

MHGA070004702016



Presented on : 06/06/2016
Registered on : 06/06/2016
Decided on : 27/03/2026
Duration : Y. M. D.
09, 09, 21,

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, AHERI,
DISTRICT-GADCHIROLI**

(Presided over by Shahid Sajiduzzaman M.H.)

Regular Civil Suit No.07/2016

Shri. Satyanarayan Ramayaji Maddiwar,
Age about - 80 Years, Occupation – Nil,
Resident of Aheri, Taluka- Aheri,
District – Gadchiroli.

...PLAINTIFF

- V E R S E S -

- 1) **Shri. Dilip Madhukar Padalwar,**
Age about-55 Years, Occ. - Trade,
- 2) **Shri. Pankaj Kisan Padalwar,**
Age about - 40 Years, Occ. - Trade,
- 3) **Shri. Parag Kisan Padalwar,**
Age about - 37 Years, Occ. - Trade,
All resident of Aheri, Taluka – Aheri,
District Gadchiroli.

.... DEFENDANTS

**SUIT FOR DECLARATION, RECOVERY OF POSSION ANF FOR
PERPETUAL INJUNCTION**

APPEARANCE :

Learned advocate for the plaintiff Shri. U.S. Galbale.
Learned advocate for the defendants Shri. S.V. Jainwar

J U D G M E N T

(Pronounced on 27th March, 2026)

1. Present suit is for declaration, recovery of possession and for perpetual injunction in respect of land situated at Aheri Northern side 25 feet wall and space out of old survey No.250 (New Block No.591) situated at Aheri having four boundaries; towards eastern side – remaining wall of the plaintiff, towards western side – plaintiff's house on the block No.570, towards northern side – house constructed illegally by the defendants on old survey No.249 and towards southern side – courtyard and house of the plaintiff (hereinafter referred to as the “**suit property**” for brevity).

CASE OF THE PLAINTIFF IN SHORT IS AS UNDER :

2. According to the plaintiff, he is the owner of land admeasuring 771.71 square meters in old Survey No.250 (New block No.591). He has house over above mentioned land which was surrounded by the compound wall of 07 feet in height. 7/12 extracts show entry of said wall. The defendants are constructing house on the above land by breaking northern side's east- west 25 feet wall of his house. In the month October 2015, the plaintiff came to know about said illegal construction of the defendants. The defendants have also closed his drainage adjacent to the suit wall and broke pipes. Therefore, in July 2015 till 09/05/2016 on many occasions, the plaintiff made complaints regarding said construction of the defendants with the Nagar Panchayat, Aheri. However, Nagar Panchayat did not take any action and on 09/05/2016

conveyed to him about approaching the Court. The plaintiff has also lodged reports from 13/10/2015 to 02/04/2016 against the defendants at the Police Station, Aheri. Consequently, offences under Sections 324, 504, 34 of the Indian Penal Code, 1860 have been registered against the defendants. Therefore, present suit for declaration that he is the owner of the suit property, directing defendants to hand over vacant possession of the suit property to the plaintiff and for perpetual injunction against them.

CASE OF THE DEFENDANT NOS.01 TO 03 IN SHORT AS UNDER :-

03. The defendants filed written statement (Exh.14) and contested the suit. The defendants have denied all the pleadings except admitting that the plaintiff is the resident of Aheri and prayed for dismissal of the suit.

04. By way of special pleading it is pleaded that the plaintiff is not owner of suit property and pleaded that their house is situated at the North- East Side. It is pleaded that the defendants had old house which they have demolished. It is pleaded that the defendants have obtained the permission of Gram Panchayat in the name of Sau. Radha Kisan Padalwar and has constructed ground floor on their own land. It is pleaded that on the basis on ground floor's construction the defendants have completed first floor. Therefore, there is no question of encroachment over suit property and question to transfer open land to the plaintiff does not arise. The defendants have made construction by obtaining necessary permission from the then Gram Panchayat. It is pleaded that the

plaintiff has not joined Sau. Radha Kisan Padalwar as party to the suit and suit be dismissed with costs.

