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05 02 17

**IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION,
GADHINGLAJ**

(Presided over by N. S. Puri)

Regular Civil Suit No.56/2021.

Exh.No.83/A

1] Shri. Dhananjay Yallappa Kamble,
Age – 52 years, Occu. Service and
Agriculture, R/o.103, Turnpush Co-Op. ... Plaintiff
Housing Society, Sahyadri Nagar, Near
Bidra Highschool, Kalyan West, Mumbai.

// VERSUS //

1] Shri. Santosh Tanaji Sarang, Age – 44
years, Occu. Agriculture, R/o.
Hasurchampu, Tal. Gadhinglaj, Dist.
Kolhapur.

2] Shri. Parasharam Kashappa Kamble,
Age – 62 years, Occu. Agriculture,
R/o. Hasurchampu, Tal. Gadhinglaj, ... Defendants
Dist. Kolhapur.

3] Vimal Yallappa Kamble, deceased through
legal heirs i.e. plaintiff and defendant
no.4.

- | | |
|---|----------------|
| 4] Shri. Anand Yallappa Kamble, Age – 57 years, Occu. Agriculture, R/o. Hasurchampu, Tal. Gadhinglaj, Dist. Kolhapur. | ... Defendants |
| 5] State of Maharashtra Through Collector, Kolhapur, Nagala Park, Kolhapur. | |

Suit for declaration and perpetual injunction.

Adv. S. K. Nandgave, appeared for the plaintiff,

**Adv. B. B. Ghatge, appeared for the
defendant no.1,**

AGP S. A. Teli, appeared for the defendant no.5,

Ex-parte against defendant nos.2 and 4,

JUDGMENT

(Delivered on 26th May, 2026)

This is a suit for declaration and for permanent injunction.

2. **Description of suit property :-**

The land bearing Gat no.382, area 1 H. 12 R., assessed at Rs.03=81 Ps., situated at village Hasurchampu, Tal. Gadhinglaj, Dist. Kolhapur, four-bounded with, to the East – the remaining land of the said Gat number, to the

West – Road, to the South – the land bearing Gat No.383 and to the North – the land of Shri. Ananda Yallappa Kamble, is the subject-matter of the present suit, (hereinafter called as “suit property” for the sake of convenience).

The factual matrix of the plaintiff's case can be outlined as follows: :-

3. The plaintiff, Dhananjay Yallappa Kamble, is aged about 52 years and is serving in employment. He also owns agricultural land. At present, he is residing at Turnpushp Co-operative Housing Society, Sahyadri Nagar, near Bidra High School, Kalyan (West), Mumbai.

4. The suit property is agricultural land bearing Gat No. 382 admeasuring 0 Hectare 03 R out of total area 1 Hectare 12 R situated at Mouje Hasurchampu, Taluka Gadhinglaj, District Kolhapur. The property is bounded on the East by remaining portion of the same Gat number, on the West by road, on the South by Gat No. 383 and on the North by land of Ananda Yallappa Kamble.

5. The plaintiff and Defendant Nos. 2 to 4 belong to the same family. Their lineage traces back to one Kashappa Kamble, who had two sons namely Yallappa and Parsharam Kamble, the latter being Defendant No. 2. Yallappa expired on 24/07/2007 leaving behind the plaintiff and Defendant No. 4 as his sons and

Defendant No. 3 as his widow. After his death, the names of the plaintiff and Defendant Nos. 3 and 4 came to be entered in the 7/12 extract of the suit land as his legal heirs.

6. According to the plaintiff, the suit property is ancestral joint family property. It is his case that the plaintiff and Defendant Nos. 2 to 4 were jointly cultivating the suit land and raising crops such as paddy, groundnut and soybean. According to him, there was never any partition between the parties nor was any separate share demarcated in the land.

