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	Decided on	:	20.03.2026
	Duration	:	16 Y 05 M 15 D

IN THE COURT OF 3rd Jt. CIVIL JUDGE JUNIOR DIVISION, JALNA.

(Presided over by Supriya N. Pund)

Regular Civil Suit No.75/2012

Exh. No.151.

1. Abdul Qadeer Abdul Shakur (Deceased)

Through LR's

Mohammad Gaus Abdul Qadeer,

Age :- 56 Yrs., Occ. :- Business,

R/o Sali Galli, old Jalna, Taluka and District Jalna.

....Plaintiff

-- V/s --

1. Janabai Kisanrao Mhaske (Deceased)

Through LR's

1-a. Vimal Sukhdev Dhanore,

Age :- 45, Occ. :- Household,

R/o Bodhalapury, Tq. Ghansavangi, District Jalna.

1-b. Nandabai Sambhaji Tarase,

Age :- 42, Occ. :- Household,

R/o Dhagi (Borgaon), Tq. And District Jalna.

1-c. Mandabai Vithal Pund,

Age :- 40, Occ. :- Household,

R/o Behind Matsodari devi temple, Ambad,

Tq. Ambad, District Jalna.

1-d. Sangita Rameshwar Gadekar,

Age :- 35, Occ. :- Household,

R/o Parner, Tq. Ambad, District Jalna.

1-e. Mangal Thakchand Tambe,

Age :- 30, Occ. :- Household,

R/o Salli Galli, Paithan, Tq. Paithan, District Aurangabad.

2. Ramrao Kisanao Mhaske,

Age :- 40, Occ. :- Agriculture,

3. Balasaheb Kisanrao Mhaske,

Age :- 35, Occ. :- Agriculture,

4. Balu Kisanrao Mhaske,

Age :- 50, Occ. :- Agriculture,

All R/o. R/o Kumbefal,, Taluka and District Jalna.

....Defendants

Appearances :-

Adv. Shri. L. P. Mukim for the Plaintiff.

Adv. Shri. J. P. Runwal for the defendant no.1 to 4.

J U D G M E N T

[Delivered on 20th March 2026]

This is a suit for declaration that the plaintiff is the owner of the suit property and possession of the suit property.

02. **The brief facts of the plaintiff's case is as under -**

Suit property - Field survey No.176 admeasuring 7 acres situated at village Kumbefal, Taluka and District Jalna, four boundaries of which are as follows :

Towards East : Land of Indirabai Laxman Mhaske

Towards West : Water Tank

Towards South : Land of Suma Badanappa Paralkar

Towards North : Land of Janabai

03. It is the assertion that the plaintiff is the owner and the possessor of the suit property by way of registered Sale-Deed executed by the defendant no.1 in his name on 17.09.1997 in his favor. It is his case that mutation entry was accordingly affected in his name. It is further contended that subsequently the defendant caused obstruction to the possession of the plaintiff, compelling the plaintiff to file a suit RCS no.90/2003 for perpetual injunction, which came to be dismissed. The appeal preferred against the said judgment was also dismissed.

04. During the pendency of the appeal, mutation entry came to be changed in the name of the defendant. Thereafter, the plaintiff filed another suit RCS no.442/2007 seeking injunction for restraining the alienation of the suit property, which also came to be dismissed. It is further asserted that the defendant has forcefully dispossessed the plaintiff. Thus, the present suit is filed for declaration of ownership and possession of the suit property.

05. The defendant appeared in the suit and filed his written

statement at Ex.11. The defendants have categorically denied the claim of the plaintiff. It is the contention of the defendant that the suit is barred by law of limitation as well as by Order II Rule 2, on the ground that the plaintiff had filed RCS No.90/2003 for injunction claiming to be the owner and possessor of the suit property. The defendants appeared therein and denied the suit by filing written statement. The suit was vehemently contested and dismissed. The title flowing from the Sale-Deed was the basic foundation of the suit. The plaintiff also filed RCS no.442/2007 with prayer of perpetual injunction which was also dismissed and no appeal was filed. The plaintiff knowingly made to sue in respect of the portion of his claim regarding the declaration and possession in previous suits. Therefore, the claim for possession and declaration was relinquished by the plaintiff. It is further contended that, the reliefs claim in the present suit could have been claim in previous suits. Thus, the suit is barred by the Order II Rule 2 of Civil Procedure Code. Moreover, it is contended that the finding given in earlier suits as well as appeal would operate as res judicata to the present suit. It is also contended that the boundaries of the suit properties are wrongly mentioned in the suit and the suit is filed with wrong submission.