05. Heard the learned advocate Shri. U.S. Galbale for the plaintiff and the learned advocate Shri. A.R.Pachpor for the defendants.

06. My learned predecessor framed issues (Exh.15). Same is reproduced here under coupled with my findings and reasons thereon.

Sr. No.	<u>ISSUES</u>	<u>FINDINGS</u>
(1)	Whether the plaintiff has proved that he is the owner of the suit property ?	No.
(2)	Whether the plaintiff has proved that defendants made encroachment on the suit property by breaking the wall and made illegal construction thereon?	No.
(3)	Whether the plaintiff is entitled for the declaration that he is the owner of the suit property and for recovery of its possession with perpetual injunction against the defendants ?	No.
(4)	What order and decree ?	The suit is dismissed with costs.

REASONS

07. At the out set, I would like to state that this is second round of litigation. It is pertinent note that earlier present suit

came to be dismissed by the court after full trail its vide judgment and decree dated 17-01-2022. However, the plaintiff prefers Regular Civil Appeal No 26/2023 before the Hon'ble District Judge-1 Aheri. The Hon'ble District Judge-1 Aheri allowed the appeal vide order dated 19-12-2023 and directed this Court to restore the suit and to give opportunities to both the parties to lead additional evidence after filing of agreed measurement map by TILR Aheri, then to hear the parties and to disposed off the suit in accordance with the law. It is pertinent to note that thereafter, suit came to be restored. The suit property came be measured by TILR Aheri. Thereafter, the plaintiff examined the said Surveyor and closed his side of evidence.

ORAL AS WELL DOCUMENTARY EVIDENCE OF THE PLAINTIFF

08. In order to substantiate his pleadings, the plaintiff has examined in all three witnesses on his behalf. The plaintiff has examined himself as PW1 by filing his examination-in-chief (Exh.20). Further, the plaintiff has examined Gajanan Sheshrao Wadekar as PW2 by adducing his examination-in-chief (Exh.65) and surveyor namely Samayya Ramayya Bomanwar as (P.W. 03) at Exh.78. **In the second round of litigation, the plaintiff has examined Dibu Maroti Borkar as (PW.04) below Exh. 156 and Tushar Ramesh Nimje as (PW.05) below Exh.167.**

09. The plaintiff has relied upon the following documentary evidence in addition and in support of oral testimonies.

<u>Serial No.</u>	<u>Nature of document</u>	<u>Exhibit No.</u>
1)	Certified Copy of record of right.	Exh.21.
2)	True copy of Gav Namuna 8A in the name of the plaintiff.	Exh.22
3)	Certified copy of 7/12 extract of survey Nos.249, 277/02 of village Aheri for the period of 1977-78 to 1986-87.	Exh.23
4)	Certified copy of 7/12 extract of survey No.250 in the name of the plaintiff of village Aheri for the period of 1987-88 to 1999-2000. (In total 05 extracts of same period).	Exhs.24, 89, 90, 96, and 97.
5)	True copy of map of survey No.250 (New block No.591).	Exh.25
6)	Akhiv Patrika of Sheet No.17 of block No.570 in the name of the plaintiff.	Exh.26
7)	Akhiv Patrika of Sheet No.17 block No.591 in the name of the plaintiff.	Exh.27
8)	Office copy of complaint dated 13/10/2015 lodged by the plaintiff against the defendants at the Police Station, Aheri.	Exh.28
9)	Office copy of complaint dated 14/10/2015 lodged by the plaintiff against the defendants at the Nagar Panchayat, Aheri.	Exh.29
10)	Certified copy of printed first information report dated 24/03/2016 lodged by the plaintiff against the defendants at the Police Station, Aheri.	Exh.30
11)	Office copy of complaint dated	

