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IN THE COURT OF ADHOC DISTRICT JUDGE,VITA
(Presided over by U.V. Indapure)

REGULAR CIVIL APPEAL No.424 OF 2024
(Old Reg. Civil Appeal No. 82/2021)

Exh. No. 65

1. Baban Bapu Sawant,	)	
Age 73 Years, Occu. Agri.,	)	
R/o. Andhali, Tal.Palus,	)	<u>Appellant</u>
Dist.Sangli.	)	

VERSUS

1. Pratibharani Bhupal Sawant	)	
Age – 54 yrs. Occu. -Household	)	
	)	
2. Sanket Bhupal Sawant	)	<u>Respondents</u>
Age- 34 Yrs. Occu. - Agriculture	)	
	)	
3. Aniket Bhupal Sawant	)	
Age – 32 Yrs. Occu. - Service	)	
All are R/o. Sawantpur, Tal.	)	
Palus, Dist.Sangli.	)	

Appeal U/S. 96, Order 41 of Code of Civil Procedure

Adv. Shri. C.D. Mane for the Appellant.

Adv. Shri. K.D. Kamble for the respondent.

JUDGMENT

(Delivered on 02.08.2025)

The appellant has preferred this appeal against Judgment and decree passed by Ld. Civil Judge Jr.Dn. Palus, Tal. Palus, Dist. Sangli in Reg. Civil Suit No.8/2024 dtd. 31.03.2021 whereby learned trial Court dismissed the suit with costs.

2. Brief facts necessary to decide the present appeal are as under: Hereinafter, parties are referred to as per their original status.

The plaintiff has filed suit for perpetual injunction restraining defendants and any other persons representing them on their behalf from causing obstruction and interference over peaceful possession of land Gat No.408 admeasuring 3.70 R, 0.04 pot kharab land situated at Andhali, Tal. Palus, Dist. Sangli including house admeasuring 40x50 foot constructed on it, borewell, electricity connection, electric motor and pipeline, situated in the suit property. (this is the subject matter of the suit hereinafter it is called as 'suit property').

3. Defendant No.1 is wife of brother of the plaintiff and defendant Nos. 2 & 3 are sons of defendant No.1. Suit property has been purchased in name of the plaintiff and predecessor of the defendants namely Bhupal Bapu Sawant. The plaintiff had paid entire consideration amount of sale deed of suit property.

The defendants did not pay any amount of consideration, but the sale deed was executed in the name of the plaintiff and Bhupal. Bhupal who was brother of the plaintiff was suffering from heart disease and the plaintiff spent lot of money for treatment of Bhupal. Due to illness Bhupal died and he could not pay purchased amount to the plaintiff. Bhupal was doing job in the Bank but due to illness, his financial condition was weak. Defendant Nos. 2 & 3 were minor at the time of execution of sale deed. The plaintiff has been exclusively cultivating suit property since the date of purchase and he constructed house in the suit property. He has also dug a bore well to supply water to the field. The plaintiff is sole owner of suit property and defendants have no concerned with it.

4. According to the plaintiff, defendant had filed RCS No.170/2006 in the Civil Court at Tasgaon for the relief of permanent injunction. Defendant No.1 has admitted in that suit that plaintiff in this matter is exclusively in possession of the suit property. The defendants are taking disadvantage of their names recorded to the 7/12 extract of the suit property and trying to encroach upon the possession of the plaintiff. The plaintiff opposed to the act of the defendants, at that time they lodged false criminal case against the plaintiff on 18.01.2014. The defendants are trying to take possession of the suit property forcefully and illegally. Hence, the plaintiff constrained to file suit. It is prayed that appeal be allowed by setting aside

judgment and decree passed by Ld. Trial Court, Palus.

5. Defendant Nos. 1 to 3 have filed written statement below Exh.17 and admitted their relationship with the plaintiff. They admitted suit property was purchased in name of the plaintiff and deceased Bhupal jointly. Bhupal was husband of defendant no.1 and father of defendant nos 2 and 3. The defendants have denied remaining contents in the plaint.

