



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

SECOND APPEAL NO. 115 OF 2020

- 1) Milind S/o Narayanrao Ballal (Mitkari),
aged about 52 years, Occu. : Service,
- 2) Sanjay Narayanrao Ballal (Mitkari),
aged about 50 years, Occu. : Business,
- 3) Manish Narayanrao Ballal (Mitkari),
aged about 48 years, Occu. : Business,
- 4) Rajiv Narayanrao Ballal (Mitkari),
aged about 45 years, Occu. : Business,

Nos.1 to 4 R/o. Opposite Lok Vidyalaya,
Kumarappa Marg, Wardha,
Tahsil and District Wardha.

- 5) Sau. Bindu W/o Gopalrao Wankhede (**Dead**)
through her legal heirs :

5A) deleted as
per Court's order
dt.05.01.2023.

- 5A) ~~Gopalrao Dattatraya Wankhede,~~
~~aged about 80 years, Occu. : retired,~~

- 5B) Prashant Gopalrao Wankhede (**Dead**)
through legal heirs :

- 5B-a) Rajashree Prashant Wankhede,
aged about 49 years, Occu. : Household,
R/o. Malhari Society,
Grudeonagar, Bhadrawati,
District Chandrapur.

- 5B-b) Chaitanya Prashant Wankhede,
aged about 18 years, Occu. : Household,
R/o. Malhari Baba Society,
Grudeonagar, Bhadrawati,
District Chandrapur.

- 5C) Manoj Gopalrao Wankhede,
aged about 51 years, Occu. : Business,
- 5D) Mangal Gopalrao Wankhede,
aged about 47 years, Occu. : household,
- 5E) Deepali W/o Arvind Mitkari,
aged about 49 years, Occu. : household,

Nos.5A, 5C to 5E R/o. C/o. Gopal Wankhede,
Malhari Baba Colony, Sunthana,
Bhadrawati, District Chandrapur.

- 6) Sau. Shobha W/o Ramesh Sontakke,
aged about 58 years, Occu. : Nil,
R/o. Kirchakra Colony, Gitti Khadan,
Katol Road, Nagpur.

.... **APPELLANTS**

// VERSUS //

R.1- deleted as
per Court's order
dt.05.01.2023.

- 1) ~~Smt. Nalini Wd/o Vinayakrao Ballal (Mitkari)
aged about 80 years,
R/o. C/o. Sanjay Saraf House,
Lahanuji Nagar, Behind Head Post Office,
Wardha, District Wardha.~~
- 2) Smt. Jaya Wd/o Pravinrao Ballal (Mitkari),
aged about 55 years, Occu. : household,
R/o. Hind Nagar, Near Khangar House,
Rashtrabhasha Prachar Samiti,
Ramnagar, Wardha.
- 3) Pratik Pravinrao Ballal (Mitkari),
aged about 25 years, Occu. : Education,
R/o. Hind Nagar, Near Khangar House,
Rashtrabhasha Prachar Samiti,
Ramnagar, Wardha.
- 4) Laxmikant Vinayakrao Ballal (Mitkari),
aged about 54 years, Occu. : Business,
C/o. Sanjay Saraf House, Lahanuji Nagar,
Behind Head Post Office, Wardha, Dist. Wardha.

- 5) Vidhya Wd/o Pramod Ballal (Mitkari),
aged about 58 years, Occu. : household,
R/o. Flat No. 205, Viddhi-Siddhi Appt.,
Opp. Vandan Lawn, Besa Chowk,
Nagpur – 440034.
- 6) Vishal S/o. Pramod Ballal (Mitkari),
aged about 37 years, Occu. : Service,
R/o. Flat No. 205, Viddhi-Siddhi Appt.,
Opp. Vandan Lawn, Besa Chowk,
Nagpur – 440034.
- 7) Ashish S/o. Pramod Ballal (Mitkari),
aged about 35 years, Occu. : Service,
R/o. Flat No. 205, Viddhi-Siddhi Appt.,
Opp. Vandan Lawn, Besa Chowk,
Nagpur – 440034.
- 8) Rahul S/o. Haribhau Bhoyar,
aged about 35 years, Occu. : Service,
R/o. Ward No.6, Tukdoji Nagar,
Near Gajanan Mandir, Ghugus,
District Chandrapur.
- 9) Savita Haribhau Bhoyar,
aged about 37 years, Occu. : Household,
R/o. C/o. Ritesh Saraf Kholapur,
Tahsil Bhatkuli, District Amravati.
- 10) Sau. Kishori Prakash Murdiv,
aged about 62 years, Occu. : household,
R/o. Opposite Gayatri Mangal
Karyalaya, Ramnagar, Wardha.
- 11) Sau. Madhuri Rajabhau Fulzele,
aged about 58 years, Occu. : household,
R/o. Raj Ashiyana Apartment,
Wing No.11, Flat No.214, Kadabi Chowk,
Motibag, Nagpur.
- 12) Omkeshwar Anandrao Thakare,
aged about 57 years, Occu. : Business,
R/o. Satyan Steel Furniture,
Opposite Maharashtra Bank,
Main road Wardha, Dist. Wardha.

