

MHND160015482022



RCS No. 385/2022

Ashabai Baburao Bhalerao Vs.
Vinayak Sadashiv Shete

ORDER BELOW EXH. 05

This is an application under Order 39 Rule 1 and 2 of Code of Civil Procedure.

2) The suit is for declaration of ownership and possession of the land bearing survey No.198/D/2 area 0.H 56R. of Village Ashti Tq. Hadgaon Dist Nanded with perpetual injunction to restrain the defendant No. 1 and 2 for causing any obstruction to the plaintiffs possession over the suit property and also for declaration that sale deed No. 156/2022 dtd. 04/07/22 and 1847/2022 dtd. 01/09/2012 are false, illegal, null and not binding upon the plaintiff.

3) **Description of the properties :-**

Landed property bearing survey No.198/D/2 area admeasuring of about 0.H 56R. assessment Rs. 2.06 paisa of village Ashti Tq. Hadgaon Dist Nanded, which is bounded as follows;

Towards East :- Land of Parmeshwar Shete
 Towards West :- Land of Shivaji Madhavrao Shete
 Towards North :- Land of Sindhubai Shete
 Towards South :- Land of Sadashiv Dulba Shete

The above agricultural land is the subject matter of the suit (**here-in-after referred as false, illegal, null and not bin "Suit Property"**).

The plaintiff's case is summarized as under :-

4) The plaintiff has filed this suit for declaration of ownership and possession of the suit property and injunction as well as declaration that the sale deed executed by defendant No.3 to the defendant No.2 and sale deed executed by defendant No.2 to the defendant No.1 are false void and not binding upon her. It is the case of plaintiff that, the plaintiff is the wife of defendant No.3. The defendant No. 2 is the money lender and defendant No.1 is the present purchaser of the suit property from the defendant No.2. The original owner of the suit property was plaintiffs father namely Sitaram Limbaji Shete. In the year 1985 Sitaram Shete performed plaintiffs marriage with the Shankar Sambhaji Chicholkar of village Palsa. Since then, she was residing with him. The landed properties owned by Sitaram Shete bearing survey No. 198/3, 198/D/2 and survey No. 199 of village Aashti was cultivated by the plaintiffs father. However, plaintiffs father was died in the false, illegal, null and not bin 1998 leaving behind the plaintiff and his wife Girjabai as legal

heirs and successors. Therefore, they become the joint owners and possessor of the whole land admeasuring of about 4H 77 R of late Sitaram Shete. Thereafter, Girjabai died in the year 2000 leaving behind the plaintiff as her legal her and accordingly the plaintiff becomes a owner of landed properties which was owned by late Sitaram Shete.

5) It is further submitted that, the plaintiff has not begotten any child from her husband Shankar Chincholkar. Unfortunately plaintiffs husband died in the year 2002 after his death the plaintiff came at Shetewadi(Ashti) and used to cultivate lands of her father. Thereafter, plaintiff performed second marriage with defendant No.3 in the year 2007. After marriage they both were residing at village Shetewadi. However, defendant No.3 Baburao being a gambler, without knowledge and behind back of the plaintiff in collusion with revenue employees has get sanctioned the mutation entry No. 2159 dtd. 27/01/2009 and the land of 79R. out of survey No. 198/3 and 56 R. land out of survey 198/D/2 of village Ashti entered in his name and the rest of the land was shown in the name of the plaintiff. The defendant No. 2 being the money lender get executed nominal sale deed of suit property from defendant No.3 behind the back of the plaintiff on 01/09/2012 towards security of loan. Thereafter the defendant No.2 on the basis of nominal sale deed get sanctioned the mutation of the suit property in his name. The defendant No. 1 is greedy person and came in contact of

defendant No.2 and by taking the benefit of false entries of the name of defendant No.2 in the 7/12 extract get executed the false and illegal sale deed of the suit property in his name behind the plaintiff.

