



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 208 OF 1950

Ebrahim Mia Mahomed Haji Janmahomed
Chotani & Anr.

... Plaintiffs

V/s.

The Official Assignee of Bombay & Ors.

... Defendants

WITH
NOTICE OF MOTION NO. 909 OF 2019
IN
SUIT NO. 208 OF 1950

Abdul Hameed Ebrahim Chotani & Ors.

... Plaintiffs

V/s.

The Official Assignee of Bombay & Ors.

... Defendants

Mr. Asif Menon for the Plaintiffs.

Mr. Raghav Taneja i/b Vidhii Partners for Defendant no. 2.

Mr. Ridhikesh Uttarwar with Ms. Pooja R. Thakur and Ms. Pradnya C. Solanki for the Defendant nos. 3(a), 9 to 13 & 16.

Mr. R. D. Soni a/w Mr. Sujay Gawade and Ms. Mudita Pawar, i/b, Shree & Co for the Defendant no. 17.

Mr. Mohit Khanna a/w Mr. Vishesh Malviya and Ms. Taniya D'souza i/b M/s. Rashmikant & Partners for the Intervenor.

Mrs. Sonali Dighe - Commissioner for Taking Accounts, High Court of Bombay.

Ms. Nandini Deshpande - 1st Assistant to Court Receiver, High Court of Bombay.

CORAM : FARHAN P. DUBASH, J.

DATE : 27th FEBRUARY 2026

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JUDGMENT:

1. The present Suit came to be instituted on 8th February 1950 by the heirs and legal representatives of late Mia Mohamed Haji Janmohamed Chotani (**deceased**), against Osman Mia Mohamed Haji Janmohamed Chotani, one of the other heirs of the deceased. The present Suit seeks, *inter alia*, a declaration in respect of the estate of the deceased and the respective shares of the parties therein. The Plaintiffs also seek partition of the said estate amongst the heirs and legal representatives of the deceased in accordance with their respective shares, together with consequential reliefs including sale of the properties and rendition of accounts.

2. By an order dated 14th March 1950, this Court appointed the Court Receiver, High Court, Bombay as Receiver in respect of the properties of the deceased described in Exhibit 'A' to the Plaint, together with all rents, income and profits thereof, with all powers of a Receiver under Order XL Rule 1(d) of the Code of Civil Procedure, 1908.

3. Thereafter, on 28th March 1950, a preliminary decree for partition came to be passed by this Court declaring the shares of the parties in the estate of the deceased. The present Suit was referred to the Commissioner for Taking Accounts for the purpose of effecting partition of the properties between the Plaintiffs and the Defendants in accordance with their respective shares. The Commissioner was also empowered to sell such properties as may be necessary.

4. Subsequently, the Original Defendant, Osman Mia Mohamed Haji Janmohamed Chotani, became insolvent. The Official Assignee, High Court, Bombay, being the assignee of his estate and effects, therefore came to be substituted in his place and stead as Defendant in the present Suit.

5. Amongst the properties forming part of the estate of the deceased and described in Exhibit 'A' to the Plaint were two parcels of land, namely: (i) land bearing Survey No. 35-A situated at Deccan College Road, Yeravada, Pune; and (ii) land bearing Survey No. 208 situated at Yeravada, Pune.

6. The property bearing Survey No. 35-A (**the Deccan College property**) came to be acquired by the Government. The compensation received by the Court Receiver in the land acquisition proceedings, together with the sale proceeds of other properties sold from time to time by the Commissioner for Taking Accounts, has since been distributed amongst the parties entitled thereto in terms of the Judge's Order dated 28th January 1979 passed in Chamber Summons taken out on 15th December 1978 by the Original Defendant.

7. Consequently, the only property which remained in the possession of the Court Receiver was the land bearing Survey No. 208 situated at Yeravada, Pune, admeasuring approximately 16 acres (**Survey No. 208 property**).

8. It appears that during the lifetime of the deceased, he had appointed one Mr. Krishandas Gordhandas Madiwale to manage the Survey No. 208 property. The heirs and legal representatives of the said Mr. Krishandas Gordhandas Madiwale thereafter claimed to hold the said property in lieu of certain debts allegedly due and payable to them by the deceased. In the alternative, they claimed a one-half share in the Survey No. 208 property, or in the sale proceeds thereof, under a writing stated to be dated 22nd June 1946 executed by the Original Defendant.

