

(CNR NO.MHGO010011002016)



Presented on : 24/10/2016

Registered on : 26/10/2016

Decided on : 22/05/2026

Duration: 09-Y. 06-M. 28-D.

EXH.NO. 22

**BEFORE THE COURT OF DISTRICT JUDGE-1 AND
ADDITIONAL SESSIONS JUDGE, AT GONDIA**

(Presided over by A. S. Pratinidhi)

REGULAR CIVIL APPEAL NO. 76/2016

Chhanulal s/o Kaduji Chulpar,

Aged – 65 Years, Occ. Retired/Cultivator,

R/o – Goregaon, Near Jagat Arts

& Commerce College, Goregaon,

Tah. Goregaon, Dist. Gondia.

... Appellant.
(Original plaintiff)

- V E R S U S -

1. Patiram s/o Bajirao Chanap
(Dead)

1-A Chayanbai w/o Bhumesh Rane,
Aged – 50 Years, Occu. Housewife.
R/o – Chutiya, Gondia,
Tah. & Dist. Gondia.

2. **Kailash @ Lekhu s/o Patiram Chanap,**
Aged – 43 Years, Occu. Cultivator,
R/o. Bhagwat Tola, Post – Ratnara,
Tah. & Dist. Gondia.

.. Respondents.
(Original defendants)

**APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL
PROCEDURE, 1908.**

Shri. S. R. Borkar, Learned Advocate for Appellant.

Shri. G. S. Bapat, Learned Adv. for Respondents.
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J U D G M E N T

(Delivered on this 22nd day of May, 2026)

Plaintiff of Reg. Civil Suit No. 07/2012 has challenged a judgment and decree dated 20/09/2016 passed by Jt. Civil Judge Junior Division, Gondia, by which learned trial court was pleased to dismiss plaintiff's suit claiming recovery of possession and mesne profit and decreed the counter claim of specific performance filed by the defendants.

2. For the sake of brevity, parties to the present appeal are referred to by their original status as plaintiff and defendants before learned trial court.

3. In a nutshell, facts giving rise to the present appeal are as under.

It is undisputed fact that plaintiffs and defendants both are triables and that defendant No.1 is cousin brother of plaintiff's mother. It is undisputed fact that properties described in plaint Para No.3 belonged to plaintiff's mother. Since, defendants No.1 & 2 are relative, they were in permissive possession and that they will hand over vacant and peaceful possession of suit properties whenever claimed.

4. Plaintiff issued notice on 26/07/2011 to vacate the suit land, however, defendants did not vacate the said property. As such, plaintiff filed the suit claiming recovery of possession and mesne profits.

5. Defendants have filed their written statement cum counter claim for specific performance of contract for sale vide Exh.10. Defendants have pleaded that since plaintiff was in need of money towards educational expenses of his children, agreement Exh.46 was executed.

6. On the basis of rival pleadings and contentions, learned trial court framed issues vide Exh. 14 and further that learned trial dismissed the plaintiff's suit and decreed the counter claim which directed the plaintiff to execute sale deed of suit property of Gat No. 140, area 0.44 in favour of defendants. Plaintiffs are also directed to seek Collector Sanction before execution of sale deed.

7. Hence, plaintiff has filed this appeal challenging judgment and decree dated 20/09/2016. I have heard learned advocate for the plaintiff and the defendants at length and upon perusal of the paper book and on going through the record of proceedings of RCS No. 07/2012, the following points have arisen for my determination, the said points together with my findings and reasons thereon are as follows.

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether learned trial court could have decreed counter claim for specific performance without deciding nature of transaction reflected in agreement to sale dated 17/05/2003 Exh.46 ?	...No.
2.	Whether learned trial court could have decreed counter claim of the defendants without framing and answering issue of limitation ?	...No.
3.	Whether dismissal of plaintiff's suit for possession was proper ?	...No.
4.	Whether interference in this appeal is warranted ?	...Partly Yes.
5.	What order ?	... As per final order.

REASONS

8. Plaintiff has examined himself vide Exh.17 as PW-1. He also examined PW-2 Nandlal Khedu Wanjari at Exh.34 and PW-3 Harilal Sudai Chanap at Exh.35. Plaintiff has also relied upon the following documentary evidence viz. Map of suit property Gat No.140 at Exh.19, 712/ extract of Gat No. 140 at Exh.20, map of suit property Gat No.92 at Exh.21, 7/12 extract of Gat No.92 at Exh.22 and notice and acknowledgment at Exh.23 to 25.