06. The plaintiff specifically pleaded that the defendant no.1 is the illiterate lady. She is the owner and possessor of entire Gat no.176 of village Kumbefal. In the month of September 1997 she was in dire need of money to perform marriage of her daughter. She was acquainted with the plaintiff who was money lender in the village. Therefore, she approached the plaintiff and request to advance hand loan of

Rs.45,000/-. The plaintiff agreed to advance a hand loan subject to condition that defendant at her own expenses shall executed a nominal Sale-Deed to the extent of 7 acres from Gat no.176 as a security towards the repayment of loan. It was further agreed that the interest on the said loan shall be 2 percent per month. At that time the plaintiff assured and promised with the Sale-Deed would be nominally and sham one. It was further assured that upon repayment of entire principal amount and interest the Sale-Deed will be null and void. After completion of transaction defendant regularly paid made interest of amount to the plaintiff till end of January 2003 and thereafter in first week of February 2003 defendant along with her sons and one Balasaheb Dasharath social worker of the village meet the plaintiff and requested him to executed appropriate reconvey of said 7 acres in favor of the defendant. At the first instance the plaintiff shown his readiness for the same. However later he avoided his obligation despite of numerous appeal on all of sudden filed RCS no.90/2003. On these grounds the defendant prayed for the dismissal of the suit.

07. Considering the pleading of the plaintiff, following are the issues came for my consideration to which I have given my findings with the reasons below :

<u>Sr.No</u>	<u>Issues</u>	<u>Findings</u>
1.	Whether the disputed Sale-Deeds dated 17.09.1997 are absolute sale or security towards loan advanced ?	No
1-A.	Whether the plaintiff proves that, he is owner in	No

	possession of suit property ?	
2.	Does the plaintiff proves that, the defendants after purchase of suit lands started obstructing in his possession by demanding further money ?	No
3.	Is the court having jurisdiction to entertain and try the suit ?	Redundant
4.	Is the suit within limitation ?	No
5.	Whether the suit is barred in view of provisions of Order 2 Rule 2 of C.P.C. ?	Yes
6.	Whether the findings in RCS no.90/2003, RCS no.442/2017 and RCA no.2/2005 operated as resjudicata ?	Yes
7.	Do the defendants prove that the plaintiff is a money lender, from whom they have borrowed money and the Sale-Deeds have been executed for security only ?	Struck off
8.	Is the plaintiff entitled for relief sought ?	No
9.	What order and decree ?	The Suit is dismissed

:: R E A S O N S ::

08. To prove the case, the plaintiff has filed the index 2 of the Sale-Deed no.4105/1997, index 2 of the Sale-Deed no.4106/1997, index 2 of the Sale-Deed no.4107/1997 at Exh.56 to 58, 7/12 extracts of suit property at Exh.59 and 60, mutation entries of the suit property at Exh.61 to 63 and certified copies of the Sale-Deed have mentioned above the plaintiff has examined himself along with other 3 witnesses

and filed evidence close pursis at Exh.101.

As to Issues No.01 and 1-A :-

09. The plaintiff has come up with the case that he has owned the suit property by virtue of the Sale-Deed executed by the defendant no.1 in his favor. As per the Indian Evidence Act, the document and its execution must be proved. The registered document carries presumption that it is duly registered. However, this presumption is limited. It does not by itself prove its execution or the truth of the contents. As per section 68 of the Evidence Act if the document is one which is required by law to be attested, at least one attesting witness must be examined. When the document is not required to be attested, as per section 67, of the Indian Evidence Act, execution of it can be proved by the executant himself, or the person who saw execution, or handwriting/signature expert, or admission by opposite party.