9. One Mr. Bhau Maruti Gawde, who claimed to be in actual occupation of the Survey No. 208 property, also asserted ownership thereof by adverse possession. In view of these rival claims, the Court Receiver, who had been appointed by this Court in respect of all the properties of the deceased including the Survey No. 208 property, instituted Civil Suit No. 26 of 1952 before the Court of the Civil Judge, Senior Division, Pune, against Mrs. Rukhamanibai Madiwale (the widow of the said Mr. Krishandas Gordhandas Madiwale), Mr. Bhau Maruti Gawde and others seeking possession of the Survey No. 208 property. Prior to instituting the said Suit, the Court Receiver had obtained the requisite leave of this Court on 13th December 1951.

10. On 16th June 1953, when the said Civil Suit No. 26 of 1952 was listed for final hearing, the parties arrived at a settlement. Under the said settlement, Mrs. Rukhamanibai Madiwale and her son agreed to relinquish

their claims in exchange for a one-fourth share in the Survey No. 208 property. The Court Receiver thereafter submitted a report dated 11th July 1953 to this Court recording the said settlement. With the authority and sanction of this Court, the said Civil Suit No. 26 of 1952 came to be disposed of in terms of the settlement, and a decree in terms of the compromise came to be passed on 16th July 1955 (**compromise decree**).

10. Under the compromise decree, the Madiwale family *inter alia* acknowledged and declared that the Survey No. 208 property belonged to the deceased and that the Court Receiver, who had been appointed as Receiver of the estate of the deceased, was entitled to possession thereof. The compromise decree also records that the title deeds in respect of the said property, which had been filed in the Suit by the Madiwale family, were handed over to the Court Receiver.

11. The compromise decree further records that the Madiwale family, who had claimed a sum of Rs. 1,60,000/- as being due and payable to them by the deceased on the basis of an alleged equitable mortgage, or alternatively claimed a one-half share in the Survey No. 208 property or its sale proceeds under the writing dated 22nd June 1946, were granted a one-fourth share in the Survey No. 208 property, in full and final settlement of all their claims against the estate of the deceased.

12. The Madiwale family also agreed that they would have no claim of whatsoever nature against the estate of the deceased or against any of his heirs and legal representatives, including the Court Receiver. The compromise decree records that the said one-fourth share in the Survey No. 208 property was carved out of the entire one-fifth share of the Original Defendant together with the balance amount from the remaining estate of the deceased. It was further directed that the one-fourth share in the said property be separated and divided by metes and bounds through the Court, whereby the Court Receiver would be entitled to a three-fourth share and the Madiwale family to a one-fourth share in the Survey No. 208 property.

13. However, it appears from the record that no partition of the Survey No. 208 property was effected in terms of the compromise decree until about the year 1984.

14. Thereafter, the heirs and legal representatives of the parties to Civil Suit No. 26 of 1952 agreed to effect partition of the Survey No. 208 property in terms of the compromise decree. Accordingly, the Court Receiver submitted a report dated 21st July 1984 seeking directions of this Court to authorise him to partition the said property by metes and bounds by drawing lots amongst the parties, as agreed between the Court Receiver and the

Madiwale family (except the Official Assignee). By an order dated 25th July 1984, this Court granted the liberty sought in the said report.

15. It appears that a portion of the property bearing Survey No. 208 remained unpartitioned at the relevant time as the same was subject to land use restrictions/reservations under the Final Town Planning Scheme of Yeravada Village, as reflected in the plan prepared by M/s. Salvi Architects. Consequently, only this portion of Survey No. 208 remained to be partitioned after the partition effected between the parties in the year 1989. This portion has been designated as Final Plot No. 79 (Part), admeasuring 4,271.50 sq. mts., and Final Plot No. 80 of TPS Yeravada, Pune, admeasuring 12,769.37 sq. mts. (Final Plot No. 80).

16. The Bishop's Education Society, the Applicant in Chamber Summons No. 627 of 2006, sought to intervene in the present Suit and *inter alia* sought discharge of the Court Receiver in respect of Final Plot No. 80.

17. The Applicant contended that the appointment of the Court Receiver interfered with its alleged rights in respect of Final Plot No. 80. By an order dated 22nd January 2024 passed by this Court, the said Chamber Summons came to be allowed and the Court Receiver was discharged in respect of Final Plot No. 80 without passing accounts. The Plaintiffs and Defendant No. 17 have challenged the said order by filing Appeal No. 16 of

2025 and Appeal No. 19 of 2025 respectively, which are presently pending before the Division Bench of this Court. In view thereof, the present judgment and order does not deal with Final Plot No. 80 and all parties shall remain bound by the outcome of the said Appeals.