6) In the month of July 2022 the plaintiff went at Talathi office for taking entry of her damaged crop of Soyabean in the suit property, the concerned Talathi told that, the suit property is in the name of defendant No.2 and the defendant No. 1 is insisting to sanction of mutation of the suit property. This fact told by her to his husband i.e. defendant No.3 and brought the copies of relevant documents. After obtaining relevant documents plaintiff came to know that the defendant No. 1 to 3 prepared false documents and trying to dispossess the plaintiff from the suit land. The plaintiff is the owner and possessor of the suit land. The alleged documents and sale deed are false null and void. The defendant No.3 was not the owner or possessor of the suit land so defendant No. 3 will not acquire any rights of the suit property. Hence, submitted to protect the plaintiffs possession by issuing temporary injunction against the defendants.

The defendants case is summarized as under;

7) The defendants have filed written statement vide Exh.18 and by filing pursis at Exh. 20 stating therein that, the written statement be considered as say to the application at Exh.5. Defendant No.1 has admitted the relationship between

the plaintiff and defendant No.3 are the husband and wife. However, denied all the contents of the plaint and submitted that, the defendant No. 2 is not the money lender and defendant No.3 has not obtained any loan from defendant No.2 and transaction between them of the suit property is not the transaction for security purpose. If the defendant No.3 has prepared false and bogus mutation entry bearing No. 2159 dtd. 27/1/2019 then why the plaintiff has not taken any objection to the said mutation entry. Further, if the defendant No.2 has prepared false sale deed from the defendant No.3 dtd. 01/09/2012 then why the plaintiff has not taken any objection about the same since more than period of 10 years. The defendant No.2 has purchased the suit property by registered sale deed dtd. 01/09/2012 and thereafter he has filed application for taking the entry of mutation to the revenue record. It was not objected and the mutation entry is also taken to the revenue record in the name of defendant No.2. Therefore, the defendant No.2 was the owner and possessor the suit property till executing the sale deed in favour of the defendant No.1.

8) It is further contended that, if the defendant No.3 would have taken the suit properties by false mutation entry then the plaintiff would have taken the objection to the said mutation entry or the mutation entry of the defendant No.2 in the year 2009.

9) It is further contended that, the defendant No.1 has purchased the suit property from the defendant No.2. Therefore, defendant No.1 has applied for mutation entry in the year 2022-2023 because he has purchased the suit property by registered sale deed. Therefore, the defendant No. 1 is in the possession of the suit property. Therefore, the question of dispossessing the plaintiff would not arise.

10) It is further contended that, the plaintiff has sought the declaration that the sale deed dtd. 04/07/2022 and 01/09/2012 be cancelled being illegal null and void, but has not paid the proper court fees. It is further submitted that, the defendant No. 3 has also sold out 0H 79 R land from the same gat number to the Laxmibai Namdev Hanmane but plaintiff has not taken any objection to the said sale deed executed by her husband. Therefore, if the mutation entry bearing No. 2159 was prepared falsely by the defendant No. 3 then plaintiff would have filed the objection regarding the other properties which is sold to Laxmibai Hanmane. Therefore, according to defendant the plaintiff in collusion with her husband has filed false suit to grab the illegal gratification from the defendant No. 1 who is the bonafied purchaser of defendant No.2. Therefore, plaintiff herself on one hand shows partition of the suit property with her husband on the stamp paper of 100/- Rupees in the year 2009 and sold out the suit property in the year 2012, and on the other hand filing the suit after 10 years against the defendant

No.1 who is the bonafide purchaser for value without notice. Therefore, this act of the plaintiff shows that, plaintiff has not come with clean hands. Hence, submitted to reject the application.

