant No.11 has purchased the suit lands pending the suit in the Court.

12) The Plaintiff is filing this suit for declaration of his share in the suit land. The

suit land is consisting of 6 different survey numbers and actual division was never effected by metes and bounds. The Plaintiff says that the Defendant Nos.1 and 2 are in possession of all joint co-sharers.

13) The Plaintiff is claiming the relief of partition and period of limitation does not apply to the suit for partition. This is so, since the right to claim separate share accrues and arises every day till the partition takes place and hence, the question of limitation does not arise. Without prejudice to this contention, if for any reason, this submission is not acceptable to the Hon'ble Court in that event the Plaintiff submits that the cause of action arose first time on 28.07.2010, when he came to know about the wrong revenue entry and

15) Valuation: So far as the valuation of the suit claim for the purpose of court fee is concerned, the same is valued as per provisions of Sec.6(vii) of the Bombay Court Fees Act, as per the details given herein below.

Though the suit land is an agricultural land, the same is shown in the residential zone in the development plan of Pune and the same is within the local limits of Pune Municipal Corporation. Hence, at the time of filing suit, the market value is Rs.6,95,000/- per Are. The Plaintiff is claiming 7.78% share in the suit land, which totally comes to 00-Hec. 41.3-Ares. Considering this area, the market value of the land claimed by the Plaintiff comes to Rs.2,90,00,000/- and paid court fee of Rs.3,00,000/- (maximum) in the Court.

The Plaintiff has also claimed the relief of declaration and injunction, hence, the suit is valued at Rs.1,200/- for the said purposes and court fee Rs.300/- is paid and the same is included in the total court fee amount of Rs.3,00,000/- paid.

16) THE PLAINTIFF, THEREFORE, PRAYS THAT:

- a) The Hon'ble Court may kindly be pleased to declare that the Plaintiff has 7.78% undivided share in each survey numbers i.e. suit land described in para (1) of the plaint.
- b) The said suit land described in para 1 of the plaint be ordered to be partitioned by metes and bounds and Plaintiff be put in actual possession of his separate share.

c) For effecting partition of the suit land

f) The Hon'ble Court be pleased to pass such other orders as will be required and found necessary in the interest of justice.

PUNE

DATED: .10.2010

PLAINTIFF

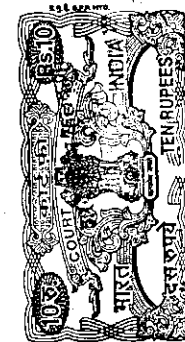
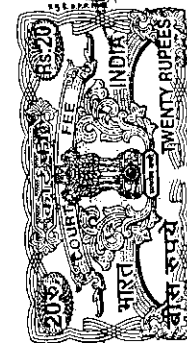
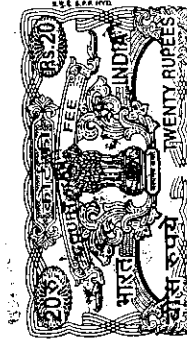
ADVOCATE FOR PLAINTIFF

VERIFICATION

I, HARSHKUMAR POPATLAL BAMB, the above named Plaintiff, do hereby state on solemn affirmation that the contents of the above plaint are true and correct to the best of my knowledge, belief and information and I have verified the same at Pune on the date mentioned above.

PLAINTIFF

Process Rs 50/-
paid on 11/08/2014
[Signature]
- Adv.





This Suit is Came before Shri. Deepak D. Male, 3rd Jt. C.J. Sr. Dn. Pune, in Presence of Shri. A. S. Abad Adv. for the Plaintiffs. Shri. Y. R. Mehta Adv. for the Deft. Nos. 1, 2, 8 and 11, Shri. A. A. Agashe Adv. for deft. No. 10. Shri. Ashok Bhatwara Adv. for defendant No. 12, and Ex Parte order passed against defendant nos. 3, 4, 5, 6, 7 and 9. Hence, it is pass the following order:-

ORDER

- 1) Suit is hereby dismissed with Costs.
- 2) Decree be drawn accordingly.

Bill of Cost

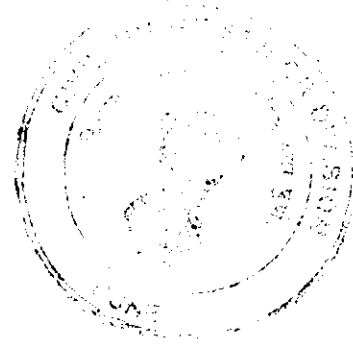
Plaintiffs	Deft. Nos. 1, 2, 8, 10, 11, 12
Stamp on Exh. 1 - 3,00,000 = 00	Vakil Patta - 10 = 00



(Deepak D. Almale)
3rd J. C. J. Sr. Dn. Pune.

A

नववर्ष करणार -
रुजू पहणार -



सुनी नववर्ष
अधिकारी
दि. ११ न्यायालय
(पुणे न्यायालय), पुणे

24 NOV 2019

