

MHKO020014442014	Presented on : 15-05-2014
	Registered on : 17-05-2014
	Decided on : 16-04-2026
	Duration : YY, MM, DD
	09 11 00

IN THE COURT OF 11th Jt. CIVIL COURT SENIOR DIVISION,
KOLHAPUR, DIST. KOLHAPUR.
(Presided over by Ashish D. Waman)

Reg. C. S.No. 469/2014

Exh. No. 67/A

1. Shri. Jitendra Bandu Bhosale,
Age - 40, Occu. - Doctor,
R/o. 303, Haripujapuram
Nagala Park, E Ward,
Kolhapur
 2. Sou. Smita Jitendra Bhosale,
Age - 36, Occu. - Service,
R/o. As above
- ... Plaintiffs**

Versus

Jagan Tukaram Desai,
Age – 41, Occu. Doctor,
R/o. S/o. Tukaram Bhiva Desai,
302, Saptgiri Co-op. Housing
Society, Cosmos Hills, Pokharan
Road no. 1, Upvan Thane, J. K.
Gram, Maharashtra 400 606

... Defendant

Appearance:

Shri. K. K. Saswade – Advocate for plaintiffs.

Shri. P. R. Patil – Advocate for defendant.

JUDGMENT**(Delivered on 16.04.2026)**

This is a suit for perpetual injunction in respect of property flat no. 303, built up area 83.07 Sq. meter and terrace area 12.4 sq. meter with car parking no. P-09 area 10.00 sq. meter, in Haripuja puram, H.R. 3 apartment, constructed on Revision Survey No. 117, E-Ward, in jurisdiction of Kolhapur Municipal Corporation, Tal. Karveer, Dist. Kolhapur (Hereinafter referred as 'suit property').

The facts giving rise to file the present suit are as follows :-

2. The suit property originally belonged to Lekhraj Jaiswal and was purchased by the plaintiffs on 22/01/2009 through a registered sale deed. Since then, the plaintiffs have been the lawful owners and are in possession and enjoyment of the property. The defendant is a former school friend of Plaintiff No. 1, and they shared a close relationship.

3. It is averred that, plaintiffs intended to sell an office premises in Kolhapur to the defendant, and a transaction was agreed upon. The defendant paid Rs. 45,00,000/- to plaintiff No. 1, but the deal was later cancelled. Out of this, Rs. 15,00,000 was returned, and the remaining Rs. 30,00,000/- was agreed to be repaid later. As the plaintiffs could not immediately repay the balance amount, the defendant insisted on security. Accordingly, a nominal sale deed dated 08/02/2013 was executed in favor of

the defendant as a form of security, without actual intention to transfer ownership. The property's real market value was around Rs. 70–75 lakhs, showing that the transaction was not a genuine sale.

4. It is averred that, no actual sale consideration was paid under the 2013 sale deed, nor was possession of the property handed over to the defendant. The deed also does not mention transfer of possession, confirming that it was not intended to be a real sale but merely a security arrangement.

5. It is averred that, it was agreed that the defendant would take a loan on the property and the plaintiffs would repay it. After repayment, the defendant would re-transfer the property to the plaintiffs. The plaintiffs have been regularly paying the loan installments, but recently the defendant has attempted to sell the property to third parties.

6. It is averred that the defendant has been interfering with the plaintiffs' peaceful possession and has threatened them through phone calls. Some persons sent by the defendant also visited the property and tried to force the plaintiffs to vacate, causing obstruction and disturbance.

7. It is averred that plaintiffs continue to be in possession and have been paying electricity, water bills, taxes, and other charges since 2009. All official documents, including vehicle

registration, Aadhar, and bank correspondence, are linked to the suit property, proving their possession.

8. It is averred that plaintiffs admit liability of Rs. 30,00,000 but state that it is secured through the loan arrangement. The sale deed is only nominal and does not confer ownership to the defendant. Therefore, they have filed the suit seeking a permanent injunction to restrain the defendant from selling, transferring, or interfering with the property and the plaintiffs' possession until final disposal of the case.

9. The defendant has filed a written statement and counterclaim (Exh.20) denying all allegations made by the plaintiffs. He asserts that the entire plaint is false, fabricated, and misleading, and therefore not admitted. The suit has been filed without any valid cause of action and is liable to be dismissed with costs. However, he admits that the description of the suit property mentioned in the plaint is generally correct.