	25/03/2016 given by the plaintiff against the defendants to the President, Nagar Panchayat, Aheri.	Exh.31
12)	Office copy of complaint dated 21/04/2016 given by the plaintiff to the President, Nagar Panchayat, Aheri against the defendants.	Exh.32
13)	Original copy of report dated 02/04/2016 regarding registration of non-cognizable offence at the Police Station, Aheri on the report lodged by the plaintiff against the defendants.	Exh.33
14)	Original copy of reply dated 22/04/2016 given by the Chief Officer, Nagar Panchayat, Aheri to the plaintiff.	Exh.34
15)	Office copy of complaint dated 24/04/2016 given by the plaintiff to the President, Nagar Panchayat, Aheri against the defendants.	Exh.35
16)	Original copy of reply dated 09/05/2016 given by the Chief Officer, Nagar Panchayat, Aheri to the plaintiff.	Exh.36
17)	Original copy of house tax receipt of property No.94 in the name of the plaintiff.	Exh.47
18)	Original copy of house tax receipt of account No.502 in the name of the plaintiff.	Exh.48
19)	Original copy of house tax receipt of account No.488 in the name of the plaintiff.	Exh.49

20)	Original copy of letter dated 28/11/1998 given by the Sarpanch, Gram Panchayat, Aheri to the plaintiff.	Exh.50
21)	True copy of action report dated 09/11/1998 given by the Secretary, Gram Panchayat, Aheri.	Exh.51
22)	'C' sheet of measurement map of the suit property regarding the measurement dated 23/04/2019.	Exh.79
23)	Certified copy of 7/12 extract of survey No.250 in the name of the plaintiff of village Aheri for the period of 1997-98. (Two copies)	Exhs.91 and 92.
24)	True copy of P.11 Khasara five years form.	Exh.93
25)	True copy of P.11 Khasara five years form of survey No.250 in the name of the plaintiff. (Two copies)	Exhs.94 and 95.
26)	True copy of 7/12 extract of No.250 in the name of the Maddiwar Satyanarayan Ramayya of village Aheri for the period of 1987-92. (Two copies)	Exhs.96 and 97.
27)	Copy of measurement map	Exh.157

10. In order to resist the suit claim, defendants have examined the defendant No.01 by filing his examination-in-chief (Exh.82). They closed their oral evidence as per the pursis (Exh.112). They have not furnished any documentary evidence on record.

11. It is imperative to note here that when the matter was fixed for the judgment, the plaintiff in person filed application and seeks permission to make submission in person. However, this court in order to meet ends of justice allowed the application and heard the plaintiff in person.

12. The plaintiff in person argued that this is second round of litigation and as he is owner of suit property he has filed the present suit over which the defendants have made encroachment. He deposed that earlier there was Hostel and in order to protect the same. He has constructed Wall Compound which the defendants have damage and have broken the same. He argued that he has filed all document regarding his ownership over suit property. Hence, suit be decreed with costs.

AS TO ISSUE No.01:-

13. The plaintiff has examined himself as PW1 and reiterated of the plaint by way of his examination-in-chief (Exh.20). He deposed that he is the owner of land admeasuring 771.71 square meters in old survey No.250 (New block No.591) which comprises the suit property. He has house on the said land. To substantiate his version, he has filed Record of right (Exh.21), Gav Namuna 8A (Exh.22), 7/12 Extracts (Exhs.24, 89 to 92, 96 and 97), Akhiv Patrika (Exh.27), Tax receipts (Exhs.47 to 49) and P.11 Khasara five years forms (Exhs.93 to 95).

14. It is pertinent to note that as per the defendants, the plaintiff is neither the owner of suit property nor the defendants have made encroachment over the suit property.

15. It is argued by the learned advocate of the plaintiff that since 1986 till 2014 there was Hostel which is now vacant and protection of which the plaintiff has erected compound wall. It is argued that the defendants have broken the said compound wall but same is visible and in existence and that can be seen in the evidence of PW4 Dibu Borkar and PW5 Tushar Nimje. Moreover, in order to show ownership over the suit property the plaintiff has filed all revenue documents which are exhibited and proved by the plaintiff. Hence, it is proved that the plaintiff is owner of suit property. It is proved that compound wall is and was in existence. It is proved that the defendants have broken the compound wall of the plaintiff and from the evidence of PW4 Debu Borkar and PW5 Tushar Nimje, it is proved the defendants have made encroachment over the suit property.

