

MHAU090021422013



Received on : 19.08.2013
Registered on : 19.08.2013
Decided on : 08.05.2026
Duration : 12Y.08M.20D.

Exh.No.100

**IN THE COURT OF 4th JOINT CIVIL JUDGE (J.D.), AT , PAITHAN
DISTRICT AURANGABAD.**

(Presided over by Smt.S.S.Ramdin)

REGULAR CIVIL SUIT NO. 250/2013

Shivaji Pandharinath Dhole,
Age: 35 years, Occp: Agriculture,
All R/o - Varvandi Khurd, Tq. Paithan,
Dist. Aurangabad.

...PLAINTIFF

VERSUS

- 1] Ramdas Kalu Chavan
Age : 60 years, Occp:Agricultural,
- 2] Raju Bakshi Chavan
Age: 40 years, Occp:Household,
- 3] Anjanabai Dnyaneshwar Chavan
Age: 22 years, Occp:Agricultural
- 4] Sunil Raju Chavan
Age: 30 years, Occp:Agricultural
All R/o – Varvandi Khurd, Tal.Paithan,
Dist. Aurangabad

...DEFENDANTS

....

Mr. S. V. Ugale, Advocate, for plaintiff.

Mr.R. K. Pallod, Advocate, for defendants.

....

Claim : Suit for perpetual injunction.

JUDGMENT

[Delivered on 8th May, 2026]

Its a suit for perpetual junction.

2] An land in Block No 15, total area 08 Hectares 04 Ares out of which 20 Ares situated within the limits of village Varvandi Khurd, Tq. Paithan, Sonsakhal Patta more particularly described in plaint, is the subject-matter of suit (hereinafter referred to as suit lands for brevity).

3] Plaintiffs' suit, in brief, is as under :

The total land in Block No.15 is ancestral land of plaintiff. At present the plaintiff is owner and possessor of 2 Hectares 34 Ares in three places out of group No. 15. Out of the 2 Hectares 34 Ares land owed and occupied by the plaintiff 20 Ares land is in the west-south corer, this is 20 Ares in the quadrangle in the west -south corner is disputed. The rest of the land is not included as there is no dispute. The defendants are relatives. The father of plaintiff Pandharinath sold 82 Ares Land out of Block No. 15 to defendant No.1 by way of registered sale deed on 11/8/1993. The said 82 Ares land was divided into two parts one part in the west-north corner and the other part in the east-south corner. At

the time of the said sale-deed and thereafter their disputed 20 Ares land is in the west-south corner. Thereafter, father of plaintiff Pandharinath sold 40 Ares land out of Block No. 15 to defendant No.2 on 11/8/1993 and also sold another 39 Ares land on 9/11/1993. Thereafter, the plaintiffs brother Sainath also sold 20 Ares Land on 11/1/1999 to defendant No.1. The defendant No.1 and 2 are close relatives. After the purchase of the property, they divided the land among themselves according to their convenience. The defendant No.2 executed sale deed in favour of defendant No.3 and No.4 on 24/9/2012. The defendant No.2 fraudulently shown the property of two places in Block No. 15 while executing the sale deed and he has included suit property. In fact the said suit property has never been purchased or taken by the Defendant No. 2 and he does not even have possession of the suit land. The sale deed in favour of defendant No.3 is illegal. The plaintiff was cultivating Sugar cane crop in the suit property. The defendants are obstructing plaintiffs' peaceful possession over suit land. Hence, present suit is filed for perpetual injunction.

4] Defendants have resisted suit by filing written statement (Exh.11,29,74). It is submitted that, the plaintiff has deliberately given a false and misleading description of the disputed property in order to grab the land of the defendant. The father of plaintiff Pandharinath Sadashiv Dhole is the original owner of Block No.15 of 8 Hectares 13 Ares. The 82 Ares light and heavy Area has been permanently sold to defendant No. 1 in two Rumali divisions by

sale deed since then the defendant No. 1 is in possession of land and he dug a well in its western-north division. Thereafter, the area transferred by the said Pandharinath to respondent No.2 and since then the respondents No.2 to 4 are in possession of it. Thereafter, the defendant No.1 purchased 20 Ares land of 1 Hecter 61 Ares from brother of plaintiff Sainath by way of sale deed executed on 11.01.1999 and he is in possession of land. The plaintiff only trying to take advantage of dispute between the defendant No.1 and defendant No. 2 to 4. The plaintiff has no concern with the affected land area. On these grounds the suit is sought to be dismissed.

5] Issues (Exh.47) are framed. I have recorded my findings on the issues for the reasons stated below:

<u>ISSUES</u>	<u>FINDINGS.</u>
1] Whether plaintiff proves his possession on the 20 R suit property ?	Yes
2] Whether plaintiff proves that the defendants are causing obstruction to his possession on the suit property ?	Yes
3] Is plaintiff entitled for the perpetual injunction as claimed?	Yes
4] What order and decree ?	Suit is decreed with costs.