18. Thereafter, Kalpataru Constructions (Pune) took out Chamber Summons No. 905 of 2015 seeking to be impleaded as a party Defendant in the present Suit, contending that under Articles of Agreement for development executed with the Madiwale family in or about the year 1989, they had acquired certain rights in respect of the share of the properties held by the Madiwale family. The said Chamber Summons came to be allowed by an order dated 23rd February 2018 passed by this Court. The said order was unsuccessfully challenged before the Division Bench. Accordingly, Kalpataru Constructions (Pune) has been impleaded as Defendant No. 2 in the present Suit.

19. Thereafter, on account of certain disputes and differences amongst the Plaintiffs, and pursuant to the orders dated 30th November 2018 and 21st December 2018, some of the Plaintiffs came to be transposed as Defendant Nos. 3 to 15 in the present Suit.

20. Subsequently, Classic Royal Realty Developers LLP sought impleadment as a party Defendant in the present Suit by taking out Chamber

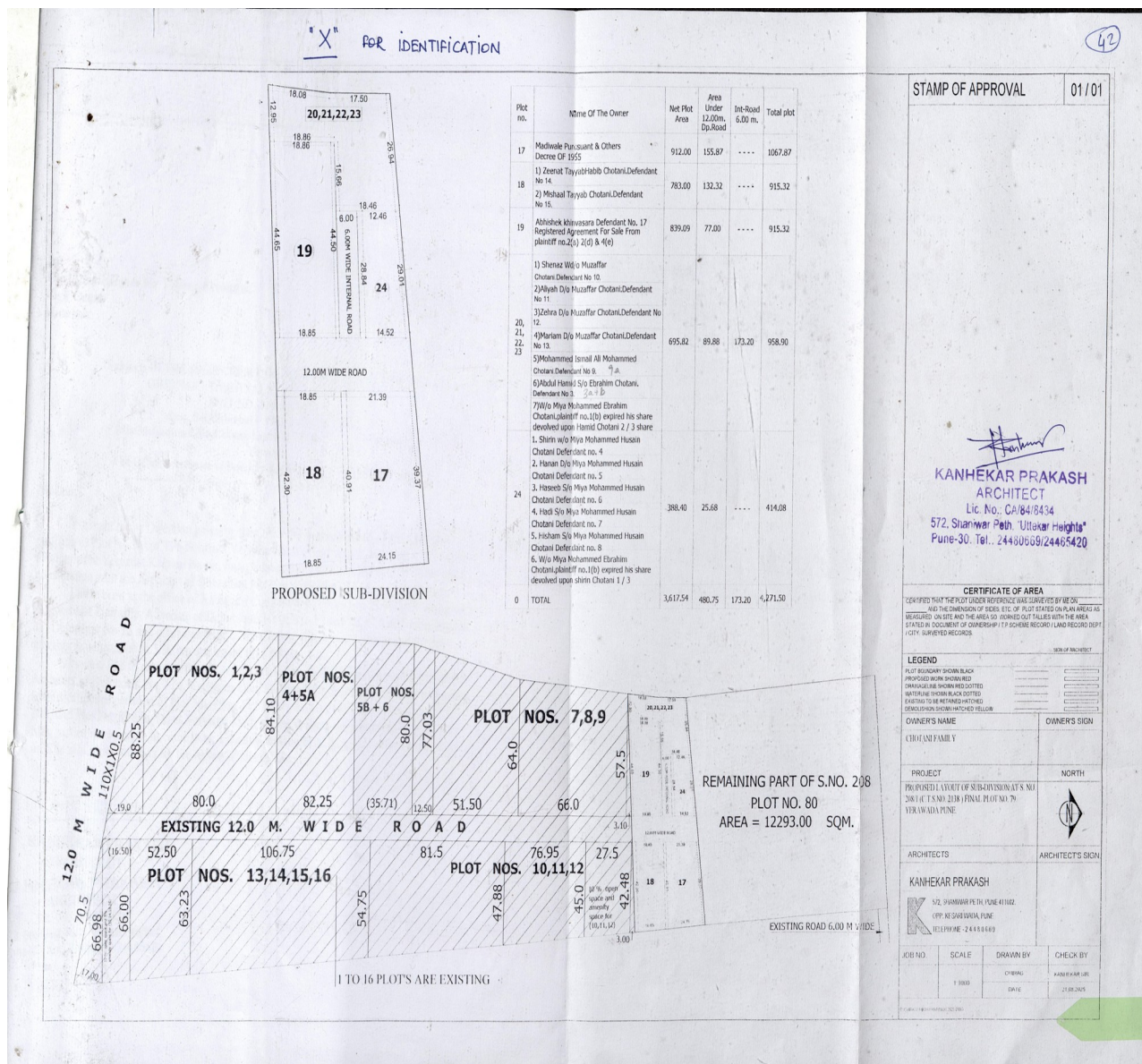
Summons (L) No. 1645 of 2018. The said Applicant contended that it had entered into an Agreement for Sale (without possession) with the Madiwale family in respect of their undivided share in the Survey No. 208 property. Reliance was placed on a registered Agreement for Sale dated 3rd May 2018 under which a consideration of Rs. 7.50 Crores was stated to have been paid to the Madiwale family. The said Applicant also claimed to have entered into certain Memoranda of Understanding with some of the other parties to the Suit in respect of their respective shares in the said property. The said Chamber Summons came to be allowed by an order dated 28th February 2019 and Classic Royal Realty Developers LLP was impleaded as Defendant No. 16.

