

Judgment

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R.C.S. No. 30/2015

CNR NO. MHDH060005512015 Presented on : 30/06/15



Registered on : 30/06/15

Decided on : 31/03/26

Duration : Y M Ds.

10 09 01

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,**

**SHINDKHEDA**

**( Presided Over by Harshada S. Admane )**

**R.C.S. No. 30/2015**

**Exh. 89/A**

Indirabai Chhotu Pardeshi,

Age- 35 years, Occu- Homemaker,

R/o- Ajande Bk, Tal- Shindkheda,

Dist - Dhule.

**...Plaintiff**

**Versus**

Macchindra Budha Jadhav,

Age- 65 years, Occu- Retired Police,

R/o- Ajande Bk, Tal- Shindkheda,

Dist -Dhule.

**....Defendant**

At Present R/o. Sai Darshan Colony,

Plot No. 30, Dhule, Tal. & Dist. Dhule.

**Appearance -**

Advocate Shri. B. V. Sonawane For Plaintiff.

Advocate Shri. P. N. Gujrathi For Defendant.

**J U D G M E N T**

(Delivered on 31<sup>st</sup> March 2026)

This is a suit for the mandatory injunction and for perpetual injunction.

**Case of the Plaintiff:-**

02) The Grampanchayat House no 466 , admeasuring 1520 sq. Feet situated within the vicinity of the mauje Ajande Bk, Tal-Shindkheda, Dist-Dhule which is bounded as follows;

Towards East- Plot,

Towards West- Plot,

Towards South- Land,

Towards North- Road.

(hereinafter referred as suit property)

03) It is contended by the plaintiff that, she is a permanent resident of the village Ajande, Tal- Shindkheda, Dist- Dhule. It is further contended by the plaintiff that, she has purchased the suit property by registered sale-deed dated 22.07.2013. Since then she is

in possession and enjoyment of the said suit property. The defendant has no right, title or interest in the suit property. Earlier, there existed an open plot on the eastern side of suit property. However, in the year 2015, the defendant illegally encroached upon a portion of suit property and started construction without any authority. The defendant has encroached upon approximately 20 feet x 40 feet area of the suit property and started unauthorized construction. After learning about the ongoing construction, she informed the defendant that, he is legally encroaching upon her property.

04) However, the defendant did not pay heed to the plaintiff's objection and on 30.04.2015 he forcibly entered in the suit property and continue unauthorized construction. Thereafter, the plaintiff approached the Grampanchyat Office and made enquiries. From the enquiries it was revealed that, the defendant had started construction without any permission from the appropriate authority. The defendant being influential person has unlawfully taken advantage of the situation and encroached upon the suit property and continue construction over the said area admeasuring approximately 20 feet x 40 feet area. On 21.06.2015 plaintiff again approached to the defendant and requested him to stop the illegal construction, stating that he has no right over the suit property. However, the defendant threatened the plaintiff, saying that she should not interfere with his construction and that if she does so he would cause harm, demolish structures and filed false cases against her. Despite this defendant

continue with the construction work. Hence, the plaintiff has constrained to institute this suit.

**Case of the Defendant :-**

05) In response of the service of suit summons, defendant appeared before the Court and combated the suit claim by filing written-statement at Exh. 14. Defendant by filing written-statement denied all the contentions of the plaintiff and stated that, the defendant is permanent resident of village Ajande Budruk. Alongwith his mother and sister defendant resides there. He also owns a house at Dhule and retired from the Police Department. Defendant further contended that, he belongs to schedule caste (Mahar Community). As per the order of the Collector, Dhule dated 28.07.1976, Gat No. 45 admeasuring 5 Acre 31 Gunthe was allotted as Gavthan property. After the said land was converted into non-agricultural land, layouts were prepared and plots were carved out. Out of total plots, plots measuring 40 x 38 feet and 60 x 50 feet were allotted to the beneficiaries. Out of that, certain plots were allotted free of costs to the backward class persons, including his father Budha Gambhir Jadhav, who was allotted plot No. 50 admeasuring 60 x 50 feet.

