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IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, JALGAON (JAMOD),

DISTRICT BULDANA.

(Presided over by Priti D. Mendhe)

Regular Civil Suit No. 7/2019

Exhibit –63

1) Ganesh Shaligram Ingle, Age 45 years, Occu. Labour	
2) Subhash Shaligram Ingle, Age 40 years, Occu. Labour Both R/o. Tatipura, Ward No.2, Jalgaon (Jamod) Tq. Jalgaon(Jamod) ,Distt. Buldana.	Plaintiffs.....
// <u>V e r s u s</u> //	
1) The Chief Officer, Municipal Council, Jalgaon Jamod, Tq. Jalgaon (Jamod), Distt. Buldana.	
2)Assistant Engineer- Urban 1 st MSEDCL- MSEDCL Office,	

	Jalgaon(Jamod)Tq.Jalgaon(Jamod), Distt. Buldana.	
	3)Executive Engineer MSEDCL-MSEDCL Office, Malkapur, Tq. Malkapur, Distt. Buldana.	
	4)Superintendant Engineer MSEDCL-MSEDCL Office, Buldana, Tq. Buldana, Distt. Buldana.	
	5)Godavari Rampuri Gosavi, Age 65 years, Occu. Household R/O Tatipura, Ward No.2, Jalgaon (Jamod)Tq.Jalgaon(Jamod), Distt. Buldana.	<u>Defendants.....</u>

**SUIT FOR DECLARATION, PERMANENT INJUNCTION WITH DAMAGES
AND MESNE PROFIT**

Appearances :-

Advocate for Plaintiffs : Shri. Karim Khan
Advocate for Defendant No.1 : Shri. A. P. Malpande
Advocate for Defendant Nos. 2 to 3 : Shri. K. S. Nirmal
Defendant No.4 : Ex-Parte
Advocate for Defendant No.5 : Shri. N. H. Giri

JUDGMENT

(Delivered on 23rd March, 2026)

The plaintiffs have instituted the present suit for declaration of ownership, recovery of possession, mandatory injunction, perpetual injunction, damages and mesne profits.

The case of the plaintiff's in brief as under :-

1. The residential plot situated within the limits of M.C. Jalgaon (Jamod) on Sheet No.13-B, Plot No.46, admeasuring 385.2 Sq.m. (4144.75 Sq. Ft) out of which 2635 Sq.Ft. surrounded by the boundaries specifically mentioned in the plaint paragraph No.1 is (Hereinafter referred as suit property).

2. The suit property is the ancestral property of the plaintiffs, originally owned by their grandfather, Tukaram Vithoba Ingale, by sale certificate in 1935, admeasuring 385.2 sq. meters. The plaintiffs grandmother, Mankabai, sold a 960 sq. ft. portion out of 4144.75 sq. ft. to Pandurang Mali on 08/02/1947. Pandurang Mali sold the same plot to Sakharam Dharme on 31/12/1955, who then sold it to Mohd. Musa Sk. Issea, and thereafter Mohd. Musa sold the said 960 sq. ft. plot to Defendant No. 5. The plot now related to Defendant No. 5 is towards the northern side, divided east-west, and the right of use to this plot is from the eastern side. The father of the plaintiffs sold a 550 sq. ft. plot to Janu Tade by registered sale deed dated 28/01/1980, along with a three-foot galli (lane) running east-west towards the northern side of the plaintiffs' suit property. Janu Tade sold the said 550 sq. ft. plot to Vinayak Bhujbal by registered sale deed dated 29/04/1985, who further sold it to Shrikrishna Gond by registered sale deed dated 19/02/1999.