- 13) Smt. Ratna Wd/o. Digambarrao Thakre,
aged about 80 years, Occu. : household,
R/o. Ganeshnagar, Ward No.3,
Near Mahakali Mandir,
Borgaon (Meghe), Wardha.
- 14) Kishor S/o Varnandmal Nathani,
aged about 56 years, Occu. : Business,
R/o. Perfect Electronics, behind
HDFC Bank, Main Road, Wardha.

.... **RESPONDENTS**

Mr. Sachin Deshpande, Advocate for Appellants.
Mr. M. R. Joharapurkar, Advocate for Respondent Nos.2 to 11.
Mr. A.J. Thakkar, Advocate for Respondent Nos.12 to 14.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 01.07.2024.
DATE OF PRONOUNCING THE JUDGMENT : 22.07.2024.

JUDGMENT.

1. This appeal is preferred against the Judgment and decree passed by the District Judge-2, Wardha in Regular Civil Appeal Nos.212 of 2015 and 213 of 2015, dated 13.12.2019, which arised out of Judgment and decree passed by 3rd Joint Joint Civil Judge, Senior Division, Wardha in Special Civil Suit No.48 of 2005, dated 31.01.2009.

2. The house bearing No.414/1 to 414/4 situated in Nazul Plot No.2627, Sheet No.68, area 57.5 Sq.Ft. East-west and 29.5 Sq.Ft.

North-south, total area 1695 Sq.Ft. situated within the limits of Municipal Council, Wardha is the suit property.

3. The plaintiffs contended that late Pandurang was a common ancestor of the joint family of the plaintiffs and defendants. His two sons names are Vithoba and Krushnarao. Vithoba died in 1935. The name of his two sons Murlidhar and Nilkant. Murlidhar died issue-less in the year 1966. Nilkanth died in the year 1959. The name of his son is Narayan and his two daughters are plaintiff Nos.6 and 7. Narayan died in the year 2003. His wife is plaintiff No.1 and four sons i.e. plaintiff Nos.2 to 5. The other son of Pandurang i.e. Krushnarao died in 1949. The name of his son is Vinayakrao who died in 1999. Defendant No.1 is his widow, defendant Nos.2 to 3 are sons and defendant Nos.9 and 10 are the daughters of late Vinayakrao. Defendant Nos.7 and 8 are the legal heirs of late Lata, a daughter of late Vinayakrao. Defendant Nos.11 to 13 are the purchasers of the suit property.

4. The plaintiffs further contended that suit property is ancestral property of plaintiffs and defendant Nos.1 to 10, which came in the hands of their Hindu joint family in 1908 by mortgage. Vithoba and Krushnarao were having half share in the suit property.

The plaintiffs collectively are from the branch of late Vithoba and defendant Nos.1 to 10 are of the branch of late Krushnarao.

5. Dispute arose in the year 2004 when the plaintiffs issued notice – Exhibit 34, dated 09.02.2004 to the defendants claiming partition of the suit property, as they have half share in the suit property. The plaintiffs published public notice – Exhibit 33 dated 10.09.2004 in the news paper alerting the public at large for not to deal with the suit property and any interest in it. By Exhibit-41, the defendants replied the notice issued by plaintiff on 09.02.2004. They contended that sons of Vithobaji i.e. late Murlidhar and Nilkanth have executed “*Kabuliyat*” vide Exhibit-80 and 81 on 26.07.1955 in favour of Vinayak. They have relinquished their share in the suit property. Therefore, plaintiffs have no share in the suit property.