16. It is pertinent to note that the defendants have filed **Written Notes Of Argument** at Exh.179 and according to the defendants this second round of litigation. According to the defendants, the plaintiff fails to prove ownership over suit property. Moreover, PW5 Tushar Nimje has nowhere deposed that the defendants have made encroachment over the plaintiff's land and therefore, PW5 Tushar Nimje has admitted

that Map no where shows that there is encroachment over Survey no. 591 by Survey no. 249. Hence, it is submitted that unless the plaintiff prove ownership over suit property and encroachment by the defendants no relief can be granted in favour of the plaintiff. Therefore, as the plaintiff fails to prove ownership and encroachment by the defendants suit be dismissed with costs.

17. It is pertinent to note that as per the plaintiff, he is owner of suit property and the defendants have made encroachment over suit property by broking the compound wall. Moreover, the defendants have made encroachment over suit property.

18. It is pertinent to note here that in the first round of litigation the present issue was answered in the negative that the plaintiff fails to prove his ownership over the property. However, even after matter is remanded to this Court by Hon'ble Additional District Judge, Aheri. The plaintiff fails to lead any evidence in respect of his ownership over the suit property. As present issue is in respect of ownership of the plaintiff over suit land. Therefore, it is necessary to discuss when a suit for injunction and declaration would lie ?

19. It is pertinent to note here that any person who has any legal character or any legal rights as to any property by virtue of title deeds or otherwise may file a suit for declaration of those rights and for injunction against any person denying or interested

to deny his title to such character or right. The Hon'ble Supreme Court has in the matter of **Anathula Sudhakar vs. P Buchi Reddy & Ors**¹, clarified the general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and or possession with injunction as consequential relief, which is reproduced as under:

Para 11.1- When a Plaintiff is in lawful or peaceful possession of a property and such possession is disturbed or threatened by the defendant, a suit for injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

Para 11.2- Where the title of the Plaintiff is not disputed, but he is not in possession his remedy is to file a suit for possession and seek in addition, if necessary an injunction. A person out of his possession cannot seek the relief of injunction simpliciter, without claiming the relief for possession.

Para 11.3- Where the plaintiff is in possession but his title to the property is dispute, or under a cloud, or where the defendant asserts title thereto and there is also threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and consequential relief of injunction. Where the title of the Plaintiffs is under cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

20. In view of the rival submissions, the first and foremost question that falls for my consideration is as to whether

¹ AIR 2008 SC 2033

the evidence let in by the plaintiff at all could be considered as the evidence in proof of title? Whether any acceptable evidence has been let in by the plaintiff in order to establish its title in respect of the suit property ?

21. Let see the oral as well as documentary evidence in relation to issue no.1 which deal with owner. The plaintiff has filed and relied on record of right (Exh.21), Gav Namuna 8A (Exh.22), 7/12 extracts (Exh.24, 89 to 92, 96 and 97), Akhiv Patrika (Exh.27), Tax receipts (Exhs.47 to 49) and P.11 Khasara five years forms (Exhs.93 to 95) which mentions only numbers and area. Therefore, it would not be received as the title proof in favour of the plaintiff.

22. The plaintiff has examined himself below Exh.20 and deposed as per content of plaint. Therefore, I directly jump to the cross examination of the plaintiff. During cross examination, the plaintiff PW1 admitted that Wall Compound exist in between his house and the house of the defendants. He admits in between that there is on street for waste water line. During cross examination, he admits that at the four feet district from Wall compound the defendants have dug plinth for their house and has made construction over that plinth. Rest of all suggestion are denied by him.

23. In order to support his testimony, the plaintiff has examined PW2 Gajanan Wadekar by filing his evidence on affidavit vide Exh.65 PW2 Gajanan Wadekar testified himself by

filing evidence on affidavit via Exh.65. He deposed that he known both, the plaintiff and defendants. He deposed that he is resident of Aheri and doing business since 2010. He deposed that till 2014 he was residing as tent in the house of the plaintiff. He deposed that when the plaintiff and his son were not available, the defendants have broken the wall compound with the help of laboures and taking the support of that wall compound the defendants have erected their wall. During cross examination state that contents of affidavit is prepared as per instruction of the plaintiff. He admitted that he did known about which he is giving evidence and lastly, admits that he is giving evidence as per say of the plaintiff.