3. Defendant No. 5 is residing in the 960 sq. ft. plot without any right to use the three-foot galli. The plaintiffs are the owners and in possession of the 2635 sq. ft. plot, which is the suit property, and the defendants or any other persons have no concern or relation with it. Defendant No. 1, being the Chief Officer representing the Municipal Council as the competent authority, has no concern with the suit property, including the three-foot galli situated towards the northern side of the suit property. Towards the eastern side of the suit property, there is a public road running northern side. Despite this factual position, Defendant No. 1 illegally and without consent constructed a road for Defendant No. 5 and her family in 2008–2009, causing irreparable loss to the plaintiffs.

4. The plaintiffs made several efforts by filing applications and requesting removal of the illegal road and restoration of possession of the part of the property, but. no action was taken. Therefore, the plaintiffs approached the Hon'ble Lokayukta, Mumbai. Defendant No. 1 faced proceedings and promised to hand over possession by demolishing the illegally constructed road, but the possession has not been handed over. The Hon'ble Lokayukta, by order dated 29/06/2016, directed the plaintiffs to approach the civil court.

5. Defendants Nos. 2 to 4 provide electricity connections to villagers and are under a mandatory obligation to follow due procedure of law while granting electricity connections and services. However, they provided an electricity connection to Defendant No. 5 by installing two poles in the suit property without permission of the plaintiffs, or

compliance with legal procedures. The plaintiffs approached the State Information Commission, Amravati and the Commission ordered them to comply, but they failed to do so. The plaintiffs therefore seek declaration of ownership, possession of the disputed portion, mandatory and permanent injunction, damages and mesne profits.

6. Defendant No. 1 resisted the suit by filing written statement at Exh. 44. It is contented that the Nazul plot No.46 owned by the plaintiffs divided in two parts having separate title grade. The plaintiffs are owners of Grade A portion whereas ownership of grade B portion vests with the State. Defendant No.1 had constructed road over grade B land for public purposes. However subsequently it was learnt that though the ownership vested with defendant No.1, the said land was in lawful possession of the predecessors of the plaintiffs. Therefore construction carried out on the said land was removed by defendant No.1 in presence of one of the plaintiffs, Subhash, and possession of land was handed over to him. A panchnama prepared by the TILR in this regard has been filed on record. The plaintiffs have filed false suit with malafide intention to cause nuisance and mental torture to defendant No.1. Hence, defendant no.1 has prayed for dismissal of the suit with heavy compensatory costs.

7. Suit is proceeded without written statement of defendant Nos. 2 ,3 and Ex-parte against the defendant No. 4.

8. Defendant No. 5 filed a written statement at Exhibit 16 and resisted the suit. She contended that the suit is time-barred and that the plaintiffs have filed the suit against defendants in their personal capacity,

which is not tenable as they are public servants. The plaintiffs filed the suit without documents, on incorrect information, and without showing actual measurement of the properties. Defendant No. 5 contended that she purchased her plot from Mohd. Musa Sk. Issea on 23/10/1967, and in that sale deed the use of the plot was mentioned from the southern side. The area of the plot and the area shown by the plaintiffs do not match.

9. According to Defendant No. 5, since the beginning, Plot No. 46 had two parts, A and B, having different areas, though geographically it is divided into three parts, an open municipal space towards the east, followed by the plots of Gond and Defendant No. 5 with a three-foot galli, and then the plaintiffs plot towards the southeast. Towards the eastern side, there is a 12-foot road and open municipal space, behind which is the plaintiffs house. The plaintiffs constructed a latrine towards the eastern side on the municipal road and closed their own access.

10. Defendant No. 5 further contended that the municipal council constructed a road from the eastern side up to her house and constructed a drainage line towards the western side. From the drainage line towards the west is the three-foot galli in front of Defendant No. 5's house, which has been used by Gond and other persons along with Defendant No. 5 for a long time and has become a public road. Since purchasing the plot in 1967, Defendant No. 5 has used this three-foot lane, which was shown in the sale deed. She alleged that the plaintiffs falsely claim ownership over the disputed place to grab municipal open space. The plaintiffs have not properly mentioned the use and direction of the plot. The plaintiffs father, when selling the back portion of the property in 1999, kept the northern

side for use by others. The electricity pole from which Dilip Bondgaokar obtained a connection about 20 years ago was situated on municipal open space, and Defendant No. 5 has taken electricity from it for a long time. It is further contended that the plaintiffs were aware of the situation since several years but did not take any action. Thus suit is barred by limitation as well as plaintiff has not paid court fees as per prayer. The suit filed only to harass the defendants and prayed for dismissal of the suit with compensation.

