

CNR NO. MHBU11-000130-2020



Presented on	: 27/02/2020
Registered on	: 27/02/2020
Decided on	: 11/03/2026
Duration	: Yr. Ms. Ds. 06 00 13

**IN THE COURT OF THE DISTRICT JUDGE – 1, MALKAPUR,
DIST. BULDANA.**

(Presided over by Purushottam B. Jadhav, District Judge–1)

REG. CIVIL APPEAL NO. 06/2020.

Exh. No. 16

Ramdas S/o Dayaram Bathe,
Age – 54 Years,
Occupation – Agriculturist and Service,
Resident of Dhadi, Post Mamulwadi,
Taluka Nandura, District Buldhana.

Appellant

--Versus--

Vishnu S/o. Raoji Bathe (Died)
through his Legal representatives –

1) Smt. Rukhmabai Wd/o Vishnu Bathe,
Age about 56 years,
Resident of Dhadi, Post Mamulwadi,
Taluka Nandura, District Buldhana.

2) Sanjay S/o Vishnu Bathe,
Age about 27 years,
Resident of Dhadi, Post Mamulwadi,
Taluka Nandura, District Buldhana.

Respondents.

Judge

- 3) **Sau. Godavari W/o Dasharath Gawande,**
Age about 35 years,
Resident of Mamulwadi, Taluka
Nandura, District Buldhana.
- 4) **Sau. Sangita W/o Gajanan Zoye,**
Age about 33 years,
Resident of Kurha Kakoda, Taluka
Muktainagar, District Jalgaon Khandesh.
- 5) **Sau. Asha W/o Ajabrao Sarode,**
Age about 31 years,
Resident of Manasgaon, Taluka Shegaon,
District Buldhana.
- 6) **Sau. Vanita W/o. Ramrao Wagh,**
Age about 29 years,
Resident of Bhendwad, Taluka
Sangrampur, District Buldhana.

Respondents.

Appearances : Mr. I.F. Jain, Ld. Advocate for appellants.

Mr. M.L. Taori, Ld. Advocate for respondents

JUDGMENT

(Delivered on 11th March, 2026)

Judgment and decree dated 14/02/2017 passed
by learned Civil Judge Junior Division, Nandura in Regular

Judge

Civil Suit No. 24 of 2008 is challenged by filing this appeal. The respondents have also filed Cross-Objection at Exh.10.

2. The appellant is the original plaintiff. The respondents are the legal representatives of the original defendant. The original defendant has died during the pendency of the suit and his legal representatives were brought on record. For the sake of convenience, the parties are hereinafter being referred as per their status before the trial Court.

3. The subject matter of the suit is that the property bearing Village Panchayat House No. 133, admeasuring 27 feet (East to West) X 41.6 feet (South to North) situated at Chandurbiswa and within the jurisdiction of Village Panchayat Mamulwadi, Taluka Nandura, District Buldhana and bounded by –

To the East : 4 feet wide Road going from South to West and being used by one Bhanudas Dayaram Bathe.

To the West : The residential house of Vithal Dayaram Bathe

Judge

To the South : The Government Road

To the North : The residential house of Bhanudas
Dayaram Bathe

4. The aforesaid property is hereinafter being referred as “the suit property”.

Brief facts of the plaintiff’s case are as under :-

5. He purchased the suit property by registered sale deed dated 25/04/2000 from Pandurang Totaram Bathe and since then he is the owner and in possession of the suit property. The name of his wife is recorded in Village Panchayat Record as per the direction of the State of Maharashtra. The road, which is at the eastern side of the suit property, is being used by the plaintiff regularly and as of right. His brother Bhanudas Dayaram Bathe is being used the said road for 25 years continuously, openly, as of right and without obstruction from anybody.

6. It is further case of the plaintiff that, after purchase of the suit property, the plaintiff was intending to construct the Bathroom, thereby he started collecting the

required documents. When this fact became known to the defendant, by raising the bathroom on the eastern side road, the defendant tried to make possession and obstruction to the use of the plaintiff and his brother over the said road. His act is illegal and amounts to grievous offence. He did not pay any heed to the plaintiff. Therefore, the plaintiff issued notice on 25/06/2007 and on 24/12/2007, but the defendant did not comply them. He did not even reply the notices. Therefore, the suit is filed for the declaration that, the defendant has no right to raise the construction of the bathroom and to obstruct the road; and also for the permanent injunction restraining the defendant from making any obstruction and encroachment over the road.