6. The plaintiffs further contended that Arjunlal Sahu and Govindlal Sahu filed Civil Suit No.7-B/58 and 10-B/58 against the joint family members, which were decided by the Civil Judge, Senior Division, Wardha by the judgment dated 26.12.1959 and 26.06.1960 in which specific issue was framed as to the existence of the Hindu joint family. In that suits, it was held that there was no partition and separation and the family was joint Hindu family. In the year 1960,

status of the family of plaintiffs and defendant Nos.1 to 10 was joint family decided by competent Civil Court. There was no any such *Kabuliyat* alleged to have been executed in the year 1955 by late Murlidhar and Nilkanth. Vinayakrao mutated his name in the Nazul record behind back of the plaintiffs. The plaintiffs, therefore, applied to the T.I.L.R. to mutate their names in the Nazul record. But no action was taken. Meanwhile, defendant Nos.1 to 10 executed two registered sale-deeds dated 17.01.2005 of the suit-house and sold out half portion of suit property in favour of respondent Nos.11 and 12 and remaining half share to defendant No.13 illegally ignoring half share of the plaintiffs. The plaintiffs, therefore, filed a suit for partition and separate possession and prayed for setting aside the sale-deeds dated 17.01.2005 executed in favour of defendant Nos.11, 12 and 13 to the extent of their half share in the suit property and for inquiry into the future mesne profits from the date of suit till delivery of possession of their half share in the suit property.

7. The defendant Nos.1 to 10 contended that deceased Vinayakrao, Narayanrao and Murlidhar were initially the members of Hindu joint family. They already sold the agricultural lands and only suit house was remained as Hindu joint family property. On 01.05.1955, these three brothers decided to reside separate in mess

and estate. Vinayakrao and his family started to live in the suit house. Narayan went to reside near Lok-Vidyalaya, Bachelor Road, Wardha and Murlidhar started living at Sawangi (Meghe), District Wardha. Vinayakrao and his mother were advised to take some writing about their share in the suit house. Accordingly, in the mutual oral partition, suit house was agreed to give to Vinayakrao, which was executed as *Kabuliyat* at Exhibit Nos.80 and 81 dated 26.07.1955. It were executed by Nilkanthrao and Murlidhar in favour of Vinayakrao. They admitted those facts in the written-statement submitted in the Court in the said suits of 1958. However, Civil Court held that defendants i.e. Nilkanth and Murlidhar were not separated before the execution of Pronote. The said findings is not of any use to claim partition to the plaintiffs in the suit house. It was because no notice of partition was issued to the creditors therefore, act of defendant No.1 Murlidhar was binding on all the defendants in that suit.

8. The defendants contended that after separation, Vinayakrao was paying Municipal and other taxes of the suit house. The defendant No.11 was tenant of one room out of the suit house since last 16 years. The defendant Nos.11 to 13 purchased the suit house by registered sale-deeds. Late Vinayakrao obtained loan of Rs.15000/- by executing simple mortgage of the suit house with the

Bank of Maharashtra. He could not repay that loan amount. Therefore, Spl.C.S. No.1 of 1985 was filed by the Bank for recovery of that amount. It was decreed on 30.09.1988 against Vinayakrao and his surities and liberty was granted to the bank to put the suit-house for auction to realize the decretal amount. A notice dated 22.12.1994 was issued by the bank for its recovery. Therefore, defendant No.3 paid Rs.40,000/- towards full and final settlement and the suit house was released from the charge of Bank of Maharashtra. Though, Narayan Mitkari was alive at that time, no any objection was raised by him when suit property was mortgaged with that Bank by Vinayakrao. The plaintiffs have filed a false suit. It is prayed to dismiss the suit with costs.

9. Defendant Nos.11 to 13 resisted the suit and contended that plaintiffs are noway concerned with the suit property. They are *bona fide* purchaser of the suit property for value without notice. The plaintiffs have no right to file suit for partition. It is lastly prayed to dismiss the suit with costs.

10. The learned trial Court held that there is existence of joint family of plaintiffs and defendant Nos.1 to 10, the suit was decreed by holding that in the year 1965 one agricultural land was

sold by the joint family of the plaintiffs and defendants. It was held that plaintiffs have half share in the suit house. The suit for partition was decreed.

11. The learned First Appellate Court held that undivided Hindu joint family was not in existence. The plaintiffs are not entitled for share in the suit property. The sale-deeds executed in favour of defendant Nos.11 to 13 are legal and not liable to be cancelled. The judgment and decree of the trial Court was set aside and suit was dismissed.