11. Considering the rival pleadings my learned predecessor framed issues below Exh. 16 - A The findings of issues are recorded against them for the following reasons :-

Sr. No.	Issues	Findings
1	Whether the suit is tenable in its present form?	.. No.
2	Whether the suit is within limitation?	.. No.
3	Do the plaintiffs prove that they are owners of the suit property and defendants have no concern with it?	.. No.
4	Do the plaintiffs prove that Defendant No. 1 illegally constructed a road over the suit property and Defendant Nos. 2 to 4 illegally given electric connection by using part of the suit property to	.. No.

	Defendant No. 5 ?		
5	Are the plaintiffs entitled for declaration as prayed for?	..	No.
6	Are the plaintiffs entitled to possession as prayed for ?	..	No.
7	Are the plaintiffs entitled for mandatory injunction as prayed for?	..	No.
8	Are the plaintiffs entitled for permanent injunction as prayed for?	..	No.
9	Are the plaintiffs are entitled for damages as prayed for?	..	No.
10	Are the plaintiffs also entitled for inquiry as per Order XX [20] Rule 12 of the Code of Civil Procedure, 1908 as prayed for?	..	No.
11	Whether Defendant No. 1 proves that the suit is false?	..	No.
12	Whether Defendant No. 1 proves that the suit is deserves to be dismissed with compensatory costs?	..	No.
13	Whether the suit is properly valued?	..	Yes.
14	What order and decree ?	..	The Suit is dismissed.

REASONS

12.a. In support of the claim, plaintiff has examined himself as P.W. 1 at Exh. 17 and relied upon Akhiv Patrika at Exh. 22, Sale Deed dated 15/08/1935 at Exhibit 23, Sale Deed dated 8/02/1947 at Exh. 24, Certified copy of Map at Exh.25, Letters of Municipal Council at Exh.26 & 27 respectively, Certified Copy of Order of Hon'ble Lokayukta at Exh.28, Certified copy of Order of Hon'ble State Information Commission at Exh.29, Notices and Acknowledgments at Exh.30 to 39 respectively, Copy of Complaint to the Hon'ble Lokayukta at Exh.40, Complaint to Collector and Acknowledgment at Exhs. 41 & 42, copy of mutation entry at Article A, Sale Deed dated 28/01/1980 at Article B, Sale Deed dated 29/04/1985 at Article C, Sale Deed dated 19/02/1999 at Article D, Mutation Entry dated 21/01/1980 at Article E, Permission letter for construction at Article F, Letter of Municipal Council at Article G,, Complaint of Defendant No.5 dated 15//05/2013 at Article H, copy of explanation of plaintiff at Article I, Copy of Sale Deed of 1961 at Exh. 49, Sale Deed of 1967 in favour of Defendant No.5 at Exhibit 50 , Municipal Notice at Exhibit 51, Panchanama at Exh.52, Plaintiffs evidence has been closed by passing order below Exh.01.

b. Defendant Nos. 1 to 4 did not adduce evidence so their evidence has been closed by passing order below Exh.1.

c. Defendant No.5 did not adduce evidence and filed evidence closing pursis at Exh.61.

d. Heard the Learned advocates of the plaintiffs and Defendant No. 5 at length. The learned advocate of the plaintiff filed written notes of argument at Exh.62.