06) It is further contentions of the defendant that, on 22.07.2013 plaintiff claims to have purchase the property through registered sale-deed from Jayvantabai Baburao Shirsath. However,

said plot number 53 was originally allotted to Baburao Kashiram Mahar and not to Jayvantabai. Further the plaintiff has not mentioned plot no. 53 in the registered sale-deed only a vague reference to property under Grampanchayat record is made. Thus, the plaintiff has not approached the Court with clean hands and suppressed material facts. As per the Collector's scheme plots were allotted for residence to beneficiary, with a clean condition that, such a plot should not be sold to the others. Thus, plaintiff's alleged purchase itself is contrary to the conditions of allotment. The plaintiff has fabricated incorrect boundaries in the sale-deed. On the enquiry with the Gramsevak, it was revealed that, the boundaries mentioned are false and manipulated.

07) The defendant's plot no. 50 (60 x 50 feet) has a 20 feet road on all sides. To the east lies a plot no. 49, to the west 20 feet road and beyond that plot no. 54 and to the south plot no. 51. Two persons namely Ramesh Suklal Chambhar and Madhukar Suklal Chambhar have constructed their houses under Ramai Awas Yojna on nearby plots of the plaintiff, but plaintiff has suppressed this fact from the Court. His father Budha was allotted plot no. 53 and after his demise the defendant is in lawful possession of the said plot no. 53. The defendant has no connection whatsoever with the suit property. The construction carried out by him is on his own plot and not on the suit property. Hence, defendant prayed for dismissal of the suit.

08) After considering the rival pleadings of both parties, issues were framed by my learned predecessor at (**Exh. 28**) and they are reproduced below along with my findings thereon.

<b>Sr. No</b>	<b>Issues</b>	<b>Findings</b>
1	Whether suit property is in possession of plaintiff ?	No.
2	Whether defendant raised construction over half portion of the suit property ?	No.
3	Whether plaintiff is entitled for the mandatory injunction to direct the defendant to demolish the construction raised over suit property and to deliver possession of the suit property to the plaintiff ?	No.
4	Whether plaintiff is entitled for relief of perpetual injunction as claimed ?	No.
5	What order and decree?	The suit is dismissed with costs.

**Oral and documentary evidence of the parties :-**

09) Documentary Evidence by the plaintiff :-

<b>Sr. no</b>	<b>Document</b>	<b>Exh.</b>
1	Original Copy of Index-II	45

2	Original Copy of 8A extract of House No. 466	46
3	Original Copy of Power of Attorney executed by plaintiff in favour of Chhotu Pardeshi	47
4	Original Copy of Mutation Entry No. 1709	48

**Oral Evidence by the plaintiff:-**

10) Plaintiff has led oral evidence of her Power of Attorney Holder Shri. Chhotu Zulal Pardeshi (**PW1**) at **Exh. 42** , Ananda Ratan Choudhari (**PW2**) at **Exh. 51** and Raghuath Gulab Mahale (**PW3**) at **Exh. 55** and filed evidence closed purshis vide **Exh. 68**.

**DEFENDANTS EVIDENCE:**

11) Documentary Evidence by the defendant :-

<b>Sr. no</b>	<b>Document</b>	<b>Exh.</b>
1	Original Copy of 8A extract of Property No. 495 (Plot No. 50) during the year 2005-2006.	75
2	Original Copy of 8A extract of Property No. 495 (Plot No. 50) during the year 2015-2016.	76
3	Original Copy of Property Tax receipt of House No. 495	77

4	Original Copy of Form No. 7 – General Receipt No. 908	78
5	A Right to Information (RTI) application send to District Collector, Dhule dated 11.09.2023	79
6	Letter given by Information Officer, Collector Office, Dhule.	80

12) Vide **Exh. 70** defendant has filed evidence affidavit of himself. Despite sufficient opportunities defendant failed to lead his further evidence. Hence, by passing order below Exh. 1 evidence of defendant was closed.