12. The substantial question of law formed by this Court by order dated 19.01.2021 as follows :

Whether the learned First Appellate Court was justified in reversing the judgment passed by the trial Court?

13. Learned Advocate for the appellants submitted that in the year 1972, the transaction of one agricultural land took place. It shows that there is existence of joint Hindu family. The alleged *Kabuliyat* Exhibit-80 and 81 are not registered documents, its contents are not proved. As per Section 17 of the Registration Act, 1908, it is not registered. If any share in any immovable property is

to be released, the release-deed must be registered when value of the immovable property exceed Rs.100/-. He submitted that the findings of the Civil Court was for limited purpose of loan transaction and stand was taken to avoid loan transaction of creditor. Though, the suit property was mortgaged, it was executed with the bank by the Vinayakrao without the consent of the plaintiffs. The suit of the plaintiffs is within limitation as no limitation is prescribed for filing suit for partition.

14. The learned Advocate for the appellants is relying upon the authority of ***Narhari and others Vs. Shanker and others***, reported in ***AIR 1953 SC 419***, in which it is held that one appeal against the two judgments of first appellate Court is maintainable when those two appeals arised out of one and same Judgment and decree.

15. The learned Advocate for the appellants further submitted that unregistered and unstamped *Kabuliyat* Exhibit-80 and 81 i.e. relinquishment deed is not admissible in the evidence. For that purpose, he is relying upon the authority of ***Yellapu Uma Maheshwari & Anr. Vs. Buddha Jagadheeswararao & Ors.***, reported in ***(2015) 16 SCC 787***, in which it is held that such unregistered and

unstamped partition-deed is not admissible in the evidence and requires compulsory registration as per Section 17(1)(b) of the Registration Act, 1908. Lastly, the learned Advocate for the appellants prayed for setting aside the impugned judgment and decree passed by the first Appellate Court and to allow this appeal.

16. The learned Advocate for the respondents submitted that the plaintiffs did not try to enter their name to the Record of Rights of the suit property. The *Kabuliyat* Exhibits-80 & 81, dated 26.07.1955 were signed by the Nilkanthrao and Murlidhar and their subsequent conduct along with conduct of these plaintiffs shows that they were not willing to reside in the suit property and they relinquished their shares in it in favour of the father of the defendants Vinayakrao. It is not their case that *Kabuliyats* were executed forcefully and fraudulently.

17. The learned Advocate for the respondents is relying upon following authorities :

(i) ***Kale and others Vs. Deputy Director of Consolidation and others***, reported in ***(1976) 3 SCC 119***. Para Nos.10 and 38 reads as under :

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence:*
- (3) The family arrangement may be even oral in which case no registration is necessary;*
- (4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;*
- (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the*

settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) *Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”*

(ii) ***Thulasidhara and another Vs. Narayanappa and others***, reported in ***(2019) 6 SCC 409***, in which it is held that even unregistered document of family settlement would operate as estoppel against parties to such settlement, it can be used as corroborative piece of evidence for explaining family arrangement and the conduct of parties, such partition-deed can be used as corroborative piece of evidence.

(iii) ***B. L. Sreedhar and others Vs. K. M. Munireddy (Dead) and others***, reported in ***(2003) 2 SCC 355***, in which it is held that effect of creating substantive rights as against the person estopped, where rights are involved estoppel may be described as a rule creating or defeating a right as well as a rule of evidence. It is further

observed that, lapse of time and delay are most material and waiving of rights may be recorded because of conduct by which the other party was placed in such a situation to act upon that waiver. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such right.

(iv) ***Gangadhar Pandhari Harde Vs. Uttam S/o Pandhari Harde & Anr.***, reported in ***2008(2) Mh.L.J. 334***, in which it is held that the oral relinquishment of share in a joint family property, on the part of *co-parcener* of a sharer in the joint family property can surrender his share orally at the time of partition.

(v) ***Smt. Kausalyabai wd/o Prakash Gadekar & Ors. Vs. Dattatray Rambhau Gadekar & Anr.***, ***Second Appeal No.196 of 2002***, decided on 21.09.2022, in which para No.13, it is held that the entries made in the record of rights provides efficacy and presumption attached to it.