7. The plaintiff has further contended that Defendant No. 2, who had worked as Police Patil and was politically influential in the village, executed sale deed bearing Document No. 1644 dated 23.05.2016 in favour of Defendant No. 1 without consent of the plaintiff and other co-sharers. According to the plaintiff, no consideration was actually paid and possession of the suit land was also not handed over. It is his contention that the said sale deed is sham, void and not binding upon his share, as Defendant No. 2 had no authority to transfer joint family property without consent of the remaining co-owners.

8. According to the plaintiff, he came to know about the alleged sale transaction for the first time in the second week of July 2018, when Mutation Entry No. 3806 dated 17.08.2018 came to be certified by the Circle Officer, Gadhinglaj. It is his contention

that the said mutation entry was certified without issuing any notice to him. After obtaining knowledge of the transaction, the plaintiff preferred an appeal before the Sub-Divisional Officer, Gadhinglaj. However, the said appeal came to be rejected on the ground of limitation. Thereafter, the plaintiff filed Second Appeal bearing R.T.S. No. 9 of 2020 before the Additional Collector, Kolhapur, which is stated to be still pending.

9. According to the plaintiff, the immediate cause of action arose on 28.02.2021, when Defendant No. 1 started excavation and construction work over the suit land by claiming ownership on the basis of the sale deed dated 23.05.2016. The plaintiff has contended that the said work was undertaken without any permission and against his wishes. It is his case that when he personally visited the suit property and objected to the construction activity, Defendant No. 1 refused to stop the work and told him that he had no concern with the property. The plaintiff further contends that Defendant No. 1 threatened to continue the construction work despite objection.

10. On these allegations, the plaintiff has filed the present suit seeking declaration that the sale deed dated 23.05.2016 executed by Defendant No. 2 in favour of Defendant No. 1 is null, void and not binding upon his rights. The plaintiff has also sought permanent injunction restraining Defendant No. 1 from carrying out any construction or creating third party interest in the suit

property.

Case of defendant no.1 in short, is as under :-

11. Defendant no.1 has vehemently opposed the plaintiff's claim by filing his written statement at Exh.17. Defendant No. 1, Santosh Tanaji Sarang, has denied the case of the plaintiff in its entirety and has contended that the suit is false and baseless. According to him, though the description of the suit property is correct, the suit land is his exclusive property and he is in lawful possession thereof.

12. Defendant No. 1 has disputed the plaintiff's contention that the suit land is fertile irrigated agricultural land. According to him, the land is rocky and barren in nature. It is his case that Gat No. 382 is situated adjacent to the Gavthan area of Mouje Hasurchampu and within about 200 meters from the Gavthan boundary. Residential houses are stated to be existing around the said Gat for several decades. He has further contended that nearly 30 to 40 years ago, one Dundavva Channappa Kamble, who is sister of Defendant No. 2, had constructed a house on the same Gat number. According to Defendant No. 1, the Gram Panchayat has also provided various civic amenities in the area and the adjoining roads are concretized. Therefore, according to him, the land has ceased to retain any real agricultural character.

13. Regarding title, Defendant No. 1 has contended that

originally Gat No. 382 stood in the name of Kashappa Kamble. After his death, the property came to be recorded in the names of his sons namely Yallappa and Parsharam. According to Defendant No. 1, during the lifetime of Yallappa and Parsharam themselves, an oral partition had already taken place between the two branches of the family and thereafter each branch was cultivating its separate portion independently. It is his contention that Defendant No. 2 Parsharam Kashappa Kamble was separately holding 56 R land from Gat No. 382 and the suit property of 3 R was sold from his independent share.

14. Defendant No. 1 has further contended that the transaction in question is genuine and valid in all respects. According to him, Defendant No. 2 intended to sell the suit land due to family necessities including marriage expenses of his daughter. Thereafter, after mutual negotiations, Defendant No. 1 purchased the suit property under registered sale deed bearing No. 1644 dated 23.05.2016 for consideration of Rs. 75,000/-. It is his case that actual possession of the suit property was handed over at the time of execution of the sale deed itself and thereafter he fenced the land after taking possession.

