

MHKO010051982019



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IN THE COURT OF DISTRICT JUDGE NO.3, KOLHAPUR,
DISTRICT - KOLHAPUR

(Presided over by D.V. Kashyap)

Reg.Civil Appeal No.07/2020

Exh.No. 49/A

Ankush Narayan Patil

Age: 68 yrs. Occu.Agriculture

R/o. A/p.Wadakshiwale,

Tal. Karveer, Dist. Kolhapur

-- Appellant

(Plaintiff)

- Versus -

1. Pandurang Narayan Patil

(Deceased represented through
legal heirs -)

A) Smt. Laxmi Pandurang Patil
Age: 73 yrs. Occu.Household

B) Sachin Pandurang Patil
Age: 42 yrs. Occu.Service
Both respondents R/o.Powar Colony,
Pachgaon, Tal. Karveer, Dist.Kolhapur

C) Shubhangi Sanjay Patil
Age: 48 yrs. Occu.Household

D) Sou.Sampatti Shivaji Patil **-- Respondents**
Age: 46 yrs. Occu.Household (Defendants)
Both R/o.Khebawade, Tal.Karveer,
Dist.Kolhapur.

E) Sou.Jayashri Bacharam Raut
Age: 44 yrs. Occu.Household
R/o. Talashi, Tal. Radhanagari
Dist. Kolhapur.

2. Balasaheb Narayan Patil
Age: 70 yrs. Occu.Retired.
R/o. Gajanan Maharaj nagar
“B” Ward, R.S.No.692, Plot No.24
In front of Mhasoba Temple,
Behind Magdum Lawn,
Kolhapur.
3. Indubai Pandurang Patil (Deceased
represented through legal heirs -)
 - (a) Arun Pandurang Patil
Age -45 yrs.
Occu.Agriculture, Farming and Auditor.
R/o.Mhakave, Tal.Kagal,
Dist.Kolhapur
 - (b) Kiran Pandurang Patil
Age -42 yrs. Occu.Agri. & Farming
R/o.As above.
4. Sou.Malutai Rangrao Daphale
Age: 72 yrs. Occu. Household
R/o.Wadakshiwale, Tal.Karveer
Dist. Kolhapur
5. Shalubai Dadasaheb Patil
Age: 66 yrs. Occu.Household
R/o.Mhakawe, Tal. Kagal
Dist. Kolhapur

**Appeal under Order 41 Rule 1 & 2 of
the Code of Civil Procedure**

Appearance :-

Shri.S.D. Kulkarni for the appellant.

Shri.A.P Powar for the respondents 1A & 1B– Contesting party.

Respondents 1C to 1E, 3 to 5 – Ex-parte.

J U D G M E N T
(Delivered on 10th April, 2026)

This appeal is filed by the original plaintiff against the judgment and decree dated 19-11-2019, passed by the learned 8th Joint Civil Judge (Jr.Dn.), Kolhapur in Reg.Civil Suit No.673/2011, whereby the suit for partition and perpetual injunction was dismissed with costs.

02. Parties are referred hereinafter as per their original nomenclature.

03. The plaintiff described the suit property in para no.1 of the plaint, which is in not dispute between the parties.

04. According to the plaintiff, the suit property was originally owned by Shrimant Chhatrapati Shahaji Maharaj. It was accepted by Narayan Govind Patil i.e. father of the plaintiff and the defendants before 1950 as tenant. It was registered in the name of Narayan Govind Patil. The plaintiff and his father Narayan were cultivating it uninterruptedly. For the family arrangement Narayan purchased the suit property from the joint family property income in the name of elder son i.e. defendant no.1 on 17-07-1964. Defendants 1 and 2 were doing job. In the life time of father Narayan ,the plaintiff was cultivating the suit land with him. After Narayan's death plaintiff has been cultivating the suit land. Today also the plaintiff has been cultivating it jointly with defendants 1 and 2. As defendants 1 and 2 were busy in their job, the plaintiff has been in actual possession of the suit property as earlier. He has

cultivated crops like rice and sugarcane in the suit land. He supplies the water to the sugarcane crop by water pump installed on the well in the suit land. The plaintiff has been paying taxes of the suit property. The plaintiff's family depends on the income of the suit land and the defendants 1 and 2 are aware of the same.