Argument by Ld.Advocate for plaintiff Shri S.U.Tikore:

11) The Ld. Advocate for plaintiff Shri S.U.Tikore submitted as per his case and further submitted that, the plaintiff is in actual possession of the suit property as per the report of Circle Officer of village Ashti Tq. Hadgaon Dist Nanded. He relied upon the certified copies produced on record of said report and statement of some persons recorded by Circle Officer. According to him, since last 20 to 25 years the plaintiff is in possession of the suit property bearing survey No. 198/D/2 through her husband. According to him, the panchanama prepared by the concerned Circle Officer is important for possession. The transaction between the defendant No. 3 and defendant No. 2 is the nominal transaction and possession was not transferred by the defendant No. 3 to the defendant No.2. According to him, plaintiff is the master of his case and to whom he should make the party is the discretion of plaintiff. Therefore, he submitted that, though the plaintiffs has husband is shown as a possessor and he is defendant No.3, the plaintiff is in possession of the suit property through her husband. Hence, submitted to allow his application.

Argument by Ld. Advocate Shri D.R.Pawar for defendant:

12) Ld. Advocate for the defendant No.1 has vehemently submitted that, the mutation entry No. 2159 is in respect of two properties i.e. for Gat No. 198/3 area 0H.79R. and Gat No.198/D/2 area 0H.56R.. It is dtd. 27/1/2009. It was not challenge by the plaintiff. No dispute between the plaintiff and defendant No. 3 is brought on record. The defendant No.3 sold the suit property to defendant No. 2 on 01/09/2012. The mutation entry of the defendant No. 2 is also confirmed. Despite that, plaintiff has not taken any objection till 2022 i.e. for more than 10 years. The defendant No. 1 is in the possession of the suit property vide registered sale deed. At this stage only prima facie case has to be seen. Therefore, as admitted by the plaintiff the defendant No.3 is in possession of the suit property as per panchanama, then how it can be concluded that, the plaintiff is in possession and defendants are obstructing her possession. Therefore, as the plaintiff admitting partial transaction taken by mutation entry No. 2159 and challenging the partial land of said mutation entry in the present suit is not acceptable. The plaintiff has to either accept the whole transaction or to reject the whole transaction. If plaintiff admitting the mutation entry in respect of partial transaction then it can be inferred that the plaintiff has admitted the same. Hence, he submitted to reject the application.

13) I have considered following points for

determination and recorded my findings thereon with reasons mentioned as follows.

Sr. No.	Points	Findings
1.	Whether plaintiff has established prima facie case in his favour ?	No.
2.	Whether balance of convenience lies in the plaintiff's favour ?	No.
3.	Whether the plaintiff will suffer irreparable loss, if temporary injunction is not granted ?	No.
4.	What order ?	As per final order.

14) **The plaintiff filed following documents on record.**

Sr. No.	Description of documents	List of Exhibit
1)	Copy of 7/12 extract land bearing 198/D/2 of village Ashti area 0H.56 R.	7/1
2)	Copy of 7/12 extract land bearing 198/D/2 of village Ashti area 0H.56 R in the name of Govind Yadav	7/2
3)	Certified copy of 7/12 extract of Gat Survey No. 198/3	7/3
4)	Certified Copy of mutation entry No. 2159 of survey No. 198/3 and 198/D/2	7/4
5)	Certified copy of mutation entry No. 1530 of survey No. 198/D, 198/D/1 and 199.	7/5
6)	Certified copy of mutation entry No.	7/6

	3119 of sale deed between defendant No.2 and 3.	
7)	Copy of application filed by the plaintiff to the Tahasildar about her possession	7/7
8)	Certified copy of sale deed No. 1847/2012	7/8
9)	Certified copy of sale deed No. 156 of 2022	7/9
10)	Verified copy of Adhar Card of plaintiff.	7/10
11)	Certified copy of panchanama dtd. 01/12/2025 conducted by Circle Officer of village Ashti and statements of two witnesses	24/1

15) **The defendants filed following documents on record :-**

Sr. No.	Description of documents	Dates	Exhibit
1.	The order of Tahasildar in the dispute before the Tahasildar bearing No. 2023/Jama-1/ Gat No. 198/D/2/CR	24/04/24	22/1
2.	Order of sub divisional officer in case No. 2024/ appeal/ Ashti/ Hadgaon/CR-34 EQJ- 2024/ 00034	16/05/25	22/2

REASONS

AS TO POINT NO.1:

16) After considering the arguments advanced by both the Ld. advocates and after perusal of documents produced on record it appears that, the plaintiff and defendant No. 3 are

the husband and wife since 2007. The plaintiff being the daughter of Sitaram Shete who was the owner of the landed properties including the suit property is admitted fact. The mutation entry No. 2159 disclosed that, the owner i.e. plaintiff has get partitioned the property bearing Gat No. 198/3 and 198/D/2 and he has given the landed area 0H 79 and 0H 56 R. to the defendant No.3 on the bond of stamp of Rs. 100/- in the year 2009. Admittedly, the same has been not opposed by the plaintiff. Further it appears that, the plaintiff firstly objected in respect of suit property to enter her name to the crop namely soybean in front of her name on 22/09/2022. However, prior to that, the defendant No. 3 has executed registered sale No. 1847/2012 in favour of the defendant No. 2 and thereafter the defendant No. 2 also executed sale deed bearing No. 156/2022 in favour of the defendant No.1. Therefore, it appears that, since 2012 the suit property is transferred to the defendant No. 2 and defendant No.1 by respective registered sale deed.

17) On this background the documents relied by the plaintiff are to be inspected. According to plaintiff the defendant No. 3 is a gambler and he has executed nominal sale deed as and by way of security for loan obtained from defendant No.2. The plaintiff applied to the Tahasildar for taking entry of his crop in the suit property. On the basis of said application the Ld. Tahasildar has issued direction to the concerned Circle Officer and obtained his report. Accordingly,

the Circle Officer vide his pancahanam and report submitted that, the suit property was sold to the defendant No. 2 and 1 respectively by the defendant No.3. However, the defendant No. 3 is cultivating the suit property and taking the crops at present. He recorded the statement of two witnesses and carried out panchanama in presence of five panchas.

18) Now, considering the documents relied by the plaintiff there are two different documents about the possession of the suit property. The sale deed executed by defendant No. 3 shows that, he has transferred its possession to the defendant No.2 and the sale deed executed by defendant No.2 shows that, he has transferred its possession to the defendant No.1. However, report of circle officer discloses that, the defendant No. 3 is in possession of the suit property at present.

19) According to plaintiff the transaction or mutation entry bearing No. 2159 is itself false and behind the back of plaintiff as the defendant No.3 being the husband of the plaintiff is not entitled to the partition of the suit properties received by her wife from her father. Therefore, the further two transaction based on the said mutation entry are void as defendant No.3 would have no right to transfer the suit property.

20) Considering the documents relied by the

defendant No.1 it appears that, the defendant No.3 has initiated the proceeding before the Tahasildar about the sale deed dtd. 01/09/2012 on 17/10/2022. Further it appears that, the plaintiff who was not party in the proceeding before the Tahasildar has filed the appeal before the Sub-Divisional officer Hadgaon against the said order. The said appeal is also dismissed on the basis that the defendant No. 1 and 2 have purchased the suit property by way of registered sale deed and those orders are subject to decision in this case.

21. Considering facts and documents produced on record it appears that, if the plaintiffs husband has entered his name to the revenue record of the suit property behind the back of the plaintiff then why the plaintiff has not taken any action against her husband since last more than 14 years. Further the defendant No.3 also sold out another property to Laxmibai Namdev Hanmane also and she has only filed the suit in respect of the present suit property which is transferred to defendant No.1 discloses that the plaintiff has accepted the said mutation entry in respect of that property only and filed the suit in respect partial property which was transferred by said mutation entry. The conduct of the plaintiff is shows that, the plaintiff would have knowledge of the said mutation entry therefore it appears that, plaintiff has not come with the clean hands to challenge all the transactions executed by her husband.

22. No doubt the suit property was received by the plaintiff from her father and as per section 15 (2)(a) of Hindu Succession Act 1956, it is to be devolved upon heirs of the father only. However, whether the transaction between the plaintiff and defendant No. 3 is valid or not and also subsequent transactions taken place between defendant No.3 to defendant No.1 are valid or not would be the part of trial and it would be decided after leading cogent evidence to that effect. Therefore, at this stage only prima facie case is to be seen that who would suffer if injunction is not granted.