6. According to the defendants, deceased Bhupal and plaintiff had jointly purchased suit property. Deceased Bhupal obtained loan from Rajarambapu Sah. Bank Ltd., Peth, to purchase the said property. Bhupal Babu Sawant paid most of the amount of consideration during his lifetime, therefore, names of the plaintiff and deceased Bhupal jointly mentioned in the sale deed. The defendants have denied that Bhupal was seriously ill and financially weak. The plaintiff and deceased Bhupal with their family have been and are jointly in possession of suit property since the date of purchase of the suit property. Recently the plaintiff constructed house in his portion and the defendants have occupied their share separately. The bore well was dug commonly in suit property for water supply, accordingly Gavkamgar Talathi issued certificate on 18.03.2004. Late Bhupal was working, so it was not possible for him to comply procedure of Electricity Board, so electricity connection was and is taken in the name of the plaintiff. Gavkamgar Talathi has given a

certificate on 24.10.2001 stating that suit property is owned by the plaintiff and late Bhupal Sawant and they have dug a bore well in it. Said bore well is joint. According to the defendants, the said bore well has electricity pump, HDP pipe 45 meters, cable 60 meters, control panel, bore camp and other fitting materials purchased by predecessor of defendants on 11.08.2005 from Subhash Electricals. Late Bhupal had obtained crop loan from Bharti Vi. Ka. Sahakar Society Palus on the suit property. He had also taken loan from Rajaram Bapu Sah. Bank Ltd. Peth Branch Ramanandnagar on mortgage of suit property. The suit property was and is in the possession of the plaintiff and the defendants. The suit property has been cultivating separately by the plaintiff and defendants since last many years. The bore well in the suit property is in the joint possession of the plaintiff and the defendants. The plaintiff never had sole possession in the suit property.

7. It is contented, civil suit bearing RCS No.170/2006 has not been decided on merits, therefore, the documents filed in that suit cannot be considered in this suit. According to the defendants, names of the plaintiff and defendants recorded to 7/12 extract of suit property, therefore question to encroach upon the land of the plaintiff does not arise. The plaintiff has no right to seek injunction against co-owner. The plaintiff has no prima-facie case, balance of convenience does not lie in favour of the plaintiff. The defendants have prayed to dismiss the suit with

costs.

8. The learned trial court after considering evidence of both sides and submission of both advocates, dismissed the suit with costs. Being aggrieved said judgment and decree the original plaintiff has preferred this appeal on the ground that the learned trial Court erred in misconstruing, mis-appreciating and misinterpreting the evidence on record and to relevant provision of law. The learned Trial Court has not framed proper issues. The observations of the learned Trial Court are wrong that the plaintiff and defendants are co-owners and they are in joint possession. In civil suit bearing RCS No.170/2006, the plaintiff of that suit has admitted that bore-well situated in the suit property belonging to the present plaintiff and the plaintiff constructed house in the suit property. RCS No.170/2006 was dismissed, hence need not to prefer appeal against mere findings, so the principle of res-judicata or estoppel does not operate against the plaintiff. The observation of the learned Trial Court in para 30 and 31 of the judgment are wrong and against the law. The appellant has prayed to allow the appeal by setting aside judgment and decree passed in RCS No.8/2014 dtd.31.03.2021.

9. Upon rival pleadings of the parties and submission of the learned counsel for the appellant and the respondents, following points arise for my determination. The points along-with my findings thereon are as under -

Sr. No.	P O I N T S	FINDINGS
1.	Whether the plaintiff proves that he is in exclusive possession over the suit property ?	No
2.	Whether the plaintiff proves, defendants causing obstruction to his peaceful possession over the suit property ?	No
3.	Whether impugned judgment and decree need interference ?	No
4.	What order and decree ?	As per final order.

REASONS

10. Before going to discuss about the evidence and submission of both advocates, it needs to mention admitted facts. The plaintiff and defendants have admitted their relationship. They admitted that suit property was purchased in the name of plaintiff and deceased Bhupal who was brother of the plaintiff. The defendants have admitted that the plaintiff constructed house in the suit property. It is not in dispute that the defendants had filed civil suit bearing RCS No.170/2006 in the Court of Civil Judge Jr. Dn. Palus against the present plaintiff for the relief of perpetual injunction and said suit came to be dismissed. It is admitted there are bore well, electric connection, pipe lines and electric meter in the suit property.

Point Nos. 1 to 4 :-

11. All points are interlinked with each other hence taken together for consideration.

12. Learned Advocate Shri. C.D. Mane for the appellant has submitted that the plaintiff is in settled possession of the suit property, therefore, he can seek perpetual injunction against co-owner. It is settled principle of law possession of trespasser should be protected and the true owner cannot seek possession of that land without following due procedure of law. The defendants had filed suit against the plaintiff which was dismissed on merit. Thereafter, this suit is filed in the year 2014. Defendant No.1 has admitted in her cross-examination in RCS No.170/2006 that, present plaintiff is in exclusive possession of the suit property since the date of purchase, therefore, present defendant No1 or defendants are now estopped from saying that the plaintiff and defendants are in joint possession of the suit property. The defendants have not filed suit for partition, therefore the finding given by the learned Trial Court are on assumption and presumption. Such approach of the learned Trial Court is not correct. It is prayed, appeal be allowed by setting aside judgment and decree passed by learned Trial Court in RCS No.8/2014 dtd 31.03.2021.