24. It is pertinent to note that the Hon'ble Supreme Court held in several Judgments that revenue records does not confer title. In **Corporation of the City of Bangalore Vs. M.Papaiah and another²**, held that "It is firmly established that the Revenue Records are not documents of title and the question of interpretation of document not being a document of title is not a question of Law." In **Guru Amarjit singh Vs. Rattan Chand and others³**, the Hon'ble Supreme Court held that "the entries in Jamabandhi are not proof of title"

25. I have gone through the record. Perused documents and evidence in respect of present issue. It is imperative to note that from the documents file by the plaintiff it apparent that all documents are revenue documents and suit

² 1989(3) SCC 612

³ 1993 (4) SCC 349

property is Abadi Land. It is imperative to note that as the defendants have seriously disputed the title of the plaintiff over the suit property then it was incumbent on the part of the plaintiff to sought declaration of title over the suit property in view of judgment of Hon'ble Apex Court in **Anathula Sudhakar** (Supra) but no such relief is claimed by the plaintiff even in second round of litigation. It is pertinent to note that suit land is Abadi Land means ownership belongs to Government. Therefore, present case is an example of its kind of deliberate negligence and hands in gloves. It is pertinent to note that even evidence of PW1 plaintiff and the evidence of PW2 Gajanan Wadekar is not sufficient to prove the ownership of the plaintiff over suit property. It appear from the evidence of the PW1 plaintiff that the defendants have erected wall on the plinth erected by them. The plaintiff fails to prove that he is owner of the suit property as revenue documents are not document of ownership. The plaintiff is under the wrong belief and was considering himself to be the owner of the suit property on basis of revenue entries. The plaintiff has not filed any documents of title over suit property. Assumption and presumption do not confer the title over the immovable property. The Transfer of Property Act 1882 is the complete Code providing how to transfer the immovable properties in different modes. Therefore, I am of considered opinion that the plaintiff fails to prove ownership over suit property.

AS TO ISSUE NO2.

26. It is pertinent to note that in order to prove issue no.2, the plaintiff has examined PW3 Samyya Bomanwar in the

first round of litigation. PW3 Samyya Bomanwar is the Cadesteral Surveyor in order to prove encroachment made by the defendants over the suit property. He deposed that there is compound wall adjacent to the Gavthan land of block No.591 of Aheri. Now as the plaintiff in second round of litigation has measured the suit land as per order of Regular Civil Appeal No.26/2023 passed by the Hon'ble District Judge-1 Aheri.

27. According to the plaintiff that the defendants are constructing house by breaking northern side's east-west 25 feet wall of his house. They have closed down his drainage and broke pipes. Further, PW2 Gajanan Wadekar also deposed that in absence of the plaintiff, the defendants had broken compound wall and constructed wall of their house on the same. PW3 Samyya Bomanwar has deposed that on 23/04/2019, he measured land in block No.591 situated at Aheri and prepared 'C' sheet (Exh.79). There is 14 meter old wall on the northern east-west side of the said land. After said 14 meter wall, there is 07 meter wall of new construction. The said 07 meter new constructed wall is on the boundary of block No.591. As per the case of the defendants they have not encroached on the suit property.

28. It is argued by learned advocate for the plaintiff that evidence of PW4 Debu Borkar and PW5 Tushar Nimje is very clear on the point that compound wall is situated and same was broken by the defendants as it is proved by evidence of PW2 Gajanan Wadekar and PW3 Samyya Bomanwar. It is submitted

that from the evidence PW5 Tushar Nimje it is clear that wall is situated and same PW5 Tushar Nimje has deposed that same belongs to the plaintiff.

29. Per contra, as per Written Notes of argument, it is submitted that though PW5 Tushar Nimje has deposed that in survey no. 591 East- West Compound Wall can be seen and it belongs to the plaintiff but PW5 Tushar Nimje nowhere deposed that the defendants have made encroachment.