23. Considering the registered documents on record it appears that, the documents of sale deed being registered document has more presumptive value than the mutation entry in the eyes of law. No doubt mutation entry no. 2159 is the basis for those sale-deeds, but considering the period of 14 years undergone for the said mutation entry, I am of the view that those sale-deed may be turned down after leading evidence. However, considering the plaintiffs case and panchanama prepared by the Circle Officer it appears that, plaintiff claiming that she is in possession through her husband but he made the husband as party defendant No.3. It means she has dispute against her husband and her husband is shown in the possession of the suit property by the Circle Officer. This conduct on the part of the plaintiff discloses that, she has made her husband as a party defendant No.3 and she is claiming her possession through her husband and they both

are residing together. Therefore, either the plaintiff ought to have claim her exclusive possession against her husband also or not support to the possession of defendant No.3. Further, the plaintiff ought to have to accept the mutation entry as a whole or to challenge all the transaction based on the said mutation entry in the one and the same suit. Therefore, prima facie it appears that, plaintiff have no prima facie case to extent the of possession of the suit property at this stage. Whether the possession of the suit property is with the defendant No. 1 or defendant No.3 would be the part of evidence, but at this stage the registered documents would prevail over the revenue record. Considering above discussion ***I answer the point No.1 in the negative.***

AS TO POINT NO. 2 :-

24. Considering the balance of convenience between the parties it appears that, the plaintiff is claiming her right on the basis of her legal and successive right in the suit property from her father. However, as per mutation entry No. 2159 the plaintiffs husband has shown the partition of the plaintiffs properties in his favour and plaintiff being her wife remained silent for period of 14 years. The plaintiffs husband further transferred his interest through registered sale deed to the defendant No.2 and neither the plaintiff nor the defendant No. 3 has attempted to make grievance about the same since 2012 to 2022. On the other hand the defendant No. 1 and 2 may be a bonafide purchaser by way of registered sale deed

which are challenged by the plaintiff. Considering the facts of the case, legality of those sale deed and mutation entry No.2159 may be decided during the trial but at this stage the conduct of the plaintiff alleging her husband for entire transaction and again claiming she is in possession through her husband would disclosed that she has not come with clean hand to seek the equitable relief. Therefore, balance of convenience is also not tilting in favour of the plaintiff. Hence, **I answer the point no. 2 in the negative.**

AS TO POINT NO. 3 :-

25. Considering documents on record the plaintiff claiming her possession through her husband and also blaming him for transaction of ME No. 2159. This act of the plaintiff is blowing hot and cold water from one and the same pipe. Further, the registered sale deed discloses right of the defendant No. 1 is involved as a bonafide purchaser. Therefore, considering above discussion it appears that, if the injunction is not granted no irreparable loss would be caused to plaintiff as the sale deed is executed in name of defendant no. 1 and plaintiff has not proved his prima facie exclusive possession irrespective of her husband over the suit property. Therefore, no irreparable loss would be cause to the plaintiff if application is rejected. Hence ***I answer that Point No. 3 in the Negative.***

AS TO POINT NO. 4 :-

26. Considering the answers given to point No. 1 to 3, in answer to point No. 4 I pass the following order.

ORDER

- 1) Application is rejected.
- 2) Cost shall in main cause.

Place :- Hadgaon
Date :- 12.02.2026

(Amarjeet B. Jadhav)
Civil Judge, Junior Division,
Hadgaon, Dist. Nanded.

CERTIFICATE

I affirm that the contents of this PD.F. file order/judgment are same word for word as per original order.

Name of steno : Anita S. Godam

Name of court : C.J.J.D.& J.M.F.C., Court
Hadgaon

Order Date : 12.02.2026

Judgment/order signed
by Presiding Officer on : 12.02.2026

Judgment/order
uploaded on : 14.02.2026