05. Plaintiff further pleaded that father Narayan Patil died in the year 1995 and mother died in the year 1997. They did not execute any document in respect of the joint family properties and their shares. Defendants 3 to 5 have relinquished their shares in the joint family property by way of registered relinquishment deed dated 5-5-1997. On 1-7-2002 all the ancestral properties were partitioned between the plaintiffs and defendants 1 and 2 by way of registered partition deed. The suit property was not included in the partition and it was decided to partition it later on by metes and bounds as most of its part is marshy. As the suit land is in the name of defendant no.1, he became greedy and attempted to sell it in November-December 2005. When the plaintiff got its knowledge, he published a proclamation in Daily Tarun Bharat dated 29-12-2025 and made the public at large aware about his rights in the suit property. After publication of the proclamation, defendant no.1 accepted his mis deed and in presence of panchas admitted not to deal with the suit land against the rights of the plaintiff. Defendant no.1 enraged due to publication of the proclamation and filed a suit against the plaintiff for perpetual injunction on

16-02-2006, bearing Reg. Civil Suit No.142/2006. The plaintiff appeared in the suit and filed his written statement. The suit came to be dismissed due to consistent absence of the plaintiff i.e. defendant no.1 in the present suit. Before dismissal of the suit and thereafter also the plaintiff met defendant no.1 personally, asked for partition and his 1/3rd share in the suit land. Defendant no.1 avoided to do so. Notice was issued to him under registered post and partition was sought but defendant no.1 did not admit claim of the plaintiff and said to sell the suit land as it stands in his name. He again attempted to sell the suit land. This resulted in arising of cause of action for the plaintiff to file the suit for partition, separate possession and prohibiting defendant no.1 from interfering in his possession till partition of the suit land by metes and bounds.

06. Defendant no.1 (since deceased) filed written statement. He admitted relationship between the parties. He also admitted description of the suit property. He denied rest contentions of the plaintiff. According to him, the suit land was originally owned by Shri.Shahaji Chhatrapati General Charitable Trust, Kolhapur. He was in possession of the same as a tenant. An agreement was executed between him and the Trust on 25-02-1963 in respect of purchase of the suit property. As per this agreement it was decided to purchase the suit property for Rs.2500/-. This amount was paid to the Trust in two installments of Rs.1,300/- & 1,200/-. Thereafter, the Trust executed the registered sale deed in his name on 17-07-1964.

Before execution of the sale deed he was in possession of the suit property as a tenant and became its possessor as an owner after execution of the sale deed. The 7/12 extract of the suit land stands in his name alone. The claim of the plaintiff that Narayan was cultivating the suit land since 1950 as a tenant is false.

07. Defendant no.1 further pleaded that he was serving with Maharashtra State Electricity Board (MSEB). From his service income he has purchased the suit land and became its owner in the year 1964. Neither the plaintiff nor other defendants have any right over the suit property. After purchase of the land he has developed it. The suit land is his self acquired property. As he was serving at various places, father Narayan was cultivating the suit land. He was spending money for the cultivation. After death of the father also he was cultivating the suit land. The claim of the plaintiff that he is co-owner of the suit property is false. Defendant no.1 further pleaded that as he was serving at outstation the plaintiff was cultivating the suit land as well as other coparcenary properties. The suit property was in his possession only for the purpose of cultivation. After retirement he has been cultivating the suit land personally and sown rice as well as sugarcane crops in it. The claim of the plaintiff that he has sown sugarcane and rice crops is imaginary. His claim of paying the Government taxes is also imaginary. The claim of the plaintiff that it was decided to partition the suit land is false and fabricated. If the suit property was purchased

from the joint nucleus of the family, it should have been included in the earlier partition deed dated 1-7-2002. The plaintiff is unnecessarily trying to create his rights in the suit property. Defendant no.1 also denied that he assured the plaintiff after publication of notice dated 29-12-2005 to refrain himself from doing any act against the interest of the plaintiff in the suit land. He also denied that the plaintiff met him personally and asked for the partition. Thus, defendant no.1 denied the entire claim of the plaintiff and finally pleaded to dismiss the suit with compensatory cost.

