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Decided on : 23/03/2026
Duration : Y M D
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**IN THE COURT OF DISTRICT JUDGE -1 GADHINGLAJ,
DIST KOLHAPUR
(Presided over by M. A. Shinde)**

**Reg. Civil Appeal No.19/2024
Exh.No. 27/A**

Bhairu Ganpati Patil @ Kesarkar,
Age-64 Yrs. Occup. Agriculture,
R/o. Mendhewadi, Tal. Ajara, Dist. Kolhapur

..Appellant.

//Versus//

1) Sambhaji Joti Kesarkar,

Age-48 Yrs. Occup. Agriculture,
R/o. Mendhewadi, Tal. Ajara,
Dist. Kolhapur.

2) Smt. Rangubai Joti Kesarkar,

Age-80 Yrs. Occup. Agriculture,
R/o. Mendhewadi, Tal. Ajara,
Dist. Kolhapur.

..Respondents.

3) Suryakant Ganpati Patil @ Kesarkar

Age-55 Yrs, Occup. Agriculture,
R/o. Near Hallaxmi Mandir, Wadarge,
Tal. Gadhinglaj, Dist. Kolhapur.

Appearance :-

For Appellant	Shri.S.N.Fagare, Ld. Advocate.
For Respondents	Shri.R.I.Palkar, Ld. Advocate.

J U D G M E N T
(Delivered on 23rd March, 2026)

The present appeal is filed by the original plaintiffs against the judgment and decree ('impugned Judgment' for short) passed by the Learned Civil Judge, Junior Division, Ajara Dist. Kolhapur (Hereinafter referred to as "*Ld. Civil Court*" for short) in R.C.S. No.82/2017, dated 22/01/2024, by which he dismissed the suit.

2. For the sake of convenience parties are referred to as per their status before the Ld. Civil Court

3. The fact of the case in nutshell is as under :-

(3.1) An agricultural land situated at Mouje Mendhewadi, Tal. Ajara, Dist. Kolhapur in Revisional Survey No.108 and new Gat No.242, 2.46 Hector, out of 5.13 Hector is the subject matter of the present litigation. Four boundaries of which are more particularly described in para-1 of the plaint. (Hereinafter referred to as "suit property" for short).

(3.2) It was purchased from the Government as a restricted ownership as per order of Sub-Divisional Officer, LCLS 3186, dated 26/05/1954, since then father of the plaintiff Ganapati Govind Kesarkar was exclusively cultivating on ownership basis. Diary No.113 was approved as there was restrictions on transfers of the said land. Therefore, the defendants have no right, title, interest in the said land. The defendant No.2 Rangubai Joti Kesarkar is the wife of Jotiba Kesarkar, the brother of the father of the plaintiff. She has received land in Survey No.107, new Gat No.256 which is adjacent to the Survey No.108.

(3.3) On the background of this factual aspects, the name of Jotiba Govind Kesarkar was wrongly mutated in 7/12 extract of Survey

No.108. Jotiba died in the year 1975. Name of defendant No.1 was mutated behind back as per diary No.253 in respect of Survey No.108. Therefore, the plaintiffs have moved R.T.S. Revision Application No.23/1994. It was decided on 27/04/1995 and directions were given to delete the names of the defendants from possession column in revenue record. It was challenged upto Additional Commissioner Revenue, Pune by defendants. But it has attained finality on 01/08/2016 by the order of Revenue Commissioner, Pune. Since, then the defendants did not challenge the said finding to any of Higher Authority.

(3.4) On the background of this factual situation, the defendants have moved R.C.S. No.99/1995 for perpetual injunction which was decreed. Therefore, the plaintiffs have moved R.C.A. No.22/1998 before this Court which was dismissed on 26/02/2002. The findings in respect of point No.1, 2 and 4 are contrary to the evidence. Thereafter, the plaintiffs have filed R.C.S. No.77/2002 for possession of suit property. It was dismissed on 23/02/2007.

(3.5) Therefore, being aggrieved by dissatisfied the said findings, the plaintiffs have moved R.C.A. No.24/2007, but on technical issue it was withdrawn on 05/05/2017. Therefore, the plaintiffs have filed present suit for declaration that, the findings recorded in R.C.A. No. 22/1998 are wrong and illegal and not binding on the plaintiffs. The suit is also filed for declaration of ownership and mesne profit.