21. Thereafter, one Mr. Abhishek L. Kinvasara took out Chamber Summons No. 280 of 2017 seeking to be impleaded as a party Defendant, contending that he had entered into certain registered Agreements for Sale with Plaintiff Nos. 2(a), 2(d) and 5(e), registered with the Sub-Registrar of Assurances on 19th August 2018, 27th August 2018 and 29th September 2018 respectively, pursuant to which consideration amounts were stated to have been paid by him. The said Chamber Summons also came to be allowed by an order dated 28th February 2019 and Mr. Abhishek L. Khinvasara was impleaded as Defendant No. 17 in the present Suit. Defendant No. 17 has also relied upon certain Memoranda of Understanding allegedly executed with other Defendants in respect of their respective shares in the property.

22. Defendant No. 17 thereafter took out Notice of Motion No. 909 of 2019 seeking various reliefs, including an injunction restraining the parties from creating any third-party rights in respect of Final Plot No. 79 (Part) and Final Plot No. 80. At that stage, the parties agreed to maintain *status quo* in respect of the said properties and further agreed not to take any steps in relation thereto without the prior leave of this Court. The said statement was recorded and accepted by this Court in orders dated 30th April 2019 and 3rd May 2019. Subsequently, by an order dated 20th June 2025 passed in the said Notice of Motion, this Court clarified that the said statement would not operate so as to prevent the exercise of partition of the said properties and that the process of partition may proceed before the Commissioner for Taking Accounts.

23. Pursuant to the preliminary decree dated 28th March 1950, the Commissioner for Taking Accounts has now submitted a report proposing partition of the remaining portion of Final Plot No. 79 (Part) situated at Yeravada, Pune. The said report is accompanied by a plan prepared by the Architect Mr. Kanhekar Prakash dated 21st August 2025. The said plan proposes partition of Final Plot No. 79 (Part), admeasuring 4271.50 sq. mts., by metes and bounds by dividing the same into various sub-plots as indicated therein. The said plan is taken on record and marked "X" for identification. All the Plaintiffs and contesting Defendants, save and except Defendant No. 2, have

consented to the partition as proposed in the said plan. For the sake of convenience, the said plan is reproduced hereunder:-



24. The principal objection raised by Defendant No. 2 pertains to the provision of a 12-metre internal road shown in the said plan for access to the proposed sub-plots. Upon perusal of the plan, it appears that the said road is in continuation of an existing access road leading to the property. In view of the

objection raised by Defendant No. 2, this Court called for the opinion of the Architect as to the necessity of providing a 12-metre road and whether a 6-metre road, as suggested by Defendant No. 2, would suffice. The Commissioner for Taking Accounts has accordingly placed on record the opinion of the Architect dated 10th February 2026, who has set out the reasons for providing a 12-metre road instead of a 6-metre road.