AS TO ISSUE NO.1 :-

13. The plaintiffs have instituted the present suit against Defendant No.1 (Chief Officer of Municipal Council) and Defendant Nos.2 to 4, officers of Maharashtra State Electricity Distribution Company Limited, alleging illegal construction of a road and illegal installation of electricity poles. Under Sections 101 to 103 of the Indian Evidence Act, the burden of proof lies upon the plaintiffs who assert ownership and illegal. In order to prove their case, Plaintiff No.1 examined himself as PW-1 and filed affidavit in lieu of examination-in-chief at Exhibit 17 reiterating the plaint averments. From the pleadings and evidence on record, it is evident that the alleged acts were performed by Defendant Nos.1 to 4 while discharging their official and statutory duties of providing civic amenities such as road access and electricity supply to residents.

14. During cross-examination, PW-1 categorically admitted that he had filed the suit against Defendant Nos.1 to 4 in their personal capacity and had not properly impleaded the Municipal Council or the electricity distribution authority as legal entities responsible for such acts. He further admitted that officers who were transferred were personally liable and those presently working were not liable. It is a settled principle of law that acts done by public servants in discharge of official functions cannot ordinarily give rise to personal liability unless mala fides or acts beyond authority are specifically pleaded and proved. The plaintiffs have neither pleaded nor proved any personal malice, collusion or abuse of power by Defendant Nos.1 to 4. On the contrary, the evidence indicates that the acts complained of were part of general civic administration and provision of essential services.

15. The construction of roads and provision of electricity are basic civic amenities required for benefit of the public at large. The material on record does not show that these facilities were provided exclusively for the personal benefit of Defendant No.5 or at her instance. There is no evidence that Defendant No.5 exercised any influence or pressure upon Defendant Nos.1 to 4. On the contrary, Defendant No.5 appears to be an ordinary resident of the village and there is nothing on record to suggest that public authorities acted under her pressure to provide road or electricity.

16. Further, PW-1 admitted that the road passes towards houses of other persons including Shrikrushna Gond and Pralhad Gond, which shows that the road serves the general public and not merely Defendant No.5. Similarly, the evidence regarding electricity pole, it appears that it existed earlier and was used for supply of electricity to consumers in the locality. These facts indicate that the alleged acts were part of public utility services and not private acts directed against the plaintiffs. The present suit, filed against officers in their personal capacity without proof of personal wrongdoing. Although admission on the part of PW1 that that suit has been filed against defendant Nos. 1 to 4 in their personal capacity, it is true that such admission alone can not render suit not tenable. However, the nature of pleadings and the fact that the alleged acts relate to official functions of public authorities show that the suit in its present form is not tenable. Moreover, the plaintiffs seek declaration, possession, injunction and damages in respect of immovable property without clearly identifying the disputed portion and without establishing exclusive title. In

absence of proper identification of property and proper parties, the reliefs claimed cannot be effectively adjudicated. Hence, the suit is not maintainable in its present form. Accordingly, Issue No.1 is answered in the negative.

AS TO ISSUE NO.2 :-

17. The question for determination is whether the suit is filed within the prescribed period of limitation. The burden to prove that the suit is within limitation lies upon the plaintiffs. PW-1 admitted in cross-examination that the property was measured in the year 1993 but no action was taken from 1993 to 2008. He further admitted that he filed the suit on the basis of measurement conducted in 2009 and that no action was taken between 1961 and 2008. He also admitted that the alleged road existed since long. These admissions show that the alleged cause of action arose much earlier and the plaintiffs remained silent for a considerable period. The plaintiffs have alleged that Defendant No.1 constructed a road over the suit property during the period 2008–2009 and that Defendant Nos.2 to 4 installed electricity poles and provided electricity connection to Defendant No.5 by using the suit property. However, the evidence of PW-1 reveals several material facts which are relevant for deciding limitation.

18. PW-1 further admitted in cross-examination that his property was measured in the year 1993. He further admitted that despite such measurement he did not take any legal action from 1993 to 2008 for removal of any alleged encroachment or for recovery of possession. This admission clearly shows that the plaintiffs were aware of the boundaries of their property since 1993, yet they remained silent for a long period.