7. The defendant resisted the suit by filing written statement at Exh. 12. He denied the description of the suit property, the ownership and possession of the plaintiff over the suit property, having any road as claimed by the plaintiff, its user by the plaintiff and his brother, raising any obstruction over it and issuance of the notices. According to the defendant, the suit is bad for non-joinder of

necessary parties. He contended that, out of his property, the eastern side portion is purchased by the defendant from Hariram Mahipat Bathe and the western side partition is his ancestral property. The main entrance is at the southern side and the secondary entrance is at the western side of his property. Outside the southern side entrance, there is *pev* (Grain storage) at the distance of 2-3 feet for 100 years and it is within the property of the defendant. At the southern side of the *pev*, there is 50 years old bathroom constructed of bricks and soil having tin shed. There is also 50 years old shed of 9 tins towards southern side of the bathroom. Towards western side of the bathroom, there is old road having width of 4 to 6 feet. It is not straight, but going obliquely and it is for the use of the defendant. His father was also using it. As such, the said road is being used by the plaintiff and his forefathers for 100 years. It ends at the western side gate of the defendant's property. There is property of Bhanudas Dayaram Bathe towards northern side of the western side gate of the defendant's property. There is government road towards northern side of the property of Bhanudas Bathe and he uses that road and his

entrance is also from that side. He did not reside in his property. The plaintiff's property is towards western side of the disputed property. The plaintiff filed the false suit. The defendant prayed for dismissal of the suit.

8. After sad demise of the defendant, his legal representatives filed pursis at Exh. 22 and 25 informing to the Court that they do not want file separate written statement.

9. The trial Court framed issues at Exh. 14. In support of his claim, the plaintiff examined himself as PW-1 at Exh. 57; and relied on his sale deed (Exh.58), the village Panchayat house extracts (Exh. 59 to 61), the village Panchyat tax receipts (Exh. 62 and 63), the copies of the notices (Exh. 64 and 65) and their postal receipts (Exh. 66 to 69).

10. The defendant examined one of his legal representatives namely Sanjay Vishnu Bathe as DW-1 at Exh.79 and relied on the copy of notice reply and their postal receipts (Exh. 83 and 84). He closed the evidence by filing pursis at Exh. 98.

Judge

11. The trial Court, by impugned judgment and decree, held that the plaintiff failed to prove that the defendant is trying to make encroachment on the disputed road. It also held that the defendant obstructed the said road. It partly decreed the suit and granted permanent injunction restraining the defendant from making any obstruction over the disputed road.

12. Feeling aggrieved by the refusal of the relief of declaration, the plaintiff preferred the present appeal. The legal representatives of the defendant filed cross-objection at Exh. 10 challenging the decree of the permanent injunction.

13. Following points arise for my determination and I have recorded findings thereon for the reasons stated thereunder :-

SR.NO.	POINTS	FINDINGS
1.	Whether the defendant is raising construction over the road at eastern side of the plaintiff's property?	... In the negative.
2.	Whether the defendant obstructed	... In the

Judge

SR.NO.	POINTS	FINDINGS
	the road, which is situated at eastern side of the plaintiff's property?	negative.
3.	Whether the plaintiff is entitled to the reliefs?	... No.
4.	Whether the impugned judgment and decree need interference?	... Yes.
5.	What order and decree?	... As per final order.

REASONS

14. I have heard Mr. I.F. Jain, learned Advocate for the plaintiff and Mr. M.L. Taori, learned Advocate for the defendant. I have perused the record of the appeal and that of the suit.

AS TO POINT NOS. 1 TO 3 :-

15. At the outset, it may be noted that though the defendant denied each and every contention made in the plaint, during arguments in this appeal, learned Advocate for the defendant did not dispute that the suit property is owned by the plaintiff. According to him, there is only

Judge

disputed as to the four boundaries of the suit property. It may be noted that the plaintiff filed the registered sale deed at Exh.58. The sale deed is not challenged by the defendant in the cross examination. The four boundaries of the suit property mentioned in the sale deed are as under:-

To the East : 4 feet wide Road going from South to West and being used by one Bhanudas Dayaram Bathe.

To the West : The residential house of Vithal Dayaram Bathe

To the South : The Government Road

To the North : The residential house of Bhanudas Dayaram Bathe

16. The same four boundaries are mentioned in the plaint. The plaintiff also stated these four boundaries in his evidence (Exh.57). The perusal of these four boundaries shows that towards eastern side of the suit property, there is 4 feet wide Road going from South to West and being used by one Bhanudas Dayaram Bathe. According to the plaintiff, towards eastern side of the said road, there is the

property of the defendant. In the written statement, the defendant also stated that there is 4 to 6 feet wide road towards western side of his bathroom. According to him, the said road is easementary road and being used by him and his forefathers for 100 years. He did not specifically claim that he is the owner of the said road. As stated above, according to him, it is easementary road. Undisputedly, the easementary road of any person cannot be claimed on one's own property. Considering these facts, it has to be held that there is 4 feet wide road between the properties of the parties. It is also not disputed that there is his bathroom situated adjacent his tin-shed. It is at the western side of the tin-shed. That means, he is claiming that the said bathroom is within his property. Whereas, the plaintiff claimed that it is constructed on the disputed road. In view of these facts, the real question is whether the defendant raised the construction of the bathroom over the said road and thereby obstructed the road.