15. Defendant No. 1 has further stated that after execution of the sale deed, Mutation Entry No. 3806 was duly effected and his name was entered in the revenue record. According to him, the mutation entry was not made secretly or

behind the back of the plaintiff, and all concerned persons including the plaintiff had knowledge of the same.

16. Defendant No. 1 has further denied the contention that the plaintiff and Defendant Nos. 2 to 4 constituted a joint family. According to him, the plaintiff along with Defendant Nos. 3 and 4 had been residing at Mumbai since the lifetime of Yallappa, whereas Defendant No. 2 was separately residing at Hasurchampu. It is therefore contended that Defendant No. 2 was independently dealing with his separate share and was not required to obtain consent of the plaintiff or any other person before executing the sale deed.

17. Regarding the construction activity, Defendant No. 1 has stated that since the suit land is situated adjacent to Gavthan area and is rocky and non-agricultural in actual use, he applied to Gram Panchayat, Hasurchampu on 29.07.2019 seeking building permission. According to him, the Gram Panchayat sanctioned the building plan and issued valid construction permission. He has further contended that construction work had already commenced in the year 2019 itself but could not be completed due to restrictions during the COVID-19 pandemic. Thereafter, the remaining work was resumed and the present suit has been filed only with an intention to obstruct his lawful construction activity.

18. Defendant No. 1 has also raised a legal objection

regarding maintainability of the suit. According to him, the plaintiff has sought only declaration and injunction without claiming consequential relief of possession and therefore the suit is barred under Sections 34 and 41(h) of the Specific Relief Act. He has further denied the allegation of joint cultivation and undivided possession. According to him, the revenue record itself clearly shows separate entries in respect of his purchased portion admeasuring 3 R and the remaining 53 R standing separately in the name of Defendant No. 2 with independent 8-A extracts.

19. On these grounds, Defendant No. 1 has prayed for dismissal of the suit as well as the injunction application with costs. He has also sought compensatory costs of Rs. 25,000/- contending that the present suit is false, vexatious and filed only to harass him.

20. Defendant no.5 has filed its written statement at Exh.14 and opposed the plaintiff's claim. It contends that the State Government made party to the suit unnecessarily. The dispute is only in between the plaintiff and defendant nos.1 to 4. The State Government made party to the suit only to bring the suit within the jurisdiction of Civil Judge Senior Division, therefore, defendant no.5 be deleted and compensatory cost of Rs.25,000/- be imposed on the plaintiffs.

21. After considering rival pleadings from both sides, the

issues have been framed in Marathi language at Exh.34. The said issues are translated in English. Those issues alongwith their findings with reasons thereon are as under :-

Sr. No.	ISSUES	FINDINGS
1)	Does plaintiff prove that, defendant nos.2 to 4 have executed the sale-deed which is illegal, vague, without consideration and without possession in favour of defendant no.1, excluding the plaintiff's undivided share and rights and without the division of land ?	... In the affirmative
2)	Whether it is proved by the plaintiff that the sale-deed bearing no.1644, dated 23.05.2016 is hollow and bogus and the same is not binding over his right ?	... In the affirmative
2A)	Whether the suit is barred by the principles of Consolidation & Fragmentation Act ?	... In the affirmative
3)	Is plaintiff entitled to the relief of declaration, as prayed ?	... In the affirmative
4)	Is plaintiff entitled to the relief of perpetual injunction, as prayed ?	... In the affirmative
5)	What order and decree ?	... As per final order.