13. Learned Advocate for the appellant has placed reliance on the following case laws -

1) T. Lakshmipathi and others Vs.P. Nithyananda Reddy and others reported in (2003) 5 Supreme Court Cases 150 wherein the Hon'ble Apex Court has held, "the law as to co-owner is well settled. Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other co-owner".

2) Rame Gowda (D) by L.Rs. Vs. M. Varadappa Naidu (D) by L.Rs. And another wherein the Hon'ble Apex Court has held, "the Court laid down the following test which may be adopted as a working rule for determining the attributes of settled possession that 1)the trespasser must be actual and physical possession of the property over a sufficiently long period. 2) That the possession must be to the knowledge (either expressed or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi".

3) Balu Mahadeo Randhir Vs.Nabilal Haji Habib Gadiwale and others reported in 1997 (1) Mh.L.J.302, in which the Hon'ble High Court has held that, "plea by plaintiff that defendant was estopped by principle of res-judicata from raising such contention in view of finding given on that issue by Court in earlier suit not tenable.

4)Deva Ram and anotherVs. Ishwar Chand and another reported in (1995) 6 Supreme Court Cases 733 wherein the Hon'ble Apex Court has held that, "an appeal does not lie against mere "findings" recorded by a Court unless the finding amount to a decree or order. Where the suit is dismissed the defendant against whom an adverse finding might have come to be recorded on some issue has no right of appeal and he cannot question those findings before Appellate Court".

5) Vidhyadhar Vs. Mankirao and another reported in (1999) 3 Supreme Court Cases 573. wherein the Hon'ble Apex Court has held that, "where a party to the suit does not appear in the witness box and state his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct".

14. On the other side, learned advocate Shri. K. D. Kamble for the respondents has submitted, the plaintiff and Late Bhupal had purchased suit property jointly and thereafter their names recorded to the property extract of the suit property. The plaintiff has not produced any document to show he alone purchased suit property and paid entire consideration amount to the vendor. The defendants filed civil suit bearing RCS No.170/2006 which was decided on 20.11.2010. The said suit came to be dismissed. Neither party to that suit challenged said judgment, hence said

judgment is intact till today. The findings recorded by the Court in RCS No.170/2006 are binding upon the plaintiff and legal heirs of Bhupal. The plaintiff is not having right to take help of admission of defendant No.1 given in RCS No.170/2006 to establish his case. The plaintiff must prove his case by leading independent evidence and he cannot take advantage of weaknesses in the case of the defendants. Present appeal is not tenable. The learned Trial Court has come to right conclusion hence, no need to interfere in the judgment and decree passed by learned Trial Court. The plaintiff has failed to prove exclusive possession over the suit property. Admission of defendant No.1 does not confer title of the suit property to the plaintiff. The case laws cited on behalf the appellant are not applicable to the present matter. It is prayed appeal be dismissed with costs. Learned advocate for the respondents has relied on the case law **Mahadev Kashiba Waghmode and others Vs. Kallappa Sidhlinga Waghmode and another 2016 (1) AIR Bombay R 593** wherein the Hon'ble High Court has held that, "mutation of property in revenue record does not create or extinguish title. It only enables person in whose favour mutation is ordered to pay land revenue in question even if entry in revenue record does not create any title in respect of land in dispute, Court can rely upon entry in revenue record which would reflect as to who was in possession of land in dispute on date when name of that person had been entered into revenue record".

15. I have gone through the evidence adduced by both parties. The plaintiff has reiterated the contents of plaint in examination in chief. In the cross-examination, he has admitted he neither took receipt from Bhupal nor from the vendor, that he had alone paid consideration amount. Bhupal was serving in Rajarambapu Sah. Bank, when the sale deed was executed. He has not produced any documents showing he alone paid consideration amount. There is no document to show that suit property is in his exclusive possession. He has not produced document showing bore-well was taken in his name and electricity meter bill receiving to his name alone. He has admitted in the year 2001, he was not in service. The predecessor of the defendants namely Bhupal had constructed bungalow at Savantpur when he was in service. He has also admitted Bhupal passed away on 25.12.2005 while he was working in Rajarambapu Bank.