17. Learned Advocate for the plaintiff submitted that, DW-1 Sanjay Bathe had no knowledge of the facts and circumstances of the case. It is true that in his cross

examination (Exh.79), DW-1 Sanjay Bathe had shown ignorance about the number of facts. But it may be noted that the plaintiff did not claim in his plaint that the defendant is not the owner and in possession of the property, which is situated towards eastern side of the road. The plaintiff came with the case that the defendant is trying to make encroachment over the disputed road. Therefore, the burden is on the plaintiff to prove the said fact and cannot take benefit that DW-1 Sanjay Bathe does not know anything about the defendant's property.

18. As stated above, real controversy is in regarding the disputed road, more specifically location of the road. When there is boundary dispute, the oral evidence of the parties would not prove that the boundary of one property starts from the particular point. It requires measurement by the expert. Undisputedly, the plaintiff had not applied for appointment of expert for the measurement of the properties. It is true that, the Court Commissioner was appointed in the trial Court. But he was Advocate. It is not the case of any party that the said Advocate Court Commissioner was expert in measurement and locating the

properties. He merely visited the properties and submitted the report of the facts appearing on the spot and the rough sketch of the spot.

19. In such circumstances, this Court would have remanded the matter by appointing the Cadastral Surveyor, as the Court Commissioner, to measure the properties of both properties to ascertain, the location of the properties and the location of the disputed road. But it is informed at Bar that the survey of the village is not carried out by the government authorities. Therefore, no purpose would serve be served by appointing such Court Commissioner.

20. As such, the facts remains that there is only oral evidence of the parties as to the disputed road. The plaintiff claiming that the defendant raised bathroom on the road. The defendant denied it and claimed that the said bathroom is within his property. As stated above, in absence of the expert's evidence and in absence of the measurement of the properties, the oral evidence of the parties would not prove the disputed fact. In the facts and circumstances of the case, the expert would not able to locate the properties since there is no survey of the village and there is no

authentic record of the area, width, length and location of the properties situated in the village of the parties. Since, there is no acceptable evidence to prove that whether the bathroom is constructed on the road or not, it has to be held in absence of such evidence that the plaintiff failed to prove that the defendant constructed the bathroom over the disputed road. In the result, it cannot be said that the defendant obstructed the user of the road. Secondly, the sale deed (Exh. 58) executed in favour of the plaintiff does not claim that the said road is for the use of the plaintiff. There is nothing on record to show that the said road is public road. The plaintiff has filed no document showing that the said road is public road. The plaintiff has also not claimed in his plaint that it is public road. It is mentioned in the sale deed that the said road is for the use of Bhanudas Dayaram Bathe. He is not plaintiff. He is brother of the plaintiff. His property is different. The suit property is not owned by Bhanudas Dayaram Bathe. Therefore, it cannot be said that the plaintiff has right to seek any relief in respect of the disputed road.

21. In view of the aforesaid discussion, it has to be

Judge

held that the plaintiff failed to prove that the defendant raised the construction of the bathroom over the area of the disputed road and thereby obstructed the disputed road. Therefore, the plaintiff is not entitled to any relief. Accordingly, I record negative findings on these points.

AS TO POINT NOS. 4 AND 5 :-

22. In view of the findings on other points that Court held that, the plaintiff is not entitled to any relief. However, the trial Court granted relief of the permanent injunction. It needs to set aside since the defendant challenged it by filing cross-objection. The cross-objection requires to be allowed. So far as the appeal is concerned, it deserves to be dismissed since the appellant/the plaintiff is not entitled to any relief. During the argument, learned Advocate for the plaintiff submitted that the plaintiff filed appeal only in respect of relief of removal of the bathroom. It is to be noted that, in the trial Court, the plaintiff did not claim such relief. Therefore, the submission is not acceptable. In the facts and circumstances of the case, it would be just to direct the parties to bear their own costs.

Judge

23. In view of the above discussion, I record findings on these points and pass the following order:-

ORDER

1. Regular Civil Appeal No. 6 of 2020 is dismissed.
2. Cross-objection (Exh. 10) is allowed.
3. Judgment and decree dated 14/02/2017 passed by learned Civil Judge Junior Division, Nandura in Regular Civil Suit No. 24 of 2008 is set aside and the suit is dismissed.
4. The parties shall bear their own costs.
5. The decree shall be drawn up accordingly.
6. The R & P of the trial Court shall be sent back along with the copy of this judgment and decree.
7. The appeal is disposed of accordingly.

Malkapur.
Date – 11/03/2026.

(Purushottam B. Jadhav)
District Judge-1,
Malkapur.

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CERTIFICATE

I certify that this Judgment's P.D.F. file uploaded is a true and correct copy as per original signed Judgment.

Name of Court	:	District Judge – 1, Malkapur.
Name of Stenographer	:	Miss H.D Chaudhari, Stenographer Grade I.
Date of Judgment	:	11/03/2026.
Date of Uploading	:	12/03/2026.