The plaintiffs forefather sold portion of the suit property in 1961 to Mohd. Musa by registered sale deed (Exh. 49) who sold to defendant No.5 in 1967 by registered sale deed dated 23/10/1967 (Exh.50). On perusal of registered sale deeds it clearly established that the purchasers of the property, including Defendant No.5, had a right of access to their plot from the southern side since the date of purchase. The existence of such right of way mentioned in the sale deeds (Exhs. 49 & 50) shows that the access was not unauthorized but was part of the original transaction. PW-1 further admitted that the alleged road existed since long and that he filed the suit only after measurement conducted in 2009. Even if it is assumed that the road was constructed in 2008–2009 as alleged by the plaintiffs, the present suit has been filed in the year 2019, that is after considerable lapse of time. The plaintiffs have not explained satisfactorily why no prompt action was taken immediately after the alleged construction.

19. The plaintiffs have attempted to rely upon proceedings before the Hon'ble Lokayukta and contended that they approached the civil court pursuant to the order dated 29/06/2016. However, the order of the Hon'ble Lokayukta merely advised the plaintiffs to seek appropriate remedy before a competent civil court and did not create a fresh cause of action when PW1 himself admitted that he was aware of the boundaries when property was measured in the year 1993 and alleged road was existed since long even prior to its construction. The cause of action, if any, arose when the alleged encroachment occurred or when the plaintiffs first became aware of it. Such prolonged inaction on the part of the plaintiffs renders the claim barred by limitation. Accordingly, Issue No.2 is answered in the negative.

AS TO ISSUE NO.3 :-

20. The plaintiffs claim that the suit property is ancestral property originally owned by their grandfather and that they are in possession of the same. The plaintiffs relied upon sale deed of 1935 (Exh.23), sale deed of 1947 (Exh.24), property record (Exh.22) and map (Exh.25). These documents show that the plaintiffs predecessors had ownership of certain property. However, the evidence also reveals that several portions of the property were sold by the plaintiffs predecessors to different persons. PW-1 admitted that he had not read all earlier sale deeds executed by his grandparents. He admitted that sale deeds at Exhibits 49 and 50 mention right of use from the southern side in favour of purchasers and that such right existed since long. More importantly, the plaintiffs have failed to specify exact boundaries and extent of alleged encroached area.

21. The plaint merely refers to a three-foot lane and road without describing exact measurements or location of encroachment. In a suit relating to immovable property, identity of property must be clearly established. Further, under Order VII Rule 3 of the Code of Civil Procedure, where the subject matter of the suit is immovable property, the plaint must contain sufficient description of the property to identify it by boundaries or measurements. Unless the exact identity of the disputed portion is established, relief of declaration or possession cannot be granted. In absence of clear description of disputed portion, declaration of ownership cannot be granted. Hence, the plaintiffs failed to prove exclusive ownership of the disputed portion. Thus, Issue No.3 is answered in the negative.

AS TO ISSUE NO.4 :-

22. The plaintiffs alleged that Defendant No.1 constructed a road over the suit property and Defendant Nos.2 to 4 installed electricity poles thereon. However, PW-1 admitted that the road goes towards houses of Shrikrushna Gond and Pralhad Gond passing in front of the house of Defendant No.5. He further admitted that municipal measurement showed existence of municipal land of about 25 square meters on eastern side of his property and southern side of Defendant No.5's property. The municipal notice at Exhibit 51 shows that after measurement municipal council handed over part of property from Government road to the plaintiffs. Panchanama at Exhibit 52 supports official action taken by the municipal authority. PW-1 also admitted that an electricity pole earlier existed which was used by another consumer. The evidence revealed that the pole was situated on municipal open space and not on plaintiffs land. The plaintiffs have not examined any surveyor to show that the road or poles are located within their property. Thus, illegal construction or unauthorized installation is not proved. Issue No.4 is therefore answered in the negative.