REASONS22. **Plaintiff's oral evidence :-**

Sr. No.	Witness No.	Name of Witness	Exhibit
1)	1	Shri. Dhananjay Yallappa Kamble (plaintiff)	38
2)	2	Shri. Sunil Chintamani Chavan	40

23. **Defendant No.1's oral evidence :-**

Sr. No.	Witness No.	Name of Witness	Exhibit
1)	1	Shri. Santosh Tanaji Sarang (defendant no.1)	45
2)	2	Shri. Prasad Dattatray Daddikar	72
3)	3	Shri. Sameer Baburao Todkar	73

24. **Defendant No.1's documentary evidence :-**

Sr. No.	Description of document	Exhibit
1)	7/12 extract of suit property of the year 2022-23 to 2024-25	47
2)	Map of suit property issued by Land Record Office	48
3)	Mutation Entry No.4882 of village Hasurchampu, Tal. Gadhinglaj	49

4)	Assessment extracts of Grampanchayat Property No.738/2, 738/3, 1020, 823, 824 of village Hasurchampu, Tal. Gadhinglaj	50 to 54
5)	Tax receipts, Light bill, Light bill receipt,	55 to 62
6)	Mutation Entry No.403 of village Hasurchampu, Tal. Gadhinglaj	63
7)	Sale-deed bearing no.1644/2016, dt.23.05.2016	64
8)	8-A extract bearing no.1564 in the name of defendant no.1 of village Hasurchampu, Tal. Gadhinglaj	65
9)	7/12 extract of suit property	66
10)	Construction permission issued by Grampanchayat Hasurchampu in the name of defendant no.1	67
11)	Certificate issued by Grampanchayat Hasurchampu regarding the Gavthan boundary with suit property	68

25. Ld. Advocate for the plaintiff has relied on following case-law :-

[i] *Mamidi Venkata Rao V/s. Mandela Narasimhaswami -- AIR 1966 SC 470 ;*

[ii] *Ramdas V/s. Sitabai -- AIR 2009 SC 2735 ;*

[iii] *Kaushal Kishore V/s. Dharam Kishore -- AIR 1978 Punjab 146 ;*

[iv] *Gajara Gosavi V/s. Prakash Kamble – (2009) 6 All MR 983 ;*

[v] *Tukaram Shinde V/s. Bhimrao Khandele – 2003 (4) All MR 1015.*

26. Ld. Advocate for the defendant no.1 has relied on following case-law :-

[i] *Rahim Sheikh V/s. Samad Sheikh --AIR 1972 J & K 7 ;*

[ii] *Chanan Singh V/s. Santa Sing -- AIR 1950 Pepsu 5 ;*

[iii] *Tek Singh Ishar Singh V/s. Jaswant Singh Waryam Singh -- AIR 1972 P & H 208 ;*

[iv] *Balaichand Sau V/s. Brindaban Dasadhikari -- AIR 2019 Calcutta 289 ;*

[v] *Narashimaha Murthy V/s. Smt. Susheelabai -- AIR 1966 SC 1862 ;*

[vi] *Amir Kapoor V/s. Nisha & Another – Hon'ble Punjab & Haryana High Court at Chandigarh, CR No.3826 of 2019 (O & M), decided on 28.04.2022 ;*

[vii] *Santokh Singh V/s. Harnek Singh -- AIR 2020 P & H 212 ;*

[viii] *S. Umamaheshwari V/s. P Murugesan – Hon'ble Madras High Court C.R.PNos.718, 2289, 2018 of 2018 and C.M.PNos.14324, 17525, 17079 of 2018, decided on 07.12.2020 ;*

[ix] *State of UP V/s. Tara Singh Jaiswa -- AIR 2013 Allahabad 35 ;*

[x] *D. S. Lakshmaiah V/s. L. Balasubramanyam – (2003) 10 SCC 310 ;*

[xi] *Shankar Waghmare V/s. Bhaurao Waghmare -- 2012 (3) Mh.L.J. 134 ;*

[xii] *Bhagwat Sharan V/s. Purushottam – AIR 2020 SC 2361.*

AS TO ISSUE NOS.1 AND 2 :-

27. Issue Nos. 1 and 2 are closely connected with each other and therefore they are being considered together.

28. The case of the plaintiff is that the suit property is ancestral joint family property and that no partition has ever taken place between the parties. According to the plaintiff, the land continued to remain in joint cultivation and therefore Defendant No. 2 had no authority to sell any specific portion from the suit land without consent of all co-sharers and without lawful partition. On the other hand, the defence of Defendant No. 1 is that partition had already taken place between the branches of Yallappa and Parsharam during their lifetime around the year 2008 and thereafter each branch was separately enjoying its respective share. According to the defendant, Defendant No. 2 sold only his independent portion admeasuring 3 R and therefore the transaction is valid under Section 44 of the Transfer of Property Act.