08. Defendant no.2 filed the written statement and admitted the plaintiff's claim. He finally pleaded for partition of the suit land by metes and bounds.

09. As defendant no.1 died during the pendency of the suit, his legal heirs were brought on record. Legal heirs 1A and 1B i.e. wife and son of defendant no.1 filed their written statement and denied all the averments in the plaint. They admitted all the averments made by defendant no.1 in his written statement. They finally pleaded that the suit be dismissed as not maintainable because the plaintiff has no locus standi to file the suit.

10. Original defendants 3, 4 and 5 and legal heirs of deceased defendant no.1 i.e. 1B, 1C and 1D did not file written statement.

11. On behalf of the plaintiff in all six witnesses came to be examined, including plaintiff Ankush Narayan Patil himself.

Number of documents are relied on behalf of the plaintiff, including the agreement dated 25-02-1963, documents issued by Dudhganga Vedganga Cooperative Sugar Factory, loan documents of Shri.Vatkeshwar Cooperative Society, 7/12 extract of land gat no.802, plaint, written statement, injunction application, say to the injunction application in Reg.Civil Suit No.142/2006, rent receipts dated 11-01-1950 and 25-02-1963, land revenue receipts, Central School Teacher Register Extract Vadakshivale etc.

12. None entered into the witness box on behalf of the defendants. The contesting defendants relied on 7/12 extract of the suit land for the years 1963 to 2009, Karveer Charitable Trust registration extract, mutation entry no.5180, sale deed dated 17-07-1964.

13. The learned Trial Court heard both the parties, placed reliance on the documents and the citations placed before it and concluded that the plaintiff failed to establish that the suit property is joint family property, the plaintiff is not entitled to partition and separate possession in it. The learned Trial Court further concluded that the plaintiff has been cultivating the suit land jointly with defendants 1 and 2, but failed to establish that defendant (legal heirs of defendant no.1) are interfering in possession of the plaintiff. Thus, the learned Trial Court dismissed the suit by holding that the plaintiff is not entitled to relief of partition, separate possession and perpetual injunction.

14. In the memorandum of appeal the plaintiff has raised grounds, wherein he has stated that the learned Trial Court has not properly and appreciated the documentary evidence on record. The rent receipts at Exhs.179, 180, 213 and 215 are undisputed and are in favour of father Narayan. The learned Trial Court did not consider pleading of defendant no.1 as well as the plaintiff in Reg.Civil Suit No.142/2006. The learned Trial Court has not considered that the debt incurred in the name of defendant no.1 was paid by the plaintiff. The learned Trial Court has neglected the voluminous documentary evidence on record, particularly Exhs.216 to 232, which show the plaintiff's exclusive possession over the suit property. The learned Trial Court did not consider that the earlier suit filed by defendant no.1 was dismissed and no efforts were taken to set aside the dismissal order. The learned Trial Court did not frame the issue regarding burden on the defendant no.1 about self acquisition of the suit property. Learned Trial Court wrongly decided issues 2 and 3. The voluminous documentary evidence adduced on behalf of the plaintiff has gone unchallenged. The learned Trial Court should have decided issues 5 and 6 in the affirmative, when exclusive possession of the plaintiff is admitted by the defendants and further proved to be objecting lawful and peaceful enjoyment of the suit property. On above, as well as other grounds, it is prayed on behalf of the appellant to allow the appeal by setting aside the judgment and decree of the learned Trial Court.