18. The learned Advocate for the respondents lastly submitted that judgment and decree of the first Appellate Court are

legal and correct and documents i.e. *Kabuliyat* Exhibit Nos.80 & 81, were acted upon. It is lastly prayed to dismiss the appeal.

19. The admitted facts are that Vithoba's sons Nilkanth and Krushnarao's son Vinayakrao were member of Hindu joint family. Vithoba and Krushnarao got the suit house by mortgaged-deed. The Civil Suit No.7-B/1958 and 10-B/1958 were filed against the Vinayakrao for recovery of loan amount, based on Promissory Note. In that suit, the plaintiffs predecessor Nilkanthrao and Narayanrao filed a written-statement and took defence that partition took place in respect of suit property between Vinayak and them and Vinayak alone got the suit property in that partition.

20. It is admitted fact that the plaintiffs are not residing in the suit property. It is also admitted fact that in the year 1965, one of the agricultural land belonging to their Hindu joint family was sold jointly. In the year 1971-72, the name of Vinayakrao was entered to the Record of Right of the suit property i.e. the City Survey Record. He continued to pay Municipal and other taxes of the suit property. The *Kabuliyat* Exhibit Nos.80 & 81, were executed on 26.07.1955, which are disputed documents. The dispute started in the year 2004 when plaintiffs issued notice dated 09.02.2004 to the defendants and

demanded partition of the suit property. Defendants replied the said notice and took stand of earlier partition as per *Kabuliyats*. Thereafter on 10.09.2004, the public notice was issued by plaintiffs informing public at large to not to deal with the defendants regarding suit property.

21. From the case laws cited by both the sides, particularly case law of *Kale and others Vs. Deputy Director of Consolidation and others* (*supra*) in which it is held that family arrangement can be inferred from conduct of several years as per Section 115 of the Indian Evidence Act, 1872.

22. Whether there is estoppel by conduct is a core question. For that purpose, the facts of the case are decisive. Following are the earlier and subsequent conducts of the plaintiffs and defendants :

(i) Two suits for recovery of an amount under Promissory Note were admittedly filed bearing Nos.7-B/1958 and 10-B/1958 against the defendants' predecessor. In the said suits, the plaintiffs predecessor took defence that partition took place between them. In that suit, the Court in para No.15 of its judgment it is observed as follows :

“15. Even assuming that the defendants had partitioned orally, one thing is certain, that there is no evidence come on record, nor it is the case of the defendants, that they had given any notice, to the creditor, of the disruption of the joint family. Under the circumstances, when the duty is cast on the members of the joint family, effecting a severance of joint status amongst themselves, to give intimation to the outside creditors, of the change in the status of the joint family, and the Karta or manager thereof, so that the put side creditors, might not continue to deal with the manager or Karta as before, and either lent further money, for the purpose of the joint family business, erstwhile carried on by the manager or the karta of the family and/or accept acknowledgments or part-payments, and this duty is not performed by any of this joint family members, all the joint family inspite of the severance between themselves, must be held to be deemed to continue to be joint, and the acts of the manager or Karta of Securing debts, for the joint family are deemed to be binding on each member thereof. (A.I.R.(32) 1945 Bom.511, Kashiram Vs. Bhaga and others relied upon. It is for these reasons that I have answered issue no.2(a) as “In the affirmative” and (b) as “Assuming that the family was separated, still the act of the defendant 1 was binding, on other defendants there being no notice to the creditors given of partition.”

The issue before that Court in that suit was whether there was existence of Hindu joint family or partition took place between the defendants. The Court held that notice of severance of joint family was not given to the creditors. Therefore, defendant No.1 Murlidhar in that case was held Manager of Hindu joint family and

he had secured debts for the joint family. Thus, it was held that there was Hindu joint family for the purposes of that suit. It is not beneficial to the plaintiffs because earlier to that in the year 1955 *Kabuliyat* Exhibit Nos. 80 & 81 were executed in favour of Vinayakrao.

(ii) Second circumstance is the execution of *Kabuliyat* Exhibit Nos. 80 & 81, executed in the year 1955. Signature of predecessor of the plaintiffs on these documents are not challenged. It is not alleged that it was executed with intention to cheat the plaintiffs predecessor's. The plaintiffs predecessor did not challenge it in their life time. It is 30 years old documents and though not admissible as evidence as per Section 49 of the Registration Act, 1908, it is admissible in the evidence for collateral purpose to decide as to whether the family arrangement has taken place or not? As per Section 17(1)(a) of the Registration Act, 1908 if the partition take place and it is reduced in to writing, it must be registered. These are not documents of partition but these are documents of relinquishment.