29. The first question which therefore arises is whether

the defendants have proved that any valid partition had in fact taken place before execution of the sale deed dated 23.05.2016.

30. Though the defendants have pleaded partition in the written statement, no clear particulars of such partition are given. No specific date of partition is mentioned. No details are provided regarding how the property was divided, which portion fell to whose share, or whether any mutation entry was effected pursuant to such partition. No documentary evidence has been produced to support the alleged partition.

31. The evidence of DW-1 Santosh Sarang also does not satisfactorily establish partition. In his cross-examination, he admitted that according to him the partition was oral and had allegedly taken place around the year 2008. He further admitted that he does not know whether any written document was prepared thereafter. His knowledge regarding the alleged partition is admittedly based on what he was told by others. He was unable to state clearly which exact portions had fallen to the share of each branch. He also admitted that there is no separate 7/12 extract jointly issued in the names of all four co-sharers after such alleged partition. This admission weakens the defence case itself.

32. Similarly, DW-3 Sameer Todkar admitted in his cross-examination that the names of Parsharam, Ananda, Dhananjay and Vimal are shown jointly in the 7/12 extract and the mode of

cultivation is recorded as “samaik”. He further admitted that the statements regarding partition mentioned in his affidavit were inserted at the instance of Santosh and that he had not personally given details regarding any partition while preparing his evidence.

33. This Court has carefully examined the 7/12 extract which was annexed to the sale deed at the time of execution of the transaction in the year 2016. The said extract clearly shows all the names together under joint area of 0 Hectare 56 R. There is no separate Gat number, no separate cultivation entry and no separate possession shown exclusively in the name of Parsharam. Even the subsequent 7/12 extract at Exhibit-47 dated 06.03.2025 continues to reflect the names of Ananda, Dhananjay and Vimal jointly under samaik area of 0.56.00 R.

34. It appears that the separate entries showing Parsharam for 0.53 R and Defendant No. 1 for 0.03 R came into existence only after Mutation Entry No. 3806, which itself is under challenge before the revenue authorities.

35. It is well settled that mere mutation entries in revenue record do not by themselves prove partition. To establish lawful partition, there must either be a registered partition deed or clear evidence showing division by metes and bounds followed by separate possession. In the present case, neither such document nor such convincing evidence is available.

36. If partition had really taken place in the year 2008 as alleged by the defendants, there is no explanation as to why no mutation proceedings were initiated for several years thereafter and why the revenue record continued to show joint cultivation and joint holding till the date of execution of the sale deed in the year 2016. These circumstances create serious doubt regarding the defence plea of prior partition.

37. One very important circumstance in the present case is the complete absence of Defendant No. 2 Parsharam Kashappa Kamble from the witness box. He is the person who allegedly sold the suit property, received the sale consideration, possessed a separate share and handed over possession to Defendant No. 1. In spite of this, Defendant No. 2 neither filed written statement nor stepped into the witness box to support the transaction. The suit has proceeded ex-parte against him throughout.

38. As a result, the entire defence regarding partition, separate possession and validity of the sale transaction rests only upon the evidence of the purchaser i.e. Defendant No. 1 and his supporting witnesses. The best possible evidence regarding the alleged partition and sale transaction could have come from Defendant No. 2 himself. However, he has chosen to remain completely silent.

39. It is a settled principle of law that when a party who is in a position to explain material facts deliberately avoids entering the witness box, the Court can draw adverse inference against such party. In the present matter, the non-appearance of Defendant No. 2 creates serious doubt regarding the defence version. Therefore, adverse inference is required to be drawn that the defendants have failed to satisfactorily prove that Defendant No. 2 had exclusive ownership and independent possession over the suit property at the time of the alleged sale transaction.