REASONS

6] Plaintiff No.1 Shivaji has examined himself as PW 1 at

(Exh.60), PW2 Shankar Anna Dhawal (Exh.91), PW3 Jawhar Dudha Chavan (Exh92) and has closed his evidence by filing pursis (Exh.94). The defendants did not examine themselves and closed their evidence by filling pursis(Exh.95).

7] **ISSUE NO.1** ∴ In a suit for perpetual injunction possession over suit property is an essential factor to be determined. At the same time it must be borne in mind that the possession must be either as a owner or referable to some title. In this suit the entries in the record of rights will play an important role in ascertaining possession.

8] The plaintiffs claims to be in possession of suit land 20 Ares by way of as he is ancestral owner and possessor. The plaintiff examined himself as PW1 at (Exh.60). He reiterated his claim in his examination in chief. He has admitted in his cross-examination that, total area of Block No. 15 is about 8 acre 4 Ares. He can not tell the date, year, month of partition. The oral partition took place. In partition the mother and sisters were not given their share. Further, he has admitted that, after the sale of portion in Block No. 15 to the Raju and Ramdas the father of plaintiff does not remain any portion in his name. His grandfather possesses 1 H 61 Ares after his demise the name of father of plaintiff was recorded in 7/12 as karta. Orel partition took place between plaintiff and his brothers. Sainath got 53 Ares, Vitthal got 53 Ares and plaintiff got 54 Ares out of 1H 61 Ares of land. The Mutation entry of said

partition is not taken. He further states that at the time of demise of his father, his father was having 1 H 61 Ares of land in his name. Further, he has admitted that, his father sold 1 H 61 Ares land out of Block No. 15 to defendant. He has denied that he has no nexus with the southern side of the property. Further, he stated that, he is having dispute with the defendant No.1 regarding Road.

9] The PW 2 Shankar at (Exh.91) deposed that, he has land in Block No.20. He knows to the plaintiff and defendant's. Plaintiff has land in 3 parts total area 6 Acre. The partition took place between plaintiff and his brother and they are in possession of their respective shares the same. The plaintiff is in possession of suit land of 20 Ares which is in the corner of Gabrusing and Chababai. The witness has admitted in his cross-examination that, the disputed property is Bock No.16 and its Area is 22 acres. He can not tell for what the plaintiff has made the claim. Some area in Blcok No. 16 were in the name of plaintiff's father Shivaji and some were in the name of Shivaji's grandfather. The father of plaintiff had sold some land to Ramdas Chavan and Raju Bakshi and he sold 2 acres of land each to them. The disputed property is of a light and heavy nature. The Rumail partition is not effected. Some part of the disputed property has been in the possession of the defendants Ramdas and Raju Bakshi for 20-25 years. After pandharinath sold the land he had 7 to 8 acres of land were left. Today there are total 6 shares in the disputed property. But he cannot say how much area each share has. The parathion/share is

about 16 acres. There was no share between pandharinath and Sadashiv. The share was made orally. The padharinath had 6 sisters. Shivaji's sisters and mother was not give share. The plaintiff and his brother were given a light and heavy share.

10] PW3 Jawhar dudha Chavan (Exh92) deposed same as PW2. In his cross-examination he has admitted that, there were 10 shares in the suit property. He can not tell the share of Shivaji and Sainath. Further, he cannot take whether partition took place between plaintiff and his brothers and whether the partition is oral or written.

11] The learned counsel for plaintiff has placed reliance on the ratio laid down by the Hon'ble Bombay High Court in case *Nathuji Narayanrao Udapure Vs. Narendra Vasanjibhai Thakkar and another (1981 Mh.L.J)*, I have carefully gone through the Judgment.

12] The real controversy is in respect of west-south corner 20 Ares land in block No.15. It is true that the 7/12 extract (Exh.75) shows the plaintiff is in possession of 2 H 34 Ares. This fact is not disputed by defendants. Further, the plaintiff relied on Mutation Entry at (Exh.80, 81, 82, 83, 87). The mutation entry at (Exh.82) regarding heirs of deceased Pandharinath, the mutation entry at (Exh.87) is regarding partition between the plaintiff and his brothers. This shows that after the demised of father of plaintiff Pandharinath the name of plaintiff and his brothers has been

recorded by mutation entry. The entries in the record of rights are presumed to be true until the contrary is proved or new entries are lawfully substituted therefore in view of provisions of section 157 of the Maharashtra Land Revenue Code, 1966.

