

MHGO080006582020 Presented on : 10.08.2020



Registered on : 10.08.2020

Decided on : 11.03.2026

Duration : 05 years, 07 months, 01 days

**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,
TIRORA, DISTRICT- GONDIA.**

(Presided over by : Smt. A. T. Bansod)

R.C.S. No. 27/2020

Exhibit No.84.

	Rajanbai Bhagwandas Asati (died)	
1.	Ashok Bhagwandas Asati Age:- 56 Year, Occupation:- Business R/o. Indora (Nimgaon), Tah. Tirora, Dist-Gondia	
2.	Ravikumar Bhagwandas Asati Age:- 66 Year, Occupation:- Agriculturist	
3.	Kailash Bhagwandas Asati Age:- 64 Year, Occupation:- Agriculturist	
4.	Kishor Bhagwandas Asati Age:- 52 Year, Occupation:- Agriculturist	
5.	Nitin Ramgopal Asati Age:- 35 Year, Occupation:- Business	
6.	Shobha Ramgopal Asati Age:-65 Year, Occupation:-household 2 to 6 R/o. At-Ekodi, Tah. And Dist-Gondia	
7.	Naresh Bhagwandas Asati Age:- 40 Year, Occupation:- Service	

	R/o. Vidya Nagar, T.B.Toli, Gondia, Tah. And Dist- Gondia	
8.	Sanjay Bhagwandas Asati Age:- 45 Year, Occupation:- Business R/o. Pragati Nagar, Tirora, Tah. Tirora, Dist-Gondia	
9.	Usha Sanjay Asati Age:-52 Year, Occupation:-Household R/o. At Wadegaon, Tah. Tirora, Dist-Gondia	
10.	Pushpa Mahendra Asati Age:- 58 Year, Occupation:- Household R/o. Ward No.1 Damoh, Tah-Dist- Damoh (MP)	...Plaintiffs
<u>VERSUS</u>		
	Sahesram Shivram Agre Age:- 60 Year, Occupation:- Carpenter/ Agriculturist, R/o. Indora (khurd), Post-Indora (khurd), Tah. And Dist-Gondia	...Defendant

**SUIT FOR DECLARATION, MANDATORY AND PERMANENT
INJUNCTION**

Learned Counsels :-

Shri. A. R. Malewar, for plaintiffs.

Shri. A. P. Yadav, for the defendant.

JUDGMENT

(Delivered on 11/03/2026)

The original plaintiff has filed suit for declaration, mandatory and permanent injunction.

2. The case of plaintiffs in brief as under :-

A) The plaintiff deceased Rajanbai Asati has purchased *kachha* house from Tikaram Raghu Undirwade R/o. Indora (khurd) Tah. Tirora, Dist- Gondia for valuable consideration, on 17/03/1992 and since then the plaintiff became owner and possessor. The area of above land is in length east-west-northern side 17 Sq. Mtr., and southern side 15 Sq. Mtr. and in width north-south-center part 15 Sq. Mtr., and western side north-south 18 meters and eastern side 13 meters 50 C.M., having total 228 Sq. Mtr., along with 67 Sq. Mtr. dilapidated house. Four boundaries of plaintiff's land are as follows.

East	:-	Aam Road i.e. (public way)
West	:-	House of Sahesram Agre
North	:-	House of Dasaram Bisen
South	:-	House of Atmaram Bhelave

B) The original plaintiff is owner and possessor of land shown as ABCD in plaint map. The plaintiffs left way on southern side for ingress and egress for themselves, defendant and other public shown in blue color in map as ACEF, which is a disputed land and hereinafter it will be referred as suit land for the sake of brevity. On ACEF land, i.e. on said way, the defendant started to dig pitch on 02/08/2020. Said construction was without permission of Gram panchayat and on said way left by plaintiff at about 5 ft. The defendant is constructing without having any right or title and therefore, it is illegal. Hence, he filed this suit.