25. The said opinion clarifies that the 12-metre road requirement is in consonance with the Unified Development Control and Promotion Regulations for Maharashtra State (UDCPR). The opinion further clarifies that as the proposed sub-plots fall within the ambit of Regulation 3.3.2 (sub-clause “C”) - Roads/Streets in Land Sub-division or Layout and Regulation 3.3.3 - length of Internal Roads, How to be Measured, it is mandatory to have a 12-metre road for the partition. Further, the said opinion also notes that the previous plan for sub-plotting of the 16 plots which had taken place in the year 1984 clearly shows such 12-metre internal road is needed to be extended till the end of the Final Plot No. 79 and as an entry to Final Plot No. 80. Lastly, the said opinion also clarifies that development potential can be obtained by using the FSI of the road on the said plot of land and there would therefore be no loss of FSI on the said plot of land.

26. Having perused the said report and the opinion of the Architect recorded therein, I am satisfied that the provision of a 12-metre internal road is

justified having regard to the layout and the access requirements of the proposed sub-plots keeping in mind the present legal requirements. The objection raised by Defendant No. 2 is therefore devoid of merit and is accordingly rejected.

27. In the above circumstances, the following order is passed:

:: ORDER ::

- (i) The Commissioner for Taking Accounts shall proceed to effect partition of the property being Final Plot No. 79 (Part), admeasuring 4271.50 sq. mts., in accordance with the said plan dated 21st August 2025 prepared by Architect Mr. Kanhekar Prakash and annexed to the Commissioner's Report dated 10th December 2025, which plan is marked "X" for identification and which plan is also reproduced under paragraph 23 hereabove.
- (ii) The Commissioner for Taking Accounts shall cause demarcation of the said property to be carried out through the District Superintendent of Land Records (DSLRL) or the concerned City Survey Officer, Pune, in accordance with the said plan and shall take necessary steps for updating the revenue records in respect thereof.

- (iii) Architect Mr. Kanhekar Prakash shall carry out the physical demarcation of the sub-plots in accordance with the said plan in the presence of the concerned authorities including the DSLR. The parties shall be at liberty to remain present at the time of such demarcation if they so desire.
- (iv) The Commissioner for Taking Accounts shall be authorised to incur and pay the necessary charges for the aforesaid exercise and shall recover the same from the parties.
- (v) Insofar as Sub-Plot No. 17 shown in the said plan, which is claimed by Defendant Nos. 2 and 16, this Court is informed that Defendant No. 2 has instituted Civil Suit No. 268 of 2019 before the Civil Judge, Senior Division, Pune. Pending adjudication of the said Suit, the Registrar of the concerned District Court, Pune, is appointed as Receiver in respect of Sub-Plot No. 17 admeasuring 1067.87 sq. mts. Possession of the said sub-plot shall be dealt with in accordance with the judgment that may be passed in the said Suit.
- (vi) Insofar as Sub-Plot No. 19 admeasuring 915.32 sq. mts. is concerned, which falls to the share of the Plaintiffs and which is stated to have been assigned in favour of Defendant No. 17 under registered instruments, the Court Receiver shall execute

the necessary conveyance in respect thereof in favour of Defendant No. 17 and hand over possession of the said sub-plot accordingly. The Commission charges of the Court Receiver shall be borne by Defendant no. 17.

(vii) The parties shall furnish all necessary documents to the Court Receiver to enable execution of the necessary conveyances.

(viii) Defendant Nos. 16 and 17 claim competing rights in respect of Sub-Plot Nos. 18, 20, 21, 22, 23 and 24 shown in the said plan on the basis of certain Memoranda of Understanding allegedly executed with other Defendants. It shall be open to Defendant No. 16 or Defendant No. 17 to institute appropriate proceedings before a competent Court for adjudication of their rights in respect of the said sub-plots. In the event of such proceedings being instituted, the benefit of Section 14 of the Limitation Act, 1963 shall be available to them.

(ix) To enable Defendant Nos. 16 and 17 to initiate appropriate proceedings, the parties shall maintain *status quo* in respect of Sub-Plot Nos. 18, 20, 21, 22, 23 and 24 as shown in the said plan. The said order of status quo shall operate until 15th June 2026.

- (x) Upon compliance with the aforesaid directions, the Commissioner for Taking Accounts, the Court Receiver, High Court, Bombay and the Official Assignee shall stand discharged without passing accounts.
- (xi) The costs, charges and expenses of the Court Receiver shall be borne by the Plaintiffs and Defendant Nos. 2 to 17 in equal shares.
- (xii) Suit No. 208 of 1950 is accordingly disposed of in the above terms.
- (xiii) All pending Notice of Motions and Interim Applications, if any, do not survive and are disposed of accordingly.

(FARHAN P. DUBASH, J.)

Amol