16. Defendant No.2 Sanket has deposed as per contents in the written statement. In the cross-examination, he admitted, in the year 2006, he and defendant No.3 were minors and the dispute is in respect of land gat No.408 situated at Mauje Andhali. He admitted, on 20.11.2010 civil suit RCS No.170/2006 was dismissed. Defendant No.1 has adduced her evidence in that suit. He has also admitted, son of the plaintiff namely Suresh has no concerned with the bungalow and land situated at village Savantpur. Deceased Bhupal purchased land at Savantpur and

constructed house on the property. He has admitted he himself or other defendants never filed suit for partition.

17. A perusal of document produced by the plaintiff goes to show that names of plaintiff and defendant Nos.1 to 3 recorded to the 7/12 extract (Exh.8) pertaining to year 2012-13 of Gat No.408 situated at Andhali, and to Khate Utara (Exh.7). Name of Baban Bapu Sawant recorded to Extract of 8A of village Andhali pertaining to year 2013-14 to 2016-17(Exh. 9). In this extract, details about area and boundaries of the house are not mentioned. It is also not mentioned in which gat number said shed is situated.

18. It seems from the documents produced by the defendants that name of the plaintiff and Bhupal Bapu Sawant recorded vide mutation entry No.5047 on 31.10.2001. In this mutation entry, it is mentioned Baban and Bhupal had purchased land from Namdeo Natha Mane with consent of Anusaya Namdev Mane for consideration of Rs.2,50,000/- by way of registered sale deed dt. 01.06.2001. A perusal of sale deed dt. 01.06.2001 (Exh.66) shows that land Gat No.408 area 3.70 R, 0.04 pot kharab, purchased by Baban Bap Sawant and Bhupal Bapu Sawant from Namdev Natha Mane for consideration of Rs.2,50,000/-. It is not mentioned in the sale deed Exh.66 that Baban had paid entire consideration amount to Namdeo Mane. On the contrary it is mentioned Namdeo had taken money from

time to time for paying his loan amount.

19. It appears from M.E. No.5099 that Bhupal obtained loan of Rs.1,00,000/-from Bharati Vi. Ka. Co-operative Society, Palus on 22.12.2001 on land Gat No.408. Names of legal heirs of deceased Bhupal recorded on 28.06.2006 vide mutation entry No.5058. The names of the plaintiff and the defendants recorded to the 7/12 extract pertaining to year 2017-18 of land Gat No.105 and 151, situated at Sawantpur, Tal. Palus. (Exh.64 and Exh.65) Here it is made clear that there is no dispute between the plaintiff and defendants in respect of lands situated at Sawantpur and the plaintiff has not sought any relief against the defendants in respect of land situated at Sawantpur, Tal. Palus.

20. The plaintiff has produced certified copy of decree passed in RCS No.170/2006 (Exh.70), certified copy of deposition of Pratibharani Sawant (Exh.71), certified copy of deposition of Baban Sawant (Exh.76), certified copy of Exh.1 of RCS No.170/2006 (Exh.77), certified copy of written statement of defendant (Exh.78) and certified copy of judgment in RCS No.170/2006 (Exh.79). The learned Trial Court has given affirmative finding of the issue that whether the plaintiff prove that suit property is in common possession of the plaintiff and defendant in RCS No.170/2006 (Exh.79). Said suit dismissed on the ground that one co-owner cannot claim injunction against other co-owner. It is also held in that judgment that the plaintiff

and previous title holder of the defendants are joint purchaser of the suit property and they appeared to be in joint possession. Therefore, plaintiff cannot claim injunction in respect of specific portion of the property without effecting partition. The learned Trial Court has also come to conclusion in that suit that the defendant failed to prove that he is sole owner of the suit property. Admittedly defendant in that suit has not preferred appeal against the findings given in the issue No.1.

21. Defendant No.1 in the present suit filed suit bearing RCS No.170/2006 for perpetual injunction on 15.09.2006 and said suit dismissed on 20.11.2010. As stated above the parties have not preferred appeal against the judgment and decree passed in RCS No.170/2006. Thereafter, Baban Sawant has filed present suit on 05.02.2014 claiming perpetual injunction against the defendants. The plaintiff in this matter has not established that after the judgment in RCS No.170/2006, the defendants in the present matter handed over the possession of their share to him or partition was effected between them in respect of the suit property, so he is in exclusive possession of suit property. Moreover, the plaintiff has not brought on record to show he alone paid entire consideration amount to the vendor. On the contrary evidence shows that the financial condition of Bhupal was very good, therefore he constructed bungalow in the land situated at Sawantpur.