10. Defendants specifically denies the plaintiffs' claim that the 2013 sale deed was executed only as a security or nominal document. According to him, this statement is false and the sale deed dated 08/02/2013 was a genuine transaction. The defendant further denies that no consideration was paid or that possession was not transferred. He states that the plaintiffs received full payment through cheque and cash, and the sale was completed lawfully.

11. The defendant also rejects the claim that there was any agreement regarding repayment of a loan by the plaintiffs or re-transfer of the property. According to him, no such arrangement ever existed between the parties. The defendant denies all allegations of interference, threats, or obstruction, and states that the cause of action mentioned by the plaintiffs is false and never occurred. Therefore, the suit is baseless and liable to be dismissed. The defendant contends that the suit is improperly valued and insufficient court fees have been paid, therefore it is liable dismissed.

12. The defendant further contends that plaintiff No. 1 is involved in fraudulent activities, including cheating people with false promises of jobs and impersonation, and that criminal cases are already pending against him. He claims the plaintiffs have approached the court with unclean hands. According to the defendant, after purchasing suit property, he allowed the plaintiffs to stay there as tenants due to their friendship, since they had no residence. The plaintiffs were paying amounts towards loan installments as rent, but have falsely interpreted it as repayment for re-transfer.

13. In his counterclaim, the defendant contended that he is the lawful owner and that possession was already handed over to him, but later permissively given back to the plaintiffs for residence. He alleges that the plaintiffs are now unlawfully

retaining possession and attempting to grab the property. Therefore, defendant has sought dismissal of the plaintiffs' suit with costs and compensation of Rs. 50,000. Through the counterclaim, he has prayed to grant him actual and physical possession of the property from the plaintiffs and pass appropriate orders in his favor.

14. The plaintiffs have filed a written statement in response to the defendant's counterclaim (Exh.49) and denied the entire contents. They assert that the description of the property in the counterclaim is incorrect and that the counterclaim misrepresents the subject property, which the plaintiffs have correctly identified in their suit. They contend the counterclaim is legally invalid and lacks any cause of action.

15. The plaintiffs specifically deny that they ever handed over possession of the property to the defendants. They state that contention of defendants that suit property was only given by defendants to plaintiff on a permissive tenancy basis due to friendship and residence needs shows that plaintiffs are in possession of suit property. The plaintiffs stated that all statements in the counterclaim claiming otherwise are false, misleading, and malicious.

16. The plaintiffs further deny the defendants' claim that they attempted to transfer the property to a third party or that any fraudulent intent exists. The defendants have provided no

documentary evidence to support these allegations. Any reference to criminal complaints by the defendants is irrelevant and baseless. The plaintiffs contended that the counterclaim's valuation is false and improperly stamped. According to them, the market value of the property should have been considered, and the court fees properly assessed under the Maharashtra Court Fees Act, 1959, but the defendants have deliberately undervalued the claim to mislead the court. The reliefs sought by the defendants are legally impermissible and cannot be granted. On these grounds, plaintiffs prays that the counterclaim be dismissed with costs.

17. The issues were framed at Exh. 24. I have given my findings thereto for reasons recorded thereunder :-

<u>Sr.No</u>	<u>Issues</u>	<u>Findings</u>
1	Whether plaintiff prove that the sale deed dtd. 08/02/2013 in respect of suit property nominal sale in favour of defendant ?	Does not survive
2	If yes, whether they further proves that defendant agreed to obtain loan on the property from the bank and it was agreed to be repaid by the plaintiffs ?	Does not survive
3	Whether defendant prove that he has paid whole consideration to the plaintiff and sale deed dtd. 08/02/2013 was absolute sale ?	In affirmative
4	Whether plaintiffs are entitled for relief of permanent injunction ?	Does not survive
5	Whether defendant is entitled for relief of possession of suit property ?	In affirmative
6	What order and decree ?	As per final order

REASONS

18. As plaintiffs were absent and they have not produce the evidence, the suit was dismissed and counterclaim of the defendant is proceed. In order to prove his counter-claim defendant has examine himself at Exh.25. He has examine DW-2 Amol Patil as Exh. 52. The defendant has relief on following documents.