3. The defendant appeared and file written statement at Exh.

32, denying case of plaintiffs in toto. He has specifically pleaded that the plaint map is not authenticate and not drawn by authorized person and therefore, it cannot be relied upon. He further stated that there, is no way of plaintiff over southern side as contended by plaintiff. Defendant is owner and possessor of said portion. The suit land cannot be identified because plaintiff had not given four boundaries of suit land nor given any Nagar Bhumapan or Gat number to show their ownership and possession.

4. On the contrary, the defendant is owner and possessor of Nagar Bhumapan Gat No. 269 and 270 of village Indora (khurd) as Index - C is issued by concern department and Sanad Certificate are in the name of defendant. The land at Nagar Bhumapan Survey No. 270 is having area of 49.5 Sq. Mtr. and four boundaries of Gat No. 270 are as follows:-

East	:-	Road
West	:-	Gat No. 269 of defendant
North	:-	Gat No. 268
South	:-	Gat No. 271

5. This land is courtyard to egress and ingress to this house at Bhumapan No. 269 and 270 is towards east side of Bhumapan Gat No. 269 as such the plaintiffs have no right and title over Bhumapan No. 270. For safety purpose, the defendant had constructed gate on his own land. There is no land or house of any other person behind house of defendant. As plaintiffs have started new construction, there is apprehension that they will encroach land at Gat No. 270. There is no

any open place left by plaintiff towards southern side of plaintiff's house. As such, prayed to dismissed the suit.

6. After going through inter-alia pleading of the original plaintiff and defendant, my Ld. predecessor has framed following issues below Exh.33, which are reproduced below, I record my findings with reasons stated as under.

S. N.	ISSUES	Findings
1)	Does plaintiff prove that she is owner of suit property as shown in plaint map?	In the negative.
2)	Does plaintiff prove that she left 12 X 46 ft. portion towards South of her house?	In the negative.
3)	Does plaintiff prove that defendant illegally encroached over ACEF portion shown in plaint map?	In the negative.
4)	Is plaintiff entitled for declaration as sought?	No.
5)	Is plaintiff entitled for mandatory and perpetual injunction as sought?	No.
6)	What order and decree?	Suit is dismissed.

7. In order to substantiate her claim, plaintiffs have examined P.W. No. 1 Ashok Bhagawandas Asati at Exh.38, P.W. No. 2 Khemlal Dasaram Asati at Exh. 47, P.W. No. 3 Sitaram Nakatu Sonwane at Exh. 48 and P.W. No. 4 Mukesh Hiralal Darwade at Exh. 49, P.W. No.5 Manishkumar Baburao Jangale at Exh. 62 and P.W. No.6 Nitesh Shalikram Khobragade at Exh. 68. They relied on documents below

Exh. 39 and 40, 63, 69 and 70. They closed their evidence by passing pursis at Exh. 71. During pendency of suit original plaintiff is died and her legal representative including P.W. No. 1 has been brought on record.

8. On the contrary, the defendant has examined himself at Exh. 72. He relied on document below Exh.76 to 82 and closed his evidence vide pursis at Exh.83.

9. The learned advocate for plaintiffs has argued that plaintiffs are owner and possessor as their mother i.e. original plaintiff has purchased said suit land for valuable consideration. The testimonies of plaintiff witnesses are remained intact as nothing is brought record to disbelieve to their testimonies. Documents on record show that plaintiffs are owner and possessor of suit land. However, no land bearing Gat No. 270 is in existence on the spot. Hence, plaintiffs prayed to decree the suit.

10. As against this, the learned counsel for the defendant has submitted that the document of Sanad of Nagar Bhumapan No. 270 shows that Nagar Bhumapan No. 270 is in existence and as per map it is towards North side of house of the defendant and towards south side of plaintiff's house. He has pointed out that, plaintiffs have not stated house number or Gat number in their plaint and deposition. Moreover, there is no power of attorney submitted by plaintiffs that the original plaintiff has given authority to adduce evidence on behalf of her.