10. In the case in hand to prove the said Sale-Deed the plaintiff has examined a power of attorney holder of the plaintiff PW-1 Mohamad Gaus at Exh.54. He deposed that the plaintiff is his father. He is 82 years old. Due to the old age he is bed ridden. Thus, a power of attorney is executed in his favor to lead evidence in the present suit. The index 2 of the Sale-Deed is filed on record. During the cross-examination PW-1 Mohamad Gaus deposed that the agreement to sale of the suit property was taken place at his shop. At the time of agreement to sale he was present with his father, defendant no.1 and 2. The earnest amount of Rs.10,000/- was paid by the plaintiff to the defendant. However, he could not deposed the four boundaries of survey no.176. Further, he

admitted that at the time of registration of the Sale-Deed, he was not present and Rama Mhaske, Balu Mhaske and Khalil Ahemad were the attesting witnesses of the Sale.

11. The plaintiff has examined PW-2 Asaram Murlidhar Shinde. He filed his evidence on affidavit at Exh.86 and deposed that he was working as a labour in the suit property from the year 2003 to 2009. The suit property is own by the plaintiff.

12. PW-4 Krushna Thombare is examined by the plaintiff as a scribe of the Sale-Deed. He deposed that he has typed the contents of the Sale-Deed no.4105/1997, 4106/1997, 4107/1997. However, during the cross-examination he admitted that he is unaware about the transaction between the parties. To prove the Sale-Deed the plaintiff has to examined the attesting witness of the Sale-Deed, however refrained to do so. The plaintiff neither proved that the attesting witnesses of the Sale-Deed are died or they are not available to examine. On the other hand, the defendant filed on record the certified copies of deposition of the attesting witnesses examined in RCS no.90/2003. The copy of deposition of the plaintiff Abdul Qadeer is also placed on record. In RCS no.90/2003 the attesting witness had deposed that he has a knowledge of transaction between the plaintiff and the defendant. The defendant no.1 was in need of money for the marriage of her daughter. She was in dire need of money. She executed a nominal Sale-Deed in favor of the plaintiff as a security of a loan amount of Rs.45,000/-. He further deposed that it was agreed between the parties that after 3 years when the loan will be repaid the plaintiff will execute Sale-Deed in favor of the defendant no.1. But this condition remained only as a oral

agreement. The said witness did not support to story of the plaintiff. Hence, he was cross-examined by the plaintiff himself. During the said cross-examination he denied that the contents of the Sale-Deed were read over to him. He denied that the said Sale-Deed was a permanent Sale-Deed of the sale transaction between the plaintiff and defendant. Likewise, another attesting witness Balasaheb Mhaske also did not support the contention of the plaintiff.

13. It is vehemently argued by the counsel for the defendants that as per Section 33 and section 80 of the Indian Evidence Act, previous depositions in earlier suit are admissible in evidence. Therefore, the earlier depositions are relevant and admissible. As all the attesting witnesses denied the story of the plaintiff in the earlier suit, all the witnesses are not examined by the plaintiff. Neither the attesting witnesses are examined nor the plaintiff himself entered into the witness box. Thus, as per section 114 of the Indian Evidence act, an adverse inference may be drawn.

14. I have minutely gone through the evidence of the plaintiff on the point of ownership of the suit property. The plaintiff has not examined the attesting witness of the sale-Deed. It has come on record that the attesting witnesses deposed that the sale deed executed by the defendant was only for the purpose of security to the hand loan. The plaintiff has neither placed on record the primary evidence of the ownership i.e. the original Sale Deed nor examined the plaintiff himself.