30. I have gone through the evidence of the PW3 Samyya Bomanwar, PW4 Debu Borkar and PW5 Tushar Nimje. It is pertinent to note that it is settled law that to prove encroachment, it is necessary to prove title of the party who asserts encroachment upon his property and I have answered the issue no.1 in the negative. But the issue no.2 is to be decided independently upon the base of the evidence in that regard.

31. It is pertinent to note that in cases of encroachment to boundaries the material witness is the Cadesteral Surveyor and his measurement report. If such report of Commissioner is proved as rendered, keeping in view the requirement of rules relating to measurement and if it withstands the test of cross examination, this alone can be the foundation to proof of facts and of extent of encroachment.

32. The Hon'ble parent High Court (Nagpur Bench) in the case of *Vijay Shrawan Shende Versus State of Maharashtra, 2009 (5) Mh.L.J 279* observed as under.

“The fact of encroachment is a matter of three aspects together, namely which can be 1) seen, 2) Perceived by sense by taking aid of measurement devices, and 3) an information based thereon.”

33. It is pertinent to note that the plaintiff has examined PW4 Debu Borkar and PW5 Tushar Nimje. It is imperative to note that measurement case was allotted to PW4 Debu Borkar but due to his sudden ill health, PW5 Tushar Nimje has went to help PW4 Debu Borkar and according measurement is conducted and Exh. 157 came to be prepared. I have perused Exh.157 and evidence of PW4 Debu Borkar and PW5 Tushar Nimje in order to ascertain the area of encroachment if any made by the defendants over the suit property.

34. It is imperative to note PW4 Debu Borkar and PW5 Tushar Nimje have deposed the suit property and Exh.157 is admitted by the defendants. So far as the evidence of PW4 Debu Borkar and PW5 Tushar Nimje is concerned. PW4 Debu Borkar and PW5 Tushar Nimje have deposed that they have prepared the Map by using Rower Technique. It is pertinent to note that during the cross examination PW4 Debu Borkar has admitted that Exh.157 does not bear signature of PW5 Tushar Nimje. It is imperative to note that during cross examination PW5 Tushar Nimje has admitted that duing measurement he has not found encroachment of survey no. 249 over survey no. 591. On the contrary PW5 Tushar Nimje has admitted that possessor of suvery no. 591 has made encroachment over the road. He further, admitted that

Exh.157 does not shows that there is encroachment of 23 meter over Survey No.591.

35. Section 83 of the Evidence Act, 1872 now section 82 of Bhartiya Sakshya Adhiniyam lays down that the Court shall presume that the maps or plans purporting to be made by the authority of the Central Government or any State Government were so made and are accurate. But maps or plans made for purpose of any cause must be proved to be accurate by the person who has prepared them, but from the evidence of PW4 Debu Borkar and PW5 Tushar Nimje is clear that there is no encroachment over survey no. 591 which is apparent from the cross examination of PW5 Tushar Nimje. Moreover, entire testimonies of PW4 Debu Borkar and PW5 Tushar Nimje is shaken during the cross examination. Hence, it would not be appropriate to relay upon their testimony. Further, PW1 the plaintiff has admitted that there is compound wall between his and defendants land, there is Nagar Panchayat road on the eastern side of their lands. He further admitted that there are drainage on both sides of said road.

36. In view of above discussion, I come to the conclusion that the plaintiff has failed to prove alleged encroachment of the defendants upon the suit property. Therefore, I answer issue No.02 in the negative.

AS TO ISSUE NO.03 :-

37. In view of my findings recorded below issue Nos.01 and 02, the plaintiff is not entitled for the relief of

declaration, recovery of possession and perpetual injunction against the defendants as claimed by him. Accordingly, I answer issue No.03 in the negative. Lastly, in answer to issue No.04, I pass the following order.

ORDER

1. The suit is dismissed with costs.
 2. Decree be drawn up accordingly.
- (Pronounced and dictated in open court).

Dated : 27/03/2026
Place : Aheri.

(Shahid Sajiduzzaman M.H.)
Civil Judge Junior Division,
Aheri, Distt. Gadchiroli.