4. The defendants have appeared in the suit and filed their written statement at Exh.20 and opposed the suit. They have specifically denied all the contents raised in the plaint and submitted that, the forefathers of both the parties by name Ganapati and Jotiba were real brothers of each other. Ganapati was the elder and Joti was the younger brother.

5. The land Survey No.108 was purchased by Shri. Govind Ganu Kesarkar from the Government for an on behalf of the HUF family of both the parties. Therefore, name of Shri. Ganapati Govind Kesarkar being elder in the family was mutated in the year 1953. Thus, the name of Ganapati Kesarkar was mutated in revenue record as a Manager of HUF family of both the parties. Since, 1953 Ganpati and Jotiba were jointly cultivating Gat No.242 (Old survey No.108). But as per diary No.113, dated 12/06/1956 name of father of the plaintiffs being Manager of HUF family was mutated in the revenue record. Ganapati was cultivating agricultural land and Joti was serving in Mumbai. Joti was financing Ganapati.

6. The diary No.253 was effected on 30/11/1961 on the basis of application moved by Ganapati on 25/02/1961. As per the said diary names of Ganapati and Joti were mutated in respect of Gat No.242 for $\frac{1}{2}$ share each and since then they were cultivating their respective $\frac{1}{2}$ share each Gat No.242. As the land in Gat No.242 was not properly apportioned to the revenue record therefore, Ganapati Govind Kesarkar moved an application dated 24/12/1964 and diary No.320 was approved on 11/11/1965 and Survey No.108/1 and Survey No.108/2 were separately numbered.

7. Thus, the Eastern portion admeasuring 2.57 Are in Gat No.242 was given and named in the name of Ganapati Kesarkar and Western side portion admeasuring 2.56 Are in Gat No.242 was given and named in the name of Jotiba Kesarkar. Since, then eastern portion admeasuring 2 Hector 57 Are was mutated in the name of Ganapati Kesarkar and after the death of Ganapati, name of plaintiffs were mutated. After the death of Jotiba Kesarkar, name of defendants were mutated towards West side land in Gat No.242. Thus, since then both the parties are cultivating their respective share in agricultural land in Gat No.242.

8. The Ld. Civil Court has framed the issues at Exh.12. Both the parties have led oral as well as documentary evidence. After hearing Ld. Counsels of both the parties, the Ld. Civil Court is pleased to dismiss the suit. Therefore, being aggrieved and dissatisfied with the findings of dismissal of the suit, the plaintiff has moved the present appeal on the grounds more precisely set-out in the appeal memo.

9. Heard both parties. Perused the record. Following points arise for my determination and my findings recorded thereon are as under:-

<u>No.</u>	<u>Points</u>	<u>Findings</u>
1.	Do the plaintiffs prove their title and dispossession at the hands of the defendants without following any due course of law from the suit property?	.. In the negative..
2.	Whether the plaintiffs are entitled for declaration, relief of possession and mesne profit as prayed for?	.. In the negative..
3	Whether the suit is hit by principles of res-judicata	.. In the affirmative.
4.	Whether Judgment and decree passed by the Ld. Civil Court required interference ?	.. In the negative..
5.	What order?	The appeal is dismissed with costs.

: REASONS :

As to Point Nos.1 to 4 :-

10. Bhairu (PW1) reiterated the facts mentioned in the plaint in his evidence affidavit filed at Exh.18/C. However, in his cross-examination he has given following admissions :