(iii) Admittedly, *Kabuliyat* Exhibit Nos. 80 & 81 are not registered documents. The signatures over it are not disputed.

On the basis of said documents, when City Survey Scheme was formed in the year 1971-72, only the names of the defendants predecessor was recorded to the City Survey Record of the suit property. It was not objected by the plaintiffs that time. This earlier conduct of the plaintiffs is also relevant as per Section 8 of the Indian Evidence Act, 1872 that it was not objected because they were not having right in the suit property.

(iv) The Bank loan was obtained by the defendants predecessor for the repairing of the suit house. The suit for recovery of that amount was filed against the predecessor of the defendants bearing Spl.C.S. No.1/1985. The defendants predecessor paid the entire amount of loan as per decree Exhibit-90 and the Bank settlement Proposal Exhibit-92. No Due Certificate was issued as per Exhibit-93 on 27.03.1997. This earlier and subsequent conduct shows that only defendants were owners of the suit property and they maintained it.

(v) There are three shops in the suit property. Out of it, one was given on rent by the defendants predecessor. The rent was received by defendants predecessor and it was not objected by the plaintiffs' predecessors and plaintiffs also. Thereafter the tenant

purchased the part of the suit property by registered sale-deed Exhibit-29, dated 14.07.1965. It was sold by the plaintiffs and defendants predecessor. In that sale-deed, it is mentioned that plaintiff No.1, 3, 6 and 7 are residing at Sawangi (Meghe) and defendants predecessor are residing at Bachelor Road, Wardha. Same addresses are mentioned in the plaint also. They left the suit property and started to reside separately. This shows that there was severance of status and partition between them in respect of mess and property. Thus, that *Kabuliyat* Exhibit Nos. 80 & 81 were acted upon.

23. If above five conducts of the both sides for years together are considered together, then it shows that there was severance of status and predecessors of plaintiffs and defendants were residing separately. The *Kabuliyats* were executed by the predecessor of the plaintiffs and they have not challenged signature on it. In the both suits of 1958, the stand of partition of the suit property was taken. After the death of Vinayakrao, the predecessor of the defendants, till filing of the suit, did not try to record their names to the City Survey record of rights of the suit property and letting out the shops in the suit property to the tenants. They have not claimed any rent of it. The stand taken in the earlier suit as to the partition is not explained,

which is corroborated by the *Kabuliyats* and subsequent conducts as discussed above.

24. No doubt, after the issuance of public notice, defendant Nos.11 to 13 purchased the part of suit property. However, unless and until legal right of plaintiffs in the suit property is established, their sale-deed cannot be held illegal. All the subsequent conducts are decisive to rely upon *Kabuliyat* Exhibits-80 & 81, which were acted upon. Though those are not registered for the collateral purpose, as to the possession and as to whether the *Kabuliyats* were acted upon or not, those can be read into evidence as per Section 49 of the Registration Act, 1908. There are legitimate reasons to infer that there was earlier partition and the predecessor of the plaintiffs have admitted the said fact. Therefore, on the basis of *Kabuliyat* Exhibit-80 and 81, as per Section 115 of the Indian Evidence Act, 1872 the doctrine of estoppel by conduct operates against the plaintiffs. The plaintiffs failed to prove their legal right in the suit property.

25. The learned first Appellate Court rightly re-appreciated the evidence and there is no any illegality in it. The reasons and findings given by the learned first Appellate Court are found legal and correct. No perversity is found in it. The learned first Appellate

Court rightly set aside the judgment and decree of the trial Court by recording legal and convincing reasons. For the reasons stated above, argument of learned Advocate for the appellants is not acceptable. Considering five subsequent conducts as per Section 8 and 115 of the Indian Evidence Act, 1872, as discussed above, the authority ***Yellapu Uma Maheshwari*** cited supra is not helpful to the plaintiffs/appellants. The substantial question of law is therefore answered that first appellate Court was justified in reversing the judgment and decree of the trial Court. There is no scope for interference in the impugned judgment and decree of the trial Court. The appeal, therefore, deserves to be dismissed. Hence, the appeal is **dismissed**. No order as to costs.

(SANJAY A. DESHMUKH, J.)