1. Copy of sale deed no. 630/2013 Exh.53
2. copy of mortgage deed Exh. 54
3. Account extract of house loan at Exh. 55

19. Heard Ld. Advocate for defendant. The plaintiffs and their advocate not present for argument.

As to issue No.1, 2 and 4 :-

20. These issues relate to the claim of the plaintiffs that the sale deed dated 08/02/2013 is a nominal document executed as security and that they are entitled to injunction. It is pertinent to note that the plaintiffs failed to lead any evidence in support of their case. They remained absent during the trial and did not step into the witness box. Consequently, the suit filed by the plaintiffs came to be dismissed for default vide order dated 23/12/2025. In view of dismissal of the suit, the reliefs claimed by the plaintiffs do not survive for adjudication. Therefore, Issues No. 1, 2, and 4 do not require determination on merits.

Accordingly, Issue Nos. 1, 2, and 4 are answered as “Does not survive”.

As to issue No.3

21. It is contention of defendant that the sale deed dated 08/02/2013 is an absolute sale for valid consideration. The burden of proving this issue lies upon the defendant. The defendant has examined himself at Exh. 25 and deposed that he purchased the suit property from the plaintiffs through a registered sale deed bearing No. 630/2013 dated 08/02/2013 for valuable consideration.

22. The defendant has categorically deposed that the entire sale consideration was paid partly by cheque and partly in cash and that possession of the suit property was handed over to him at the time of execution of the sale deed. To substantiate his claim, the defendant has produced the copy registered sale deed at Exh.53.

23. On careful perusal of the said document, it is evident that it is a duly registered document executed before the Sub-Registrar. It contains recitals regarding payment of consideration. It records transfer of right, title, and interest in favour of the defendant. It mentions delivery of possession. It is a well-settled principle of law that a registered sale deed carries a presumption of validity and due execution. Such presumption can be rebutted only by strong and cogent evidence.

24. In the present case, the plaintiffs have taken a plea that the said document is nominal and executed as security. However, they have failed to substantiate this contention. The plaintiffs have neither entered the witness box nor produced any documentary evidence to show that transaction was in the nature of a loan, or sale deed was executed as a security, or there was any agreement for re-transfer of the property. It is also significant that the plaintiffs did not cross-examine the defendant or his witness. Hence, the testimony of the defendant remains unchallenged.

25. The defendant has further examined DW-2, a bank official (Exh.52), who has deposed that the defendant had mortgaged the suit property with the bank and obtained a housing loan. The mortgage deed (Exh.54) and loan account extract (Exh.55) corroborate the fact that the defendant has dealt with the suit property as an owner. Such conduct is consistent only with ownership rights and not with a nominal or sham transaction. In absence of any rebuttal evidence from the plaintiffs, the presumption attached to the registered sale deed remains unrebutted. Therefore, it can safely be concluded that the defendant has proved that the sale deed dated 08/02/2013 is a genuine and absolute sale transaction executed for valid consideration. Hence, Issue No. 3 is answered in the affirmative.

As to issue No.5

26. Now it is necessary to see as to whether defendant is

entitled to recovery of possession of the suit property. The defendant's entitlement to possession is based on his title over the suit property. The defendant has successfully established his ownership by virtue of the registered sale deed. The plaintiffs, on the other hand, have failed to establish any legal right to continue in possession of the suit property. Though the plaintiffs are admittedly in possession, mere possession without legal title does not confer any right against the true owner. The defendant has explained that after purchase, he permitted the plaintiffs to reside in the suit property due to friendly relations. This explanation appears probable, especially in absence of any contrary evidence. It is a settled position of law that the owner is entitled to recover possession from any person in unauthorized occupation. In the present case, the plaintiffs have failed to prove any legal basis for their possession. Therefore, their possession is unauthorized and they are liable to hand over possession to the defendant. Accordingly, Issue No. 5 is answered in the affirmative.

As to issue No. 6

27. In view of the findings recorded on Issue Nos. 3 and 5, the counterclaim filed by the defendant deserves to be decreed. The conduct of the plaintiffs in not prosecuting the suit and compelling the defendant to file a counterclaim also justifies awarding costs. Ultimately, in answer to issue no. 6, I pass following order.

ORDER

1. The counterclaim filed by the defendant is hereby decreed with costs.
2. The plaintiffs are directed to hand over vacant and peaceful possession of the suit property to the defendant within a period of two (02) months from the date of this judgment.
3. In case of failure, the defendant is at liberty to recover possession through execution proceedings in accordance with law.
4. The plaintiffs shall pay the costs of the counterclaim to the defendant and bear their own costs.
5. Decree be drawn accordingly.

(Judgment Dictated & pronounced in open Court)

Place : Kolhapur.

Date : 16/04/2026.

(A. D. Waman)
11th Jt. Civil Judge Senior Division,
Kolhapur