13) Heard Learned Advocate Shri. B. V. Sonawane for the plaintiff and Shri. P. N. Gujrathi for the defendant.

### **REASONS**

#### **AS TO ISSUE NO. 01:**

14) After considering the rival contention of the parties, it will find that the title of the plaintiff over the suit property has been disputed by the defendant. Advocate for defendant submitted that, the plaintiff has purchased the suit property from one lady namely Jayavantabai Baburao Shirsat. It is further submitted by the Advocate for defendant that, the suit property i.e. plot No. 53 was originally

allotted to Baburao Kashiram Shirsat by the order of Collector, Dhule dated 28.07.1976 under the scheme of Government. By the order of Collector, Dhule dated 28.07.1976 the plot No. 53 has been allotted to Baburao as being backward class person. Hence, at the time of allotment by the order of Collector, Dhule dated 28.07.1976 certain conditions has been imposed on the beneficiaries that they could not sale the said plots to the others. Hence, in this backdrop Jayantabai is not entitled to sale the said plot to the plaintiff and accordingly the plaintiff has not acquired the title of the suit property i.e. plot No. 53. In order to resolve controversy between the parties in respect of suit property are proceed to scan the evidence of the both the parties.

15) The plaintiff's Power of Attorney (PW1) has filed his chief-examination on affidavit at Exh. 42. It is nothing but the replica of plaint. During course of cross-examination, the Power of Attorney of plaintiff admitted that,

"हे म्हणणे खरे आहे की, पूर्वी दावा मिळकत बाबूराव काशिराम शिरसाट यांच्या नावे होती. हे म्हणणे खरे आहे की, दावा मिळकत घर नं. ४६६ चा पूर्वी प्लॉट क्र. ५३ असा होता. हे म्हणणे खरे आहे की, गावठाण परिसरात एकूण ५८ प्लॉट होते. हे म्हणणे खरे आहे की, दावा मिळकतीचे क्षेत्रफळ ४० x ३८ इतके आहे. हे म्हणणे खरे आहे की, प्रतिवादीच्या मिळकतीचे क्षेत्रफळ ६० x ५० इतके आहे. हे म्हणणे खरे आहे की, गावठाण भागाचे सदरचे प्लॉट माननीय जिल्हाधिकारी यांच्या आदेशाने मागासवर्गीय बेघर लोकांना रहिवासासाठी दिले होते."

From the aforesaid admission of Power of Attorney of plaintiff, it clearly seen that plaintiff had knowledge about the source of suit property.

16) I have given thoughtful consideration to the argument advanced by both the parties. The main question for consideration is that, whether the plaintiff acquire a lawful title of the suit property. Considering the contentions of the plaintiff, the plaintiff claimed ownership on the basis of registered sale-deed vide Exh. 45 executed in her favour. However, upon careful perusal of the record, it emerges that, suit property originally forms part of land allotted by Collector under a Government scheme to a member of scheduled caste community who are homeless. After perusal of the Exh. 80 it appears that, such allotment was subject to specific condition that the allottee shall not transfer, alienate or sale the property to any third party without any prior permission of the Collector. Such a condition is not merely procedural but goes to the very root of the title and binds the allottee as well as any person claiming through him.

17) In the present case, the plaintiffs derive the title from the allottee. However, there is nothing on record by the plaintiff to show that, the restriction imposed by the Collector was ever lifted or that prior permission was obtained thereafter. It is a settled principle of law that, a person cannot convey a better title than what he himself possesses. When the original allottee had no right to transfer the

property, any sale effected in breach of such a condition is void or atleast unenforceable in law. Therefore, the alleged sale transaction in favour of plaintiff does not confer a valid ownership to her. On appreciation of entire evidence on record, it is clear that the plaintiff has not succeeded in proving her ownership over the suit property. The documentary as well as oral evidence lead by the plaintiff is insufficient and does not inspire confidence. Once the ownership itself is not proved, the question of lawful possession does not arise. Hence, the plaintiff has failed to establish her possession over the suit property. In this backdrops issue No. 1 is answered in Negative.