- i) Survey No.108 comprises with 12 acre land. It was allotted to his father by the Government in the year 1953-1954. Joti Kesarkar is the brother of his father. He was serving in Mumbai. There was no dispute in respect of Gat No.242 till 1988. The dispute was that, Survey No.107 should be allotted to Sambhaji and Survey No.108 was to be allotted to him.
- ii) He cannot tell when Joti and Ganapati separated. He came to know about partition in between his father and uncle in the year 1998. Survey No.108 was given for the benefit of joint Hindu family. But at that time his father and uncle were residing separately.
- iii) Survey No.17/5,17/8, 17/17, 17/21, 17/22, 85/2, 85/4, 117/2, 117/3, 117/6, 117/8, 133/5, 133/9 and 142/4 are the ancestral properties of his family. Apart from suit property there is no dispute in respect of remaining survey numbers.
- iv) The diary No.253 was approved on 30/11/1961. There was no dispute till 1993-1994 about said diary. His father and uncle started residing separately in the year 1961 and since then they started cultivating their properties and suit property separately.
- v) There is no proof with him that his father was doing business of Bamboo sticks.
- vi) An appeal was filed in the year 1994 by him before the S.D.O. Gadhinglaj in respect of diary No.253. He has also filed appeal before the District Collector bearing R.T.S. Appeal No.77/1995. After the decision of appeal, diary No.534 was approved.
- vii) R.C.S. No.99/1995 was filed in respect of 6 acre 6 gunthas land situated towards West side. At that time 6 acre 6 gunths land situated towards East side was in his possession.
- viii) R.C.S. No.99/1995 was decreed. Therefore he moved an appeal R.C.A. No.22/1998 which was dismissed by District Court. Thereafter he moved second appeal before Hon'ble Bombay Court bearing Second Appeal No.263/2002. It was dismissed on 08/08/2002. However, he did not challenge the findings recorded by the Hon'ble Bombay High Court before the Hon'ble Supreme Court.

ix) He has filed R.C.S.No.77/2002. Thereafter, he moved RCA No. 24/2007 before the District Court, Gadhinglaj against the findings recorded in RCS NO.77/2002.

x) R.C.S.No.172/2015 was filed in the Court of Ld. Civil Judge Senior Division, Gadhinglaj against him.

xi) Gat No.241 was allotted to his father by the Government. There is no dispute in respect of Gat No.241 in between he and the defendants.

11. Sambhaji (DW1) deposed at Exh.35 in terms of contents in the written statement filed by him at Exh.20. In this cross-examination he admitted that, suit property bearing Survey No.108 was Government land. The land in Survey No.107 which is adjoining to Survey No.108 is also Government land. The father of the plaintiffs by name Ganapati was elder in the family. Ganapati was doing agricultural business since inception. Survey No.107 was allotted to the defendant No.2 in the year 1968. Survey No.107 was named in the revenue record in the year 1968 in the name of defendant No.2.

12. There is no documentary evidence to show that, the purchase amount in respect of Survey No.108 was deposited by the defendant No.2 or his father. There is also no document to show that, the land was transferred by Ganapati to Joti.

13. All the revenue decisions were given in favour of the plaintiffs and appeal is moved against the decision of Revenue Commissioner but there is no stay order.

14. He has filed R.C.S.No.99/1995 in respect of the suit property. The four boundaries were mentioned in the said suit. Survey No.107 is now given Gat No.256.

15. On the background of this oral evidence, both the parties have

filed documentary evidence on file. The record shows that, the defendants in the present case have filed R.C.S. No.99/1995 for simplicitor injunction in respect of suit property and the same was decreed and the present plaintiffs who were defendants in the said suit were permanently restrained from obstructing the peaceful possession of the present defendants over the suit property.

16. The judgment in R.C.A. No. 22/1998 is filed on record, wherein the findings recorded by the Ld. Civil Judge Junior. Division, Ajara in R.C.S.No.99/1995 was challenged before this Court. The suit was decreed in favour of these defendants and therefore being aggrieved and dissatisfied with the findings recorded by the Ld. Civil Court, Ajara the present plaintiffs have moved the appeal which was heard on merits by this Court and after hearing both the parties at length, this court has answered the findings as under.

Sr. No.	Points	Findings
1.	Do the plaintiffs prove possession over suit land referable to valid title?	.. Yes.
2.	Do the defendants prove that entire Gat No.242 is self-acquired separate property of Ganpati S/o. GovindKesarkar?	.. No.
3.	Do the plaintiffs prove overt act of defendants in respect of suit land?	.. Yes.
4.	Whether the plaintiffs are entitled to permanent injunction?	.. Yes.
5.	Whether decree passed by Trial Court is correct and proper ?	Decree is correct and Proper. Findings on issues referred by this court are incorrect.
6.	What Order?	Appeal is dismissed with costs.