13] It is necessary to scrutinize the boundaries of sale deed to know whether the father of plaintiff Shivaji and brother of plaintiff has ever sold west-south corner 20 Ares land to defendant's or it remained with them. The sale-deed (Exh.77) of Block No. 15 about 82 Ares shows that father of plaintiff Shivaji has executed the sale-deed in favour of defendant No.1 in which the boundaries mentioned as in eastern side land of Janardhan, western side land of Damu, southern side land of Harisingh, northern side remaining land in Block No. 15 of father of defendant, in which one portion is west-north corner and one portion is east-south corner was sold. From this it can be seen that, the land in west-south corner is remained with father of plaintiff. The sale deed (Exh.84) of Block No. 15 about 40 Ares shows that father of plaintiff Shivaji has executed the sale-deed in favour of defendant No.2 in which the boundaries mentioned as in eastern side land of Janardhan, western side land of Damu, southern side land of Ramdas, northern side remaining land in Block No. 15 of father of plaintiff, this also shows that the land in west-south corner is remained. The sale deed (Exh.90) of Block No. 15 about 39 Ares shows that father of plaintiff Shivaji has executed the sale-deed in favour of defendant No.2 in which the boundaries mentioned as in eastern side land

of Janardhan , western and southern side land of Ramdas, northern side remaining land in Block No. 15 of father of plaintiff , this also shows that, the land in west-south corner is remained. The sale deed (Exh.78) of Block No. 15 about 20 Ares shows that brother of plaintiff Sainath has executed the sale-deed in favour of defendant No.1 in which the boundaries mentioned as in eastern side land of Janardhan, western side land of Shivaji i.e plaintiff, southern side land of Raju, northern side remaining land in Block No. 15, this also shows that, the land in west-south corner is remained. The sale deed (Exh.79) of Block No. 15 about 20 Ares shows that defendant No.2 has executed the sale-deed in favour of defendant No.3 in which the boundaries mentioned as in eastern side land of Ramdas, western side land of Chabubai, southern side land of Gabrusing, northern side land of Ramdas, upon careful perusal of boundaries of this sale deed it can be seen and upon perusal of the earlier sale-deed that this portion of land was never sold to defendant No. 2 by father of plaintiff and further boundaries of 20 Ares shows that defendant No.2 has executed the sale-deed in favour of defendant No.4 in which the boundaries mentioned as in Eastern side his remaining land, Western side land of Ramdas, Southern Ramdas, Northern side land of Shivaji which does not matches with the earlier boundaries of sale-deed.

14] The defendants during the cross-examination and oral argument have raised a plea that the partition is not took place between the father of plaintiff and his sisters and between plaintiff

and defendant. The defendant tried to create cloud on title of plaintiff. But the defendant has not denied that the father of defendant possessed land in block No.15 and had executed the sale-deeds in favour of defendants. Further, it is argued that the defendant did not claimed the declaration. To substantiate their plea the defendants did not enter the witness box and offer themselves for cross-examination. Non-examination of the party to the lis would lead to drawal of an adverse inference against them. Further, upon perusal of sale deeds the defendant had no right, title, or interest in the suit property. Despite this defendant No.2 executed a sale deed and thereby affecting the plaintiffs possession.

15] The learned counsel for the defendants has placed reliance on the ratio laid down by the Hon'ble Telangana High Court in case Pallempti Samba Siva Rao Vs. Go Group in Civil Revision Petition No.1854 of 2023. I have carefully gone through the Judgment.

16] There is nothing to disbelieve the testimony of plaintiff coupled with the documentary evidence viz. 7/12 extract, mutation entry, sale-deeds. The documentary and oral evidence shows that plaintiff's father and after his demise his heirs are in possession of suit land. The plaintiff has proved that he is in possession of the suit land and no such west-south corner of 20 Ares in Block No.15 is ever sold to defendants. Issue No.1 is answered in the affirmative

17] **ISSUE NO.2** : Denial of plaintiffs' lawful right and possession itself is an obstruction giving rise to cause of action. Plaintiff has averred that on 18.08.2013 defendants had tried to disturb the peaceful possession of suit land. Raising of such plea without its proof itself is a cause of action for plaintiff to ask for the relief of perpetual injunction. Issue No.2 is, therefore, answered in the affirmative.

18] **ISSUE NO.3** : Plaintiff has proved his possession over suit land. The obstruction at the hands of defendants is also proved and, therefore, plaintiff is entitled to the relief of perpetual injunction. Issue No.3 is answered in the affirmative.

19] **ISSUE NO.4** : The plaintiff succeeds and the suit deserves to be decreed with costs. In the result following order is passed.

ORDER

- 1] The suit is decreed with costs.
- 2] The defendants either themselves or through their relatives, agents and servants are perpetually restrained from obstructing plaintiff in his peaceful possession and enjoyment over suit land.
- 3] Decree be drawn up accordingly.

Date: 08.05.2026

Place: Paithan

(S.S. Ramdin)

4th Joint Civil Judge (J.D.),
Paithan.

Certificate

“I affirm that the contents of this P.D.F. file Judgment/Order are same word for word as per original .”

Name of Steno	R. S. Puri [Stenographer Grade-III]
Court Name	Smt.S.S.Ramdin, 4 th Jt.Civil Judge,J.D, Paithan.
Date	08.05.2026
Judgment /order signed by P.O.on	08.05.2026
Judgment /order uploaded on	08.05.2026