**AS TO ISSUE NO. 02 & 03 :**

18) The plaintiff has alleged that, the defendant has encroached upon a portion of suit property and has carried out construction thereon. However, the defendant has specifically contended that, the construction is carried out on his own plot, which was lawfully allotted to his predecessor under the same Government scheme and denied the contentions of plaintiff as regard the encroached in the form of construction of the alleged house. The entire case of the plaintiff was in respect of alleged construction made by the defendant. It is also submitted that, plaintiff had examined her Power of Attorney as PW1, Ananda (PW2) and Raghunath (PW3) for proving the said alleged encroachment over the suit property. In this regard, I must say that in order to determine

whether there has been an encroachment, it is always desirable to get the field measured by an expert and find out exact area encroached upon, oral evidence cannot conclusively prove such an issue. In absence of a such conclusive proof, the decree is probably meaningless and execution means virtually starting the space overall again. In this context, I would like to draw attention of the parties on ruling of Hon'ble High Court. In the case of *Suleman Khan s/o Mumtaj Khan and others Vs. Bhagirathibai w/o Digambar Asalmol and another reported in 2014(4) Mh.L.J. 250*. The Hon'ble High Court has observed in para no. 9 of the ruling as follows :

“9. In cases to determine encroachment it is always desirable to have disputed suit property measured by competent surveyor to find out encroachment and its extend. Oral evidence cannot prove such a contentious issue conclusively. In a suit where parties are disputing the boundaries of the property and one of the parties alleges encroachment made by another party to the suit inside suit property. In such a cases plaint map as evidence in respect of thereof is vital document for to decide real controversy between the parties. ....”

19) In the light of aforesaid factual and legal position of this matter it come to notice that the plaintiff has never taken painstaking efforts to prove alleged encroachment in the form of construction

over the suit property. In the absence of exact location of alleged encroachment area, it is very difficult for the Court to determine area of alleged encroachment. Therefore, the plaintiff failed to prove that defendant made encroachment in the form of construction of alleged house over the suit property to the extend of 20x40 feet. Therefore, the question of recovery of alleged encroachment portion of suit property, is not arises at all. In this backdrop issue No. 2 & 3 are answered in Negative.

**AS TO ISSUE NO. 04 :**

20) To obtain the relief of injunction, the plaintiff must establish :-

1. Lawful possession,
2. Intereference by the defendant and
3. Threat of injury.

In the present case the plaint has failed to prove lawful ownership and possession over the suit property as discussed above. Further when the very title of the plaintiff is doubtful and based on a transaction-deed by legal prohibition, the plaintiff cannot seek equitable relief of injunction. It is settled position that, injunction is a discretionary and equitable relief, and a person who does not come with clean hands or whose claim is based on illegal transaction is not entitle to such a relief. Moreover, the defendant appears to be in possession of his own allotted plot and no material is produced to

show unlawful interference with plaintiff's alleged possession. Therefore, the plaintiff is not entitled to the relief of perpetual injunction as claimed. In this backdrop I answered issue No. 04 is Negative.

**AS TO ISSUE NO. 05:**

21) In view of aforesaid discussion and the findings of issue No. 1 to 4, it is evidently clear that the plaintiff has failed to prove the suit claim. Therefore, the plaintiff is not entitled to relief of perpetual as well as mandatory injunction. The plaintiff made baseless allegations in the suit against the defendant. Thus, the plaintiff is liable to pay cost of the present suit to the defendant. Ultimately the present suit is devoid of merits and liable to be dismissed with costs. In the result, following order is passed :

**:- ORDER :-**

- 1) The suit is dismissed with costs.
- 2) Decree be drawn up accordingly.

(Dictated and pronounce in Court.)

Date : 31/03/2026.

(Harshada S. Admane)  
Civil Judge, Junior Division,  
Shindkheda

**CERTIFICATE**

I certify that the contents of this PDF file are word to word as per Original Order.

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