17. While answering above points this court has taken a view that,

“Therefore, when being karta of Hindu joint family Ganapati was in-charge of other agricultural joint family land and when admittedly Ganapati had no other source of income except the joint family agricultural land, heavy burden lies on the defendants to prove that Ganapati acquired Gat No.242 without the aid of joint family funds. However, defendant Bhairu Kesarkar (DW1) nowhere deposed in his evidence regarding separate income of Ganapati forming source of money by which occupancy price of Gat No.242 was paid to the Govt. Therefore, when defendants fail to discharge burden that Ganapati acquired Gat No.242 without aid of joint family funds. I have no hesitation to hold that plaintiffs have proved that Gat No.242 was acquired in the name of Ganapati for joint family of Ganapati and Jotiba”.

“The contention of the plaintiffs that, Ganapati acquired Gat No.242 (Survey No.108) for subsequent conduct of Ganapati after the acquisition of Gat No.242. From the entries in Shetwar Patrak (Exh.161) it emerges that, at the inception only name of Ganapati was recorded in the record of Survey No.108. Mutation entry No.113 certified on 12.6.1956 (Exh.61 and 160) shows that Survey No.108 was granted by Government to Ganapati Kesarkar. Entries in record of right of Survey No.108 from 1953 to 1963 (Exh.55) show that from 1953 till 1955 Ganapati was in possession of the suit land and the mode of cultivation was Reet No.3 (as tenant). After 1956, the mode of cultivation of Ganapati was changed as Reet No.1 as owner. Mutation Entry No.253 (Exh.148) shows that on 25.2.1961 Ganapati Kesarkar submitted vardi application and thereafter with the consent of Jotiba Kesarkar names of Ganapati and Jotiba were recorded over half share each in the record of Gat No.242 (Survey No.108), as they became separate from each other.”

“Plaintiffs have proved their separate exclusive lawful possession over West half portion of Gat No.242 (suit land), defendants have no right to interfere the possession or to oust the plaintiffs from the suit land. Under these circumstances, to avoid the ouster of the plaintiffs from the suit land, perpetual injunction deserves to be granted against the defendants.”

Thus this Court has confirmed the decree of perpetual injunction passed by the Ld. Civil Court against present appellants/plaintiffs and finally dismissed the appeal.

18. The record further shows that, the present plaintiffs have challenged the findings recorded by this Court in R.C.A. No.22/1998, dated 26/02/2002 before the Hon'ble Bombay High Court in a Second Civil Appeal bearing its number 263/2002. It was dismissed by the

Hon'ble Bombay High Court by observing that,

“ On careful scrutiny of the judgment of both lower courts viz-a-viz the facts involved I am satisfied that the lower appellate court has rightly concluded that land bearing gat No.242 was partitioned between the parties which was mutated on 25/02/1961 and since then the plaintiffs were in exclusive possession of their one half portion of the property. The conclusion that the defendants have made efforts to obstruct the possession of the plaintiffs also appears to be correct, based on relevant facts on record”.

19. Thus, it appears that, a issue involved in the present matter has attained finality long back in second appeal No.263/2002.

20. The record further shows that, the plaintiffs have moved RCS No.77/2002 before the Ld. Civil Court against the defendants claiming possession and mesne profit based on title and the Ld. Civil Court has dismissed the suit with costs by observing that,

“There are entries of defendants and their father since 1961. Those are unchallenged up to R.C.S.No.99/1995 which resulted their favour. Not only this, their entries are confirmed by the Consolidation Authority during implementation of scheme. In the result, plaintiffs failed to prove their title over suit land. Equally, they failed to prove that defendants possession over suit land is illegal”.

21. The record further shows that, the plaintiffs have moved RCA No.24/2007 against the said judgment and decree passed in R.C.S. No.77/2002, but it appears that, the said appeal was withdrawn unconditionally.

22. The record further shows that, the defendants have moved RCS No.172/2015 in the Court of Ld. Civil Judge Senior Division, Gadhinglaj for declaration and perpetual injunction against the Government and the present plaintiffs. The said suit was decreed and present appellants are restrained from disturbing the peaceful possession of the present respondents over the suit property. It is also declared that, the possession receipt (panchnama) dated 17/06/2015 is not binding on the

present defendants.