22. The electricity connection, bore-well, electric motor and pipeline are available in the suit property. The appellant/plaintiff tried to convince that bill of sugarcane crop issued in the name of appellant. The appellant has produced khate utara bill of sugarcane in the name of appellant, photographs and receipt of bill of photo alongwith list Exh.64. The appellant has not proved these documents as per the provisions of evidence Act. Moreover the appellant has not given any satisfactory explanation why he did not produce those documents before the trial court or alongwith appeal memo. The plaintiff has not produced any documents such as receipts, copy of form, purchase receipt of pipes and electric motor to show he alone spent money for taking all above things in the suit property.

23. I have gone through the cited case laws on behalf of the appellant. In the present matter both parties admitted that suit property purchased in the name of Baban and Bhupal jointly. The learned trial Court has held in RCS No.170/2006 that the suit property is in common possession of the plaintiff and the defendants therefore, they are co-owner. One co-owner cannot take exclusive possession of the property and each co-owner has interest in every inch of the common property. The plaintiff and the defendants have not filed suit for partition to get their separate share in the suit property. This fact shows that both are having possession in the suit property. In this fact and

circumstances the ratio laid down in the cited case law (2003) 5 SCC 150 is applicable to the case of the defendants. Other case laws cited by the appellant are concerned, the facts mentioned in the case laws are totally different that the facts of the present matter, therefore with due respect I state the ratio laid down in the case laws are not helpful to the plaintiff.

24. So far as case law submitted on behalf of the respondents is concerned, it is settled principle of law that entry in the revenue record is taken for fiscal purpose and it is not title document. The ratio laid down in the case law is applicable to the defence of the defendants.

25. Injunction is the equitable remedy, the person who seeks equity come with clean hand and has not suppressed material fact from the Court. In this suit, the plaintiff is seeking injunction against co-owner. He has not proved that he alone spent money for taking bore-well, electricity connection, pipeline etc. Moreover, he failed to prove, he himself paid entire consideration amount to the vendor and deceased Bhopal promised to pay him half amount of consideration by selling his land known as 'Deskat' situated at Savantpur. On the other side, evidence on record shows that Bhupal was in service at the time of execution of sale-deed and his financial position was sound. In such situation, it can be said that the plaintiff has not come with clean hands.

26. Learned advocate for the appellant has submitted admission of present defendant No.1 given in RCS No.170/2006 is material and supported to the case of the plaintiff. The plaintiff has established his case by his evidence and admission of the defendant. Here, it is to be stated, the plaintiff has come before the Court, therefore he has to prove his case by producing documents and adducing evidence and he cannot take advantage of defects or error in the evidence of the defendants. At the cost of repetition, I state that, the learned trial court had taken said admission of defendant no.1 in consideration at the time of decision of said suit. Hence, I do not accept submission of learned advocate for the appellant. It is to be stated that on the basis of admission of the defendant No.1 in RCS No.170/2006, it cannot be concluded that the plaintiff of present suit is in exclusive possession of suit property.

27. I have gone through the judgment and decree passed by the learned trial Court. The ld. Trial Court has considered evidence adduced by both sides and submission of advocates of the plaintiff and the defendants. The learned trial Court properly considered the documents produced by the parties and came to right conclusion.

28. As discussed above, the plaintiff has failed to establish that the suit property is in his exclusive possession. He

also failed to prove obstruction with the hands of the defendants. Partition of the suit property between the plaintiff and the defendants yet to be effected, hence the defendants are also in possession of said property because it is purchased by the plaintiff and deceased Bhupal jointly. In these facts and circumstances, the issues framed and findings given thereon by the learned trial Court are correct and proper, hence no need to interfere in the judgment and order passed by the Learned Trial Court. Accordingly, I accept submission of learned advocate for the respondents and also take help of case laws (2003) 5, SCC 150 and 2016 (1) AIR Bombay R 593 and answer point nos. 1 to 3 as above and as to point no. 4, I pass following order -

ORDER

1. The appeal is dismissed.
2. Parties to bear their own costs.
3. Record and proceeding be sent to
Learned C.J.J.D. Palus.
(Pronounced in open Court.)

Date :- 02/08/2025
Vita

(U. V. Indapure)
Ad-hoc District Judge-1,
Vita

CERTIFICATE

I affirm that, the contents of this P.D.F. file, are same word to word, as per the original order.

Name of Stenographer	: A. B. Kamble (Steno Grade-I)
Court	: Addl. Sessions Judge, Vita
Date of order	: 02.08.2025
Signed by Presiding officer on	: 02.08.2025
Uploaded on	: 04.08.2025