11. He further argued that, boundaries of suit land are not properly mentioned. Therefore, suit land is not identifiable. Sale deed

at Exh. 39 did not bear Nazul number. During further argument he has pointed out that when sale deed at Exh. 39 was exhibited being old document, on that day, said document was not completed 30 years or when it was filed. Apart from this, contents of sale deed are not proved. Therefore, it cannot be relied upon. Considering total documentary evidence and cross-examination of plaintiff's witnesses, it is proved that land at Nagar Bhumapan No. 270 is owned and possessed by the defendant and as such plaintiffs failed to prove their case. Hence, prayed to dismissed the suit.

REASONS

AS TO ISSUE No. 1 TO 3 :-

12. All issues are interlinked with each-other, to avoid repetition, I have decided to discuss them together. The PW. No.1 Ashok Bhagwandas Asati is a son of original plaintiff and he has filed an application below Exh. 37 and was allowed by this Court by order below Exh. 37 to adduce the evidence. So, he has reiterated contentions made in the plaint. He has identified sale deed dated 17-03-1992 vide Exh. 39 and Sanad vide Exh. 40.

13. The testimony of PW. No. 1 has been seriously challenged by the defence counsel during which he has admitted that he has not filed any medical document of original plaintiff that she is suffering from paralysis. He has further admitted that, his mother did all transactions. It was argued by the defence counsel that, the original plaintiff for best reason known to her has not examined herself and she has not given any power of attorney to this witness to deposed on her

behalf and therefore cannot be relied upon.

14. During further cross-examination, it has been brought on record that this witness has not mentioned in his affidavit of evidence that, Exh. 39 came to be prepared in presence of witnesses, both parties put their signature on it and his mother is having all knowledge about sale deed and he has not mentioned the reason as to how said document came in his custody. It has also brought on record that there is road on Northern side which is used by all. He has denied existence of Bhumapan No. 270, but has admitted that towards East side of Bhumapan No. 270 there is road of Gram panchayat.

15. It is also seen from his cross-examination that, he has not mentioned in his affidavit or in plaint name of such persons who used or uses said road. Gram panchayat used to keep record of roads, but he has not placed any such document to show that suit land is road and is left for people to use it as a road. He has fairly admitted that Gat No.270 does not belong to him, but volunteers its non-existence. He has further admitted the plaintiff is owner and possessor of kachha house as she has purchased it. He was admitted that area, number and name of owner is mentioned in *Sanad* . He has admitted that prior to purchase of their land defendant has purchased his land.

16. From the above evidence, it is clear that, said road is used only by defendant as this witness has admitted names of other people who used it are not mentioned as well as there is Gram panchayat road towards North side which is used by villagers. This fact is admitted by P.W. No. 2 Khemlal Bisen and P.W. No. 4 Mukesh Darwade during their cross-examination. They have admitted that said land is not left for

villagers, towards East side there is road of Gram panchayat for egress and ingress of plaintiff. Both these witnesses are not witnesses on sale deed at Exh. 39. Moreover, they were having no knowledge about contents of sale deed at Exh. 39.

17. Similarly, the P.W. No.3 Sitaram Sonewane is also not a witness on sale deed and he has not seen said document. The P.W. No.3 and P.W. No. 4 have admitted their village comes under *Gavthan* and in their respective affidavits, there is no mention that they went along with members of Tanta Mukta Samiti and villagers to raise their objections on the spot. The P.W. No. 4 has not seen any document wherein it is mentioned that suit land is left by plaintiff to use it as road.

18. The P.W. No. 5 is measurer who has measured land at Nagar Bhumapan No. 268 by issuing notices to the applicant and adjacent land holders. He has prepared 'A', 'B' and 'C' copy of map and copy C is identified at Exh. 63. He has deposed that towards Western side of Nagar Bhumapan No. 268 there is land of 269 and towards South side of Bhumapan No. 268 there is road.

19. The above testimony of P.W. No.5 has been challenged by the defence counsel during which he has brought on record that copy of map 'A' is not similar with copy of map 'C'. He has admitted that in map, there is no encroachment shown on the land of Nagar Bhumapan No. 268. However, he has admitted in map 'A', he has shown Bhumapan No. 270 towards south side of Gat No. 268 and in map at Exh. 63 there is no mention of Nagar Bhumapan No. 270. It has also brought on record that whitener is used on map at Exh. 63 as it is over written,

wherein no initial put by said witness. He has further admitted that document at Exh. 40 does not bear name of plaintiff. So, it is clear from the evidence of this witness that, the land which is situated at southern side of Nagar Bhumapan No. 268 is a land having Nagar Bhumapan No. 270.