15. Learned advocate for the plaintiff submitted written notes of arguments as well as advanced oral arguments. According to him, the relationship between the parties is undisputed. Only defendant no.1 has objected the plaintiff's claim. He did not lead evidence and offered himself for cross-examination. He did not lead the evidence to discharge the burden that the suit property is his self acquired property. Adverse inference should have been drawn by the learned Trial Court against the contesting defendant. The plaintiff has succeeded in proving on the basis of documentary evidence, specifically the extract of lands possessed by the joint family of the plaintiff and the defendants, that the joint family had sufficient income. He further submitted that father Narayan Patil was a teacher and he was having source of income. The plaintiff has examined independent witness to establish this fact. The family was joint till 2002. The oral evidence of the plaintiff is supported by the documentary evidence. The plaintiff succeeded in establishing the fact that the suit property is purchased from the joint family income. The Trial Court drew baseless inference by ignoring the rent receipts. He further submitted that the plaintiff is in exclusive possession of the suit property. The learned Trial Court did not take this aspect into consideration and dismissed the suit. He prayed to allow the appeal and decreed the suit.

16 Learned advocate for the plaintiff placed his reliance on following case laws -

- i) **Vidhyadhar V. Manikrao and another (AIR 1999 SC 1441)**
- ii) **Bhagwant P. Sulakhe Vs. Digambar Gopal Sulakhe and others (AIR 1986 SC 79)**
- iii) **K.V.Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer (1964 DGLS (SC) 108)**
- iv) **Murlidhar Ramchandra Sonar Vs. Ramchandra Pandurang Sonar since deceased by his heirs and others (1987(2) Bom.C.R. 301)**

17. In reply, learned advocate for the defendants 1A & 1B also submitted written submissions and also advanced oral arguments. It is submitted that the initial burden that whether the suit property was purchased out of nucleus of joint family property was on the plaintiff. The plaintiff failed to discharge this burden. He failed to establish exact source of income of joint family property. He further submitted that in the partition took place between the plaintiff and defendants 1 and 2 the suit property was not included because it was self-acquired property of defendant no.1. He further submitted that the suit property was purchased by Narayan. The sale deed is in his name. He had sufficient independent income to purchase the suit property. The agreement to sell was also executed between the Trust and Narayan. He further submitted that Exh.249 indicates that the loan was obtained by defendant Pandurang for education of his son and encumbrance of the same was also shown on the extract. The plaintiff miserably failed to prove source and income out of the joint family. There was no burden on defendant no.1. It was not required for him to enter into witness box. The plaintiff admitted in his cross-examination

that amount of income gained and expenses have not been shown by him. He finally submitted that the learned Trial Court rightly answered the issues framed by it and dismissed the suit. There is no merit in the appeal. It deserves to be dismissed. He placed his reliance on Union Bank of India Vs. Ibrahim Uddin & Anr. (2013 AIR(SCW) 2750)

18. Following points arise for my determination. I have recorded my findings on them for the stated reasons.

Sr.No.	Points	Findings
1	Whether the plaintiff succeeded in establishing before the learned Trial Court that for family adjustment the suit property was purchased from the joint family income in the name of defendant no.1 ?	No
2	Whether the plaintiff succeeded in establishing before the learned Trial Court that the status of the suit property is joint family property and he is entitled to its partition and separate possession to the extent of 1/3 share ?	No
3	Whether the plaintiff succeeded in establishing before the learned Trial Court that he has been in exclusive possession of the suit property since long ?	Yes
4	Whether the plaintiff succeeded in establishing before the learned Trial Court that there was interference in his possession at the hands of the defendant no.1 in his life time and thereafter by his legal heirs i.e. defendants 1A and 1B ?	Yes

- | | | |
|---|--|--------------------------------|
| 5 | Whether the plaintiff is entitled to relief of partition and separate possession ? | No |
| 6 | Whether the plaintiff is entitled to relief of injunction against defendants 1A and 1B ? | Yes, as per final order |
| 7 | Whether interference is required in the learned Trial Court's judgment and order ? | Partly Yes. |
| 8 | What order and decree ? | As per final order |

- REASONS -

As to Points 1 & 2 :-

19. The foremost submission advanced on behalf of the plaintiff that the learned Trial Court did not place any burden on defendant no.1. It was for defendant no.1 to establish by leading cogent and reliable evidence that the suit property was purchased by him from his own income. In this regard reliance is placed in the matter of **Vidyadhar (supra)**. In this ruling it is observed by Hon'ble Supreme Court that when a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.