40. The defendants have relied upon certain Judgments in support of their case. One such Judgment is *Bhagwat Sharan v. Purushottam (cited supra)* and *D.S.Lakshmaiah V/s. L. Balasubramanyam (cited supra)*, wherein it has been held that mere existence of a joint Hindu family does not automatically lead to presumption that every property standing in the family is joint family property. There cannot be any dispute regarding this legal proposition.

41. However, the said principle does not help the defendants in the facts of the present case. This Court is not proceeding merely on any presumption arising out of existence of joint family. The finding that the suit property continued to remain joint and undivided is based upon positive material available on record. The revenue entries consistently show joint holding and joint cultivation under “samaik” entries. The witnesses examined

by the defendants themselves have admitted that the land was shown jointly in the revenue record. Further, absolutely no convincing documentary evidence of partition has been produced by the defendants. Therefore, the facts of the present case stand on a different footing and the ratio of the above decision is not applicable here.

42. The defendants have further relied upon decisions reported in *Rahim Sheikh V/s. Samad Sheikh (cited supra)*, *Chanan Singh V/s. Santa Sing (cited supra)*, and *Tek Singh V/s. Jaswant Singh (cited supra)* to contend that a co-sharer can transfer property which is in his actual possession and can also deliver such possession to the purchaser. The legal proposition laid down in those Judgments is also not disputed.

43. However, those cases are clearly distinguishable on facts. In all those matters, the co-sharer executing the sale was found to be in separate and identifiable possession of the portion sold, indicating existence of *de facto* partition on the spot, though formal partition may not have been recorded in revenue papers. In the present case, no such independent or exclusive possession of Defendant No. 2 has been proved.

44. The 7/12 extract existing at the time of the sale deed continued to show all co-sharers jointly under “samaik” entries. Even DW-3 Sameer Todkar admitted that cultivation was recorded

as joint. Most importantly, Defendant No. 2 himself never entered the witness box to assert that he was separately possessing the portion allegedly sold by him. Therefore, the factual circumstances in the present case are materially different and the above decisions do not support the defence.

45. The main legal contention raised by the defendants is based on Section 44 of the Transfer of Property Act. Section 44 provides that where one of several co-owners transfers his share or interest in the property, the transferee acquires the rights of the transferor to the extent of such undivided share including the right to joint possession and the right to seek partition.

46. There can be no dispute regarding this principle. A co-owner is legally entitled to transfer his undivided share in joint property and the purchaser steps into the shoes of the transferor to that extent. However, the rights flowing from Section 44 are limited in nature. What the purchaser acquires is only the right which the co-owner himself possessed namely joint enjoyment and right to seek partition.

47. Section 44 does not authorize a co-owner to carve out a specific defined portion with fixed boundaries and transfer it as though it were his exclusive and separately identifiable property when no partition has actually taken place. In absence of lawful partition or proof of separate possession, such transfer cannot bind

the shares of the remaining co-owners.

48. In the present case, Defendant No. 2 did not merely transfer his undivided share in the joint property. On the contrary, he purported to sell a specific portion admeasuring 3 Gunthas with fixed boundaries as if it was his exclusive and independently owned property. Such a transaction cannot be treated as a simple transfer of undivided share contemplated under Section 44 of the Transfer of Property Act.

49. Even assuming Section 44 applies, the purchaser can acquire only such rights as were available with the transferor. At the highest, Defendant No. 1 could claim joint possession along with other co-sharers and the right to seek partition through due process of law. He cannot, on the strength of such transfer, assert exclusive ownership over a specific defined portion and proceed with construction against the wishes of the remaining co-sharers.

50. The proper remedy available to a purchaser of an undivided share is to seek partition before the competent Court. Without partition, the purchaser cannot unilaterally occupy a demarcated portion and raise permanent construction thereon by excluding other co-owners.