20. The P.W. No. 6 Nitesh Khobragade was Sarpanch of Gram Panchayat Indora (khurd) in the year 2020. He has issued NOC for construction to the plaintiff below Exh. 69. Similarly, there was report prepared on 03/08/2020 regarding dispute between the plaintiff and the defendant below Exh. 70.

21. The above testimony has been challenged by defence counsel by way of cross-examination, during which he has admitted below document at Exh. 69, there is no mention of property number, Nazul number, Ward number and boundaries. On the contents of over writing on said document, there is no initial put by him. Below document at Exh. 70 i.e. report there is no signature of plaintiff or defendant and in it also there is not mention of any property number. He has admitted that for seeking permission for construction map, boundaries, measurement needs to be given, then it came to be put before the committee and then resolution came to be passed. In absence of description of properties in both documents issued by Gram Panchayat below Exh. 69 and 70, it is difficult to say that they may be regarding lands of plaintiffs and defendant or the land at dispute.

22. The defendant has examined himself below Exh. 72 and reiterated contents made in his written statement. To support his contention, he has produced Sanad of Nazul Bhumapan No. 270 and

269 below Exh. 76 and 77. He has also produced map of Nagar Bhumapan No.270 vide Exh. 78, House tax receipt vide Exh. 79, assessment list of Nagar Bhumapan No.269 and 270 below Exh. 80 and 81 and lastly relied on property card of Nagar Bhumapan No.270 vide Exh. 82.

23. The above testimony of D.W. No. 1 has been challenged by the counsel for plaintiffs, during cross-examination it has brought on record that, land at Nagar Bhumapan No. 269 and 270 are in the name of defendant and his brother, but D.W. No. 1 has not mentioned name of his brother in his affidavit of evidence. He has further admitted that he has not got measured land at Nagar Bhumapan No. 269 and 270, there was complainant against him about his construction, members of Tanta Mukh Samiti along with some villagers came to his place and gave understanding to him that, said land is for egress and ingress of plaintiff.

24. However, nothing has brought on record to disbelieve the testimony of this witness though he has admitted boundaries of plaintiff during his further cross-examination. The Ld. Counsel for the plaintiffs has argued that, name of father of defendant is not mentioned on documents of Nagar Bhumapan Nos. 269 and 270 before his name as that of his brother and thus the defendant has brought his name by manipulation. I found no substance in this argument, in view of question put by plaintiffs relating to having name of brother of defendant on documents of Nagar Bhumapan No. 269 and 270.

25. Coming to the documentary evidence on record, filed by the defendant, it is clear that land at Nagar Bhumapan No. 269 and 270

belongs to defendant and his brother. On the contrary, the plaintiff failed to prove contents of sale deed by not examining the attesting witness or parties to the deed or the writer. Merely, it is a document of 30 years old will not suffice the purpose as to its contents because when the document came to be exhibited or filed on record, it was not of 30 years old. Therefore, the presumption under Section 90 of Indian Evidence Act is not helpful to the plaintiff.

26. Moreover, when the plaintiff was alive, she has not adduced the document at Exh. 30, but her son P.W. No.1 Ashok has filed it on record. Therefore, it is necessary on the part of P.W. No.1 to clarify how said document i.e. sale deed came in his possession or custody. Moreover, nowhere it is brought on record that witnesses, parties on sale deed at Exh. 39 or its writer are unavailable.

27. It is pertinent to note here that, the P.W. No.1 has filed application below Exh. 37 for seeking permission to examine himself as his mother was suffering from paralysis and want to adduce her evidence through him. The court has allowed him to adduce evidence being son as first witness. So, in such circumstances and without having any power of attorney, he was allowed to lead evidence, but fact remains same as the contents of sale deed has not proved from him considering his cross-examination in respect of sale deed at Exh. 39.