20. In the matter **Kamma Otukunta Ram Naidu Vs. Chereddy Pedda Subba Reddy and Ors. (AIR 2003 SC 3342)** Hon'ble Supreme Court has held that all the pros and cons must

be examined before drawing an adverse inference against a party. In the matter of **Mahant Shri Srinivas Ramanuj Das V. Surjanarayan Das & Anr. (AIR 1967 SC 256)** it is held by the Hon'ble Supreme Court that mere withholding of documentary evidence by a party is not enough to draw adverse inference against him. The other party must ask the party in possession of such evidence to produce the same, and in case the party in possession does not produce it, adverse inference may be drawn.

21. In a suit for partition when the plaintiff comes with the case that the suit property is purchased from the nucleus of other joint family properties, burden always rests on him to establish this fact by cogent and reliable evidence. If he succeeds in establishing this fact then only the onus shifts on the defendant to substantiate that the suit property is his self-acquired property. The initial burden is always on the plaintiff in such suit.

22. In the case at hand the initial burden was on the plaintiff. It is required to see on the basis of oral as well as documentary evidence placed on record before the learned Trial Court whether the plaintiff succeeded in discharging his burden and shifting onus on the defendant no.1.

23. Plaintiff Ankush entered into the witness box by filing his affidavit in form of examination-in-chief as per Order 18 Rule 4 of the Code of Civil Procedure. In his evidence

affidavit he reiterated all the contentions raised by him in his plaint. In para no.2 of his examination-in-chief he specifically deposed that till 1964 and thereafter also his family was having only source of income from the agricultural lands. His father purchased the suit property in the name of elder son i.e. defendant no.1 on 17-07-1964. He further deposed that defendants 1 and 2 were doing their jobs at out stations. They did not do agricultural business.

24. He further deposed specifically against defendant no.1 that -

“ He was serving as Meter Reading Clerk in M.S.E.D.C.L., he was removed from the service for some period due to his irresponsible behaviour, to maintain his family defendant no.1 used to seek father’s help in the kinds of money and grain and in the year 1964 he was not possessing any balance money ”.

25. This evidence of the plaintiff against defendant no.1 had no foundation in the entire plaint. It is basic rule of the pleading that to first plead and then lead. In absence of pleading of above stated evidence against defendant no.1 it was out of consideration.

26. During cross-examination, plaintiff Ankush admitted that agreement to sell in respect of the suit property was executed in favour of defendant no.1. He also admitted that the sale deed of the suit property was executed in the name of

defendant no.1. He further admitted that defendant no.1 was serving in M.S.E.B. but denied that on 19-09-1961 he was in service. He denied that the suit property was purchased by defendant no.1 from the income received to him from the job in M.S.E.B.. He denied that he had no share in the suit property so it was not impleaded in the partition effected in the year 2002. He further admitted since 1961-62 name of defendant no.1 is appearing in the 7/12 extract.

27. During the course of argument it was tried to convince that in plaintiff's cross-examination the plaintiff's pleading that it was decided as per advise of bond writer to partition the suit property later on is underscored in his cross-examination by putting him suggestion that it is correct and the plaintiff has accepted it. This suggestion amounts to admission of the defendant no.1 that the suit property is joint family property. This argument advanced on behalf of the plaintiff cannot be legally accepted because mere underscoring some portion in cross-examination does not establish the plaintiff's case. It is for the plaintiff to lead cogent evidence. The plaintiff, except stating in his evidence that the suit property was purchased from the joint family income, has not brought any circumstance in the form of documents that his father had provided money for purchase of the suit property from the income of the joint family. Except bare words of the plaintiff there is no evidence on record that the suit property was purchased from the joint family property income.

28. It is tried to convince on behalf of the plaintiff that Exh.209 i.e. extract of the joint family properties is sufficient to infer that the suit property was purchased from the joint family income can not be taken into consideration because except producing Exh.209, the plaintiff has not produced any document to show that the joint family had sufficient income from the properties mentioned in Exh.209 to purchase the suit property.