23. Thus, on the background of this prolonged and repeated litigation in respect of the suit property between the same parties, the Ld. Civil Court has rightly applied principle of res-judicata as contemplated u/s.11 of the CPC. The Ld. Shri. S.N.Fagare for the appellants/plaints has relied on following case laws-

i) **Grampanchayat of Village Naulakha Vs. Ujagar Singh and Ors., (2000) AIR SC) 3272**, wherein it is held that,

“We may also add one other important reason which frequently arises under section 11 CPC. The earlier suit by the respondent against the Panchayat was only a suit for injunction and not one on title. No question of title was gone into nor decided. The said decision cannot, therefore, be binding on the question of title. See in this connection Sajjadanashin Sayed. Md. B.E.Edr.(D)By Lrs Vs. Musa Dadabhai Ummer and others -where this Court, on a detailed consideration of law in India and elsewhere held that even if, in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a latter suit or proceedings where title is directly in question, unless it is established that it was 'necessary' in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding of title. Even the mere framing of an issue on title may not be sufficient as pointed out in that case.”

ii)) **Vinodchandra Sakarlal Kapadia Vs. State of Guijarat and Ors., (2020) AIR (SC) 5138**, wherein it is held that-

“The question arises as to whether any living person can execute a document in contravention of any law. The answer is always in negative. If law do not permit and there is a prohibition to do certain thing, or there is a prohibition to do certain act except in certain manner, any document or agreement or anything in contravention to such provision of law, is illegal and invalid. During the lifetime of a living person, if the person is under restriction to execute certain document and thereby has no right to transfer his occupancy or no right to transfer his interest under one or other Act, he cannot execute any document, including a will showing his wish and intention in regard to such property in contravention of such law. Therefore, a tribal even cannot wish nor can show his intention to transfer his right of occupancy to a tribal or non-tribal, there being restriction Under Section 73AA of the Bombay Land Revenue Code. Similarly, a tenant- owner of agricultural land cannot wish nor can show his intention to transfer his right on agricultural land to a non-agriculturist by executing a will in contravention of Section 63

of the Bombay Tenancy Act, except in the manner prescribed thereunder. Any such wish and intention shown by testator during his lifetime, being in contravention of law, as noticed above, is invalid and can be ignored.

iii) State of Himachal Pradesh Vs. Keshav Ram and Ors., (1997) AIR (SC) 2181, wherein it is held that-

“ In the absence of the very order of the Assistant Settlement Officer directing necessary correction to be made in favour of the plaintiffs, it is not possible to visualize on what basis the aforesaid direction had been made. But at any rate such an entry in the Revenues papers by no stretch of imagination can form the basis for declaration of title in favour the plaintiffs. To our query as to whether there is any other document on the basis of which the plaintiffs can claim title over The disputed land, the learned counsel for the plaintiffs-respondents could not point out any other document apart from the alleged correction made in the register pursuant to the order of the Assistant Settlement Officer. In our considered opinion, the courts below committed serious error of law in declaring plaintiffs' title on the basis of the aforesaid order of correction and the consequential entry in the Revenue papers”.

24. However, in view of above repeated litigation in respect of same property, in between the same parties in respect of the same subject matter which has attained finality on merits and therefore said ratios are not helpful to the plaintiffs/appellants in the case in hand. The appellants have already agitated the legality of partition and transfer of suit property by the father of the appellants in favour of the father of the defendants and the same are decided on merit by the Court of law.

25. Therefore, I hold that the Ld. Civil Court has rightly dismissed the suit and come to the logical conclusion based on oral as well as documentary evidence place on record by both the parties. Therefore, no interference is required in the well reasoned judgment and decree passed by Ld. Civil Court which is in consonance with the previous judgments passed by the Court of law and thus I answered points No.1, 2 and 4 in the negative and point No.3 in the affirmative. Therefore, following order is passed.

ORDER

- 1) Appeal is dismissed with costs.
- 2) Decree be drawn up accordingly.
- 3) Record and Proceedings be sent to the office of the Civil Judge, Junior Division, Ajara, forthwith.

(Dictated and pronounced in open Court.)

Date: 23/03/2026.

(M. A. Shinde)
District Judge-1, Gadhinglaj.