15. It is argued by the counsel for the defendant that the power of attorney holder cannot deposed on behalf of the principal. In this

regard he placed his reliance on the decision of Hon'ble Apex Court in the case of **S. Kesari Hanuman Goud Vs. Anjum Jehan and others, 2013(3) ALLMR916 (S.C.)** in which it is held that, *the power of attorney holder cannot depose in place of the principal. Provisions of order III, Rule 1 and 2 of C.P.C. empowered the holder of the power of attorney to "act" on behalf of the principal. The word "acts" done by the power of attorney holder, in exercise of the power granted to him by virtue of the instrument. The term 'acts', would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has preferred any acts in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined.*

16. In the present case, the suit is filed by the plaintiff himself. However, it is shown that the plaintiff is an old aged person and cannot attend the court, the power of attorney cannot depose instate of the plaintiff. There are other modes to record the evidence of the person who cannot appear before the court for evidence. Moreover, I have minutely gone through the evidence of the power of attorney holder. From his deposition it is seen that the power of attorney holder has no knowledge about the transaction between the plaintiff and the defendant. Therefore, the evidence of PW-1 Mohammad Gaus who is the power of attorney cannot be relied in it's strict sense.

17. In the present case, execution, nature, and intention behind

the alleged Sale-Deeds are matters within the exclusive knowledge of the plaintiff. His failure to enter the witness box is fatal. Further, the defendant has raised a specific defence that the document was executed as security for a loan transaction. The plaintiff has failed to rebut the same by cogent evidence. It is well settled that mutation entries do not confer title. Thus, the plaintiff has failed to prove that the sale deed is an absolute conveyance or that he is the owner or the possessor of the suit property. Hence, I answer issue no.1 and 1-A in the negative.

As to Issues No.02:-

18. The plaintiff has examined the witnesses on the point that the plaintiff is the owner of the suit property, he is in possession of the suit property and the plaintiff is not in a condition to appear before the court to adduce his evidence. However, the plaintiff has not adduced any evidence on the point that the defendant has demanded further money to the plaintiff. The plaintiff examined PW-2 Asaram Shinde who is the worker of the plaintiff. He deposed that he was working for the plaintiff from the year 2003 to 2009. He deposed the incident about the dispossession of the plaintiff at the hands of defendant. However, during the cross-examination the aforesaid witness deposed that he was working for the plaintiff from the year 2007. Further he admitted that, the plaintiff never lodged the complaint about the incident of dispossession of the plaintiff. On perusal of the entire evidence on record it transpires that there is no cogent and satisfactory evidence on record to prove the overt act on the part of defendant. It is already discussed that the plaintiff has not deposed about the his dispossession from the suit property. As the plaintiff has failed to prove his possession

over the suit property, there is no question about the obstruction by the defendants for the peaceful possession of the plaintiff over the suit property. Hence, I answer issue no.2 in the negative.

As to Issues No.03:-

19. Since, the suit was filed in the year 2009 the pecuniary jurisdiction of this court was lacking. After the amendment the pecuniary jurisdiction of this court is increased and the suit is re-registered in the year 2012. Thus, This issue is not relevant today. Hence, I answer issue no.3 as redundant.

As to Issues No.04, 05, and 06 :-

20. All the issues are correlated with each other. Hence, they are discussed together. It is the contention of the plaintiff that the Sale-Deed no.4107/1997 was executed on 17.09.1997. The plaintiff has filed the very first suit against the defendant in the year 2003. The foundation of which was the ownership of the suit property. The plaintiff could have claim the declaration of his ownership in that suit. But omits to do so. The suit was dismissed. The appeal of the same has also been dismissed. After that one more suit was filed by the plaintiff in the year 2007, which was also dismissed. All the litigation between the parties were based upon the same suit property, between the same parties and for the same relief. Thus the present suit is barred by the law of limitation , barred by the order II Rule 2 of the CPC and the res judicata. In support of this contention the defendant relied on the various Judgments of the Hon'ble Supreme Court and the Hon'ble various High Courts.

On the point of Res judicata -

- L] 2009 (3) Apex Court Judgment 574 [SC]
Ramchandra Dagdu Sonwane Vs Vithu Heera Mahar
- M] 2005 (2) Apex Court Judgment 173 [SC]
Aanaimuthu Thevar Vs Alagammal & others
- N] 2008 (2) Apex Court Judgment 660 [SC]
Anathula Sudhakar Vs P. Buchi Reddy
- O] 2010 (1) Civil Court Case 480 [SC]
Gangai Vinayagar Temple & os. Vs Meenakshi Ammal & ors.
- P] AIR 1998 Bombay 87
Mulji Umeshi Shah Vs Paradisia Builders Pvt. Ltd.