29. On the other hand, defendant no.1 was serving with the M.S.E.B. is undisputed. It is sufficient to infer that he had source of money to purchase the suit property.

30. In the instant suit, the plaintiff has specifically come with the case that the suit property was purchased from income of joint family but in the written statement (Exh.176) in earlier suit no.142/2006 the plaintiff pleaded that the suit property was purchased by the father from the income of his salary as well as joint family income. The plaintiff has made two fold pleadings in two different proceedings. At one hand he says that the suit property was purchased by father from his own income as well as family income and on the other hand he says that it was purchased only from the joint family income.

31. In the year 2002 there was partition between the parties and all the properties appearing in Exh.209 were partitioned. If status of the suit property was joint family property, certainly the suit property would have included in it

and its partition was effected. Non inclusion the suit property in the earlier partition leads to the inference that the suit property was not purchased from the joint family income and for that reason only it was not included in the earlier partition. In agreement to sell at Exh.123 and sale deed at Exh.251 it is no where mentioned that it was purchased in the name of defendant no.1 from the income of the joint family property.

32. It is tried to convince that there is presumption that if a member of joint family has acquired a separate property and the joint family has sufficient nucleus to acquire the property, the property in the name of any member should be presumed to have been acquired from the funds of joint family. Reliance is placed on **K.V.Narayanswami (supra) and Murlidhar Sonar (supra)**.

33. Facts in above referred case are somewhat different from the facts in the instant case. In the referred matter the member, who acquired the separate property had no independent income. No such situation is here in the case at hand because defendant no.1 was serving with M.S.E.B. and he was having sufficient income to purchase the separate property.

34. In the matter of **Murlidhar (supra)** Karta of joint family purchased the suit property and claimed that he was having separate source of income from the business of goldsmith but he could not establish that it was his separate business. On the contrary, the goldsmith business was of joint

family. No such facts are emerging in the case at hand. Defendant no.1 is not Karta of the family because when the suit property was purchased, Karta of the family was alive. The sale deed executed in favour of defendant no.1 does not make any reference that it was purchased from the joint family property income.

35. Reliance is also placed on **Bhagwant Sulakhe (supra)** to impress upon the Court that character of any joint family property does not change with the severance of the status of the joint family and a joint family continues to retain its joint family character so long as the joint family property is in existence and not partitioned amongst the co-sharers. In the case at hand, by way of registered partition effected on 1-7-2002 all the joint family properties were partitioned amongst the members and character of joint family came to an end. The facts in the reported case are not identical with the facts in the case at hand.

36. The plaintiff has examined two independent witness Pandurang Mhadu Parale and Lahu Sakharam Parale to substantiate the fact that purchase of the suit property from the joint family income but during their cross-examinations they categorically admitted that they have not seen the executed documents. Evidence of these witnesses does not anyway contribute the contention of the plaintiff to substantiate the fact that the suit property was purchased from the income of the joint family properties.

37. Thus, the discussion made above leads this Court to come to the conclusion that the plaintiff failed to discharge the burden of establishing status of the suit property as joint family property. Due to failure of such burden, he is not entitled to partition and separate possession to the extent of 1/3rd share in the suit property. This results in answering point no.1 and 2 in the negative.

Points 3 and 4 :-

38. The learned Trial Court gave affirmative finding on issue no.4 and concluded that plaintiff has been cultivating the suit property with defendant 1 and 2. Defendant no.1, in his written statement, specifically pleaded that he is in exclusive possession of the suit property. This finding of issue no.4 is against defendants no.1A and 1B but they have not submitted cross-objection.

39. The plaintiff, in his evidence, has claimed his exclusive possession over the suit property. There is no challenge to this contention of the plaintiff in cross-examination. Plaintiff's witnesses Pandurang Parale has specifically stated in his examination-in-chief that the half portion of the suit property is marshy land, out of the remaining land the plaintiff has sown rice crop in 10 guntha land and sugarcane crop in 30 guntha land. He further deposed that after death of Narayan Patil in the year 1995 the plaintiff has been taking crops in the suit property. Plaintiff's another witness

Lahu Parale has also deposed that the plaintiff has been in exclusive possession of the suit property and he is taking crops in the same. Plaintiff's witnesses Pandurang and Lahu are cross-examined at length but they stood stick up to their versions that the plaintiff is in exclusive possession of the suit property. Their evidence about exclusive possession of the plaintiff over the suit property assumes importance because they are residents of the same village and their agricultural lands are also near to the suit land. No suggestions are put to them that after retirement defendant no.1 took possession of the suit property from the plaintiff and started cultivating the same independently.