51. There is another important circumstance which creates doubt regarding the identity of the property allegedly sold.

In the sale deed, the southern boundary of the suit property is described as land of Santosh Sarang. However, during his cross-examination, DW-1 Santosh himself admitted that his property is not adjacent to Gat No. 382. This admission creates inconsistency in the boundary description mentioned in the sale deed and raises serious doubt regarding the exact identity of the portion allegedly transferred.

52. Further, DW-2 Daddikar, who acted as deed writer, admitted in his cross-examination that no separate document regarding verification of boundaries was produced before him at the time of preparation of the sale deed. He also admitted that the 7/12 extract annexed to the sale deed was not within the prescribed validity period of three months. These circumstances further weaken the reliability of the boundary description mentioned in the document and also cast doubt on the alleged delivery of exclusive possession.

53. The defendants have also argued that since the sisters of Kashappa and daughters of Yallappa have not been joined as parties, it should be presumed that partition had already taken place and their rights had come to an end. This contention cannot be accepted.

54. The present suit is not a suit for partition. The plaintiff has approached the Court seeking declaration and injunction for

protection of his own undivided share against interference by Defendant No. 1, who is an outsider purchaser. For such relief, it is not necessary that every possible heir or co-sharer should be impleaded as party.

55. The absence of some other heirs or co-sharers therefore does not defeat the plaintiff's right to seek protection of his own undivided interest. At the same time, it is clarified that the findings recorded in the present suit are confined only to the rights of the plaintiff vis-à-vis the impugned transaction and shall not affect independent rights, if any, of persons who are not parties to the present proceedings.

56. So far as credibility of witnesses is concerned, PW-1 Dhananjay was subjected to lengthy cross-examination. Certain admissions were brought on record regarding his residence at Mumbai and his limited day-to-day involvement with the village property. However, despite detailed cross-examination, his main case that the suit property remained joint and that no partition had taken place could not be shaken.

57. PW-2 Sunil Chavan was criticized during cross-examination on the ground that he is son-in-law of Defendant No. 2 Parsharam and therefore an interested witness. However, an important aspect of his evidence cannot be ignored. In his cross-examination, he admitted that the 7/12 extract

continued to show joint names and “samaik” cultivation. This admission, coming from a witness connected with the defendants’ side, supports the plaintiff’s case and assumes significance as an admission against interest.

58. The evidence of DW-1 Santosh Sarang also requires careful scrutiny since he is the purchaser himself. His admissions in cross-examination regarding the alleged oral partition, his hearsay knowledge about the same, absence of documentary proof, inconsistency in boundary description, and the fact that non-agricultural conversion was obtained during pendency of injunction proceedings, create doubt regarding his version about partition and exclusive possession.

59. DW-2 Daddikar, who acted as deed writer, is essentially a formal witness connected with preparation of the document. In his cross-examination, he admitted several deficiencies in the transaction such as use of an old 7/12 extract, absence of encumbrance certificate, absence of boundary verification document and absence of Saksham Adhikari certificate. Rather than strengthening the transaction, these admissions expose material irregularities surrounding execution of the sale deed.

60. Similarly, DW-3 Todkar admittedly deposed at the request of Defendant No. 1 and is related to him. He also admitted

that substantial contents of his affidavit were inserted by Santosh himself. Therefore, his evidence carries little independent evidentiary value.

61. After considering the entire oral and documentary evidence on record, this Court finds that the defendants have failed to prove that any valid partition had taken place prior to execution of the sale deed dated 23.05.2016. The revenue record existing at the relevant time clearly reflected joint holding and joint cultivation. The defendants have also failed to satisfactorily establish exclusive possession of Defendant No. 2 over the specific 3 Guntha portion allegedly sold.

62. In these circumstances, this Court holds that at the time of execution of the sale deed, the suit property continued to remain joint and undivided property of the plaintiff and Defendant Nos. 2 to 4. Defendant No. 2