On the point of Order II Rule 2 -

- Q] 1999 (2) Apex Court Journal 258 574 [SC]
Laduram Vs Ganeshlal
- R] 2005 (3) Civil Court Cases 397 [SC]
Swamy Atmananda Vs Sri Ramkrishna Tapovanam
- S] 2011 (2) Civil Court Case 327 [SC]
Van Vibhag Karamchari Griha Niraman Sahkari Sanstha
Maryadit (Regd.) Vs. Ramesh Chandar & others
- T] 2014 (1) Civil Court Case 653 [SC]
State Bank of India Vs Gracure Pharmaceuticals Ltd.
- U] 2005 (2) Civil Court Case 204 [Bombay]
Gajanan R. Salvi Vs Satish Shankar Gupte

21. So far as the defence of the resjudicata is concerned before going to the merits, it is pertinent to look after the provision of section 11 of C.P.C.

Section 11 Res judicata :-

No court shall try any suit or issue in which the matter directly

and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Explanation I-

The expression former suit shall denote a suit which has been decided prior to the suit in question whether or not it was instituted propr thereto.

Explanation II-

For the purposes of this section the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such court.

Explanation III-

The matte above referred to must in the former suit have been alleged by one party and either denied or admitted expressly or impliedly by the other.

Explanation IV-

Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V-

Any relief claimed in the plaint which is not expressly granted by the decree shall for the purposes of this section be deemed to have been refused.

Explanation VI-

Where person litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others all persons interested in such right shall for the purposes of this section be deemed to claim under the persons so litigating.

Explanation VII-

The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit issue or former suit shall be construed as references, respectively to a proceeding for the execution of the decree question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII-

An issue heard and finally decided by a court of limited jurisdiction competent to decide such issue shall operate as res judicata in a subsequent suit notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

22. In the case in hand , The alleged sale deed is of the year 1997. The earlier litigation between the parties clearly indicates that disputes regarding title and possession had arisen long back. The plaintiff, despite having knowledge, did not seek declaration within the prescribed period. As per Article 58 of the Limitation Act, the limitation for declaration is three years from the date when the right to sue first accrues. Thus, the present suit is clearly barred by limitation.

23. It is not in dispute that earlier suits for injunction between the same parties in respect of the same property were dismissed and have attained finality. As discussed in decisions cited supra, the doctrine of Res judicata has been explained to prevent multiplicity of litigation. Further, it is held that if a plaintiff omits to sue for a relief arising from the same cause of action, he is barred from subsequently claiming it. In the present case, the cause of action arises from the same alleged transaction and dispute. The plaintiff had an opportunity to seek declaration in earlier proceedings but failed to do so. Thus, the present suit is barred by Section 11 CPC (Res Judicata) and Order II Rule 2 CPC.

Hence, I answered issue no.4 in negative and issue no.5, 6 in affirmative.

As to Issue no.8 and 9 :- (Issue no.7 is struck off)

24. considering the entire evidence on record and in view of findings to issues nos. 01 to 06, I am of the considered view that, the plaintiff is not entitled to the relief claimed. As such the suit is liable to be dismissed with costs and costs follow events. Thus I answer issue no.8 in negative and in answer to issue no.9 following order is passed.

ORDER

The suit is dismissed with costs.

Dictated and pronounced in open court.

Date : 20.03.2026.
Jalna.

(Smt. S.N.Pund)
3rd Jt Civil Judge Junior Division,
Jalna

CERTIFICATE

“ I affirm that, the contents of this PDF file are word to word as per original order ”.

Name of Steno :- U. R. Dasare
Name of Court :- JMFC & CJJD Court no.3, Jalna.
Date of PDF :- 25.03.2026.

Sd/-
Signature of Stenographer