40. Plaintiff's witness Mahadeo Sakharam Pawar is accountant in Dudhganga Vedganga Sugar Factory. During the course of his examination documents showing supply of sugarcane by the plaintiff to sugarcane factory are exhibited. It appears from the documents that the plaintiff is a member of Dudhganga Vedganga Sugar Factory. Land survey nos.807 and 214 are registered in his name in the sugar factory. It appears from the documents at Exh.139, 140, 141, 142, 143, 144, 145 that the plaintiff has supplied the sugarcane to the sugar factory in the years 2007-2008, 2009-2010, 2010-11, 2011-12, 2014-15, 2015-16, 2017-18. During cross-examination of witness Mahadeo, no suggestion is put to him that the plaintiff never supplied sugarcane to the Sugarcane factory. He is cross-examined only on the point of mentioning survey no.807 in the

documents instead of Gat no.807.

41. The documents produced by witness Mahadeo Pawar are sufficient to infer that the plaintiff has been supplying sugarcane to the sugarcane factory.

42. Neither defendant no.1 nor his legal heirs i.e. defendant no.1A and 1B entered into witness box to substantiate their exclusive possession over the suit property. Land revenue receipts of the suit land at Exhs.213 to 233 indicate that the land revenue of the suit property is either paid by father Narayan Patil or plaintiff Ankush Patil. The sugarcane supply documents, coupled with land revenue receipts strengthen the plaintiff's case that he is in exclusive possession of the suit property. Except making averment in the written statement about possession, the defendants have not attempted to establish their possession over the suit property. The ocular evidence and the documents placed on record are sufficient to hold the plaintiff's exclusive possession over the suit property.

43. Filing a separate suit against the plaintiff by defendant no.1, claiming himself to be in exclusive possession of the suit property and allowing it to dismiss for default amounts to interference in the plaintiff's possession. Legal heirs of defendant no.1 i.e. defendants 1A and 1B, claiming their possession over the suit property, also amounts to interference in the plaintiff's exclusive possession over the suit property. This discussion leads to answer points 3 and 4 in the affirmative.

Points 5 and 6 :-

44. It is settled legal position that even the owner of the property can get back his possession only by resorting due process of law (**Prajapati N. Kothari Vs. John Braganza (1999) 4 SC Cases 403**). In view of negative findings on points 1 and 2, the plaintiff is not entitled to relief of partition and separate possession in the suit land. As points 3 and 4 are answered in the affirmative, the plaintiff is entitled to relief of injunction against defendants 1A and 1B, dispossessing him from the suit property otherwise than in due course of law. Points 5 and 6 are answered accordingly.

Points 7 & 8 :-

45. In view of discussion made above, partial interference is required in the learned Trial Court's judgment and decree in respect of refusal of injunction by her against defendants 1A and 1B. Point no.7 is answered accordingly. In answer to point no.8, following order is passed -

ORDER

1. Appeal is partly allowed with costs.
2. Judgment and decree dated 19-11-2019, passed by the learned 8th Joint Civil Judge (Jr.Dn.), Kolhapur in Reg.Civil Suit No.673/2011, is partly set aside.

3. Reg.Civil Suit No.673/2011 is partly allowed with costs.
4. Defendants 1A and 1B are restrained from disturbing the possession of plaintiff over the suit property till they obtain its possession from him by adopting due course of law.
- 5 Decree be drawn up accordingly.
- 6 Record and proceedings be sent to the Trial Court alongwith copy of the judgment.

Kolhapur
Date : 10/04/2026

(D.V.Kashyap)
District Judge-3, Kolhapur.