9. On behalf of the defendants, first defendant has deposed at Exh.45. They also examined DW-2 Dhanlal Balchand Thakre at Exh.52 and DW-3 Kalketu Rajendra Majumdar at Exh.58. Defendants have also relied upon the following documents viz. Letter written by plaintiff to defendants at Exh.27 & 28, photo copy of agreement of sale at Exh.29, agreement of sale dated 17/05/2003 at Exh.46, letter of payment of impounding amount of Rs.11,550/- at Exh.50, letter of impounding document and amount received at Exh.51 and letter of Sub-Registrar at Exh.59.

10. Now, therefore, I will proceed to answer points for determination.

Point No. 1 to 5.

11. These points are answered together in order to avoid repetition. True it is to say that defendants have supported the said decree and for that purpose, they have relied upon in case of ***Babasaheb -Vs- Radhu Vithoba Barde, arising out of SLP (C) No. 29462/2019 dated 15/02/2024.*** In the said appeal it is decided that specific performance of land to be transferred to non-triable can be granted subject to obtaining permission under Sec. 36-A of Maharashtra Land Revenue Code.

12. However, for applying the said authority in the instant case, it was incumbent upon learned trial court to

decide whether defendants' counter claim is hit by Article 54 of Limitation Act or not. Careful perusal of the impugned judgment and decree nowhere depicts that issue of limitation is framed and that the said issue is answered by learned trial court.

13. Further, it can be seen that plaintiff on the other hand has contended in his reply to counter claim Exh.13 that the transaction covered by Exh.46 was more or less a loan transaction than contract for sale. Further, because plaintiff's mother was residing at Itarasi, the defendants were allowed to use the property as the said defendants are relatives of plaintiff. As such, according to the plaintiff viewed from angle of Sec. 36 of MLRC, 1966, the transaction between the parties cannot be termed as contract for sale, in as much as the said document Exh.46 depicts need of the plaintiff to have loan towards education and other expenses. However, the said aspect is not taken in to account and that suit at hand is decided holding that transaction reflected in Exh.46 is contract for sale.

14. I have carefully perused the record and proceeding of RCS No. 07/2012 and evidence led by the parties. It can be seen that the plaintiff is disputing contract for sale. He is contending that the said document Exh.46 is more or less loan transaction than contract for sale. However, the said aspect is

not decided in fact issue relating to the nature of suit transaction goes to the root of the matter. As such, it is necessary to decide nature of transaction as is reflected in Exh.46 before deciding claim of specific performance.

15. That apart, contract for sale (Exh.46) was allegedly made on 17/05/2003. The defendants have filed counter claim in suit RCS No. 07/2012 on 29/05/2012. Now, the defendants have relied upon the aforesaid authority and have contended that subject to permission of Collector, decree for specific performance of contract can be granted where land in question is triable land and requires previous sanction of Government.

16. However, it is to be noted that the said authority relied upon by the defendants has not prohibited the Court from framing and answering issue of limitation before granting specific performance subject to sanction by the Collector. As such, considering that contract for sale was executed on 17/05/2003, learned trial court ought to have frame and ought to have decided whether or not counter claim of the defendants was within limitation in the year 2012. However, it can be seen that in the instant case learned trial court has neither frame nor decided the core issue of limitation. As such, in my view in the instant case remand is inevitable. Hence, the points under discussion are answered

accordingly and against point No.5 I proceed to pass the following order.

ORDER

Reg. Civil Appeal No. 76/2016 is partly allowed.

2. Impugned judgment and decree dated 20/09/2016 passed by Jt. Civil Judge Jr. Division, Gondia in Reg. Civil Suit No. 07/2012, thereby dismissing plaintiff's suit and allowing counter claim for specific performance of contract, is hereby set aside.
3. Accordingly, RCS No. 07/2012 along with counter claim is restored to the original file of Jt. Civil Judge Jr. Division, Gondia.
4. Learned Jt. Civil Judge Jr. Division, Gondia is directed to decide nature of transaction as is reflected in Exh.46 and also to decide whether counter claim filed by the defendants is within prescribed period of limitation as per Article 54 of Limitation Act and then to decide suit and counter claim.
5. Accordingly, parties to the present suit shall appear before learned trial court on 01/07/2026.

6. Decree be drawn up accordingly.
7. Record and proceeding of Reg. Civil Suit No. 07/2012 be sent to the learned trial court.
8. Informed learned Trial Court accordingly along-with copy of this order.

Gondia.
Dated: 22.05.2026.

(A. S. Pratinidhi)
District Judge-1 & ASJ,
Gondia.

CERTIFICATE

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

Name of the Court :- Shri. A. S. Pratinidhi
Member, MACT, Gondia.

Name of the Steno :- Shri. D. L. Kurve
Stenographer (Grade-III)

Date of Judgment :- 22/05/2026

Dictated and transcribed on dais computer on	:	22/05/2026
Checked by the Judge on	:	22/05/2026
Finally printed and signed by the Judge and uploaded on	:	22/05/2026