28. I have gone through sale deed at Exh. 39, wherein there is no mention of any such way on the spot and it is of only house property. If as per plaintiff, there is any such way in existence for use of plaintiff, defendant and villagers, definitely in sale deed it has to be mentioned. At this juncture, considering the admission of P.W. No. 3

and P.W. No. 4 that, there is no such way used by villagers on the spot, I find the way which plaintiffs are pretending is only used by the defendant for the reason that, the P.W. No. 4 has admitted during his cross-examination that the adjacent land holders used the road which is towards northern side of their houses and towards southern side they all are having compound walls.

29. So, definitely when there is compound wall from southern side of every house, they certainly could not use any road or way which is situated towards southern of their houses. So, it is clear that other peoples or villagers did not use said way to approach their respective houses. Moreover, no any such document is placed on record to show that the plaintiff has left suit land for egress and ingress of plaintiffs, defendant and other villagers.

30. It is suppressing to note here that, the plaintiff has not mentioned property number of dispute land or of her land in her plaint. Similarly, the P.W. No.1 also has not mentioned about property number of disputed land and the land purchase by his mother. The document which is at Exh. 40 i.e. Sanad of 268 area 218.2 is in the name of Tikaram Ragu Undirwade who is admittedly not a party to the suit.

31. The question before this court is whether suit land or way is owned by plaintiffs. In sale deed, nowhere it is mentioned about existence of such way for use of plaintiffs, defendants or villagers. The plaintiff has relied on sale deed but as discuss earlier its contents are not proved as it was not being 30 years when it was marked as exhibit, the benefit of presumption under Section 90 of Indian Evidence Act cannot be given to said document. Hence, considering the documentary

and oral evidence on record, in my opinion, plaintiffs have failed to show their ownership on suit land as shown in plaint map. Hence, **I record my answer to issue No.1 in the Negative.**

32. Plaintiffs have failed to produce any document on record to show that the original plaintiff has left 12 X 46 feet portion towards south of her house. From perusal of sale deed, it appears that, there is mention about house property, but not about any other place and not having any such way to approach or any land is left. At the cost of repetition, the P.W. Nos. 2 to 4 have admitted that they have not seen any document stating that there is any place which is left by plaintiff to approach his house. Hence, for want of evidence that the plaintiff has left some portion of land for using it as road towards south side, is unbelievable. Thus, **I record my answer to issue No. 2 in the Negative.**

33. The defendant has shown his ownership and possession over land at Nagar Bhumapan No. 270. Considering the cross-examination of P.W. No.5 namely Manishkumar Jangale who is measurer has admitted that there is no mention of any encroachment on Nagar Bhumapan No. 268 in copy of map A, B and C. However, he has admitted that in copy of map 'C' there is no mention of Nagar Bhumapan No. 270, but in copy of map 'A' the land of Nagar Bhumapan No. 270 is shown towards southern side of Nagar Bhumapan No. 268. The map which plaintiff has relied is not stating about any encroachment at Nagar Bhumapan No. 268. If land shown as "ACEF" is part of Nagar Bhumapan No. 268, then during measurement, encroachment must be seen, but as per measurer he has not found any encroachment on the land at Nagar Bhumapan No. 268. Considering the oral and documentary evidence on record, plaintiffs have failed to

prove that the defendant has made encroachment shown over land “ACEF” in plaint map. Hence, I record my answer to this issue in the Negative.

AS TO ISSUE No.4 AND 5:-

34. In view of negative findings of issue Nos. 1 to 3, I hold that plaintiffs are not entitled for declaration, mandatory and permanent injunction as prayed.

AS TO ISSUE No. 6:-

35. From discussion and observation made above, I proceed to pass following order:-

ORDER

1. Suit is hereby dismissed.
2. Under circumstances of the case, parties to bear their own cost.
3. Decree be drawn up accordingly.

(Pronounced in an open Court)

Place : Tirora.
Date : 11.03.2026

(A. T. Bansod)
Civil Judge, Jr. Dn., Tirora,
Taluka- Tirora, Dist.- Gondia.