AS TO ISSUE NOS. 5, 6, 7 AND 8 :-

23. The relief of declaration, possession and injunction are consequential to proof of title and unlawful interference. As discussed earlier, the plaintiffs have failed to establish ownership of disputed portion, identity of property or encroachment by defendants. PW-1 admitted that after measurement certain possession was handed over by municipal authority, which further weakens the claim of continuing illegal

occupation. Further, in a suit for possession of immovable property, the plaintiff must prove his title and the defendants unlawful possession. The plaintiffs have not proved that the defendants are in unauthorized possession of any specifically identified portion of their property.

24. The learned advocate for Defendant No.5 relied upon the decision in *Executive Officer, Arulmigu Chokkanatha Swami Koil Trust vs Chandran, 2017 (4) Mh.L.J. 809*, wherein it was held that where plaintiff is not in possession and seeks declaratory relief without proper proof of possession or entitlement, the suit is not maintainable. The principle laid down applies to the present case as the plaintiffs failed to prove possession over disputed portion. Reliance was also placed on *Tajul Islam and another vs Shariyatullah Mansoorali Sheikh*, wherein it was held that the plaintiff must prove previous possession and wrongful possession of another. The plaintiffs failed to prove either. Hence, plaintiffs are not entitled to declaration, possession or injunction. Thus, issue Nos.5, 6, 7 and 8 are answered in the negative.

AO TO ISSUE NO.9 :-

25. The plaintiffs claim compensation against Defendant No.1 and Defendant Nos.2 to 4. However, damages can be granted only when illegal act and resulting loss are proved. As the plaintiffs failed to prove unauthorized construction or encroachment, no basis exists for awarding damages. Therefore, Issue No.9 is answered in the negative.

AS TO ISSUE NO.10 :-

26. The plaintiffs have claimed mesne profits in respect of alleged

unauthorized use of their property. Mesne profits can be granted only when the plaintiff proves that the defendant was in wrongful possession of the property belonging to the plaintiff and derived benefit therefrom. In the present case, the plaintiffs failed to prove that the defendants are in wrongful possession of any identifiable portion of their property. The identity of the disputed portion itself is not established. Further, no evidence has been led to show the nature of use, income derived or loss suffered. In absence of proof of title, possession and wrongful occupation, the claim for mesne profits cannot be granted. Hence, Issue No.10 is answered in the negative.

AS TO ISSUE NO.11 :-

27. The evidence shows that plaintiffs failed to prove essential facts and made admissions contrary to their case. However, mere failure to prove a case does not necessarily establish that the suit is deliberately false or malicious. Therefore, Issue No.11 is answered in the negative.

AS TO ISSUE NO.12 :-

28. Though the plaintiffs failed to prove their case, there is no sufficient evidence of deliberate or vexatious litigation warranting compensatory costs. Hence Issue No.12 is answered in the negative.

AS TO ISSUE NO.13 :-

29. Defendant no.5 has raised the objection pertaining to valuation of suit. If the valuation of the plaintiff pertaining to the suit land is considered, Defendant no.5 has also not brought on record about incorrect valuation. No convincing evidence is produced to show improper

valuation Consequently, it is held that, suit is properly valued and proper court fees is paid. Therefore Issue No.13 is answered in the affirmative.

AS TO ISSUE NO.14 :-

30. The plaintiffs could not succeed in establishing their claim. Therefore the suit is liable to be dismissed. Considering circumstances it will be proper to direct the parties to bear their own cost. In the result following order is passed.

ORDER

1. The Suit is dismissed .
2. The parties to bear their own cost.
3. Decree be drawn up accordingly.

(Pronounced in open Court.)

Jalgaon- Jamod.
Date : 23-03-2026.

(Priti D. Mendhe.)
Civil Judge Junior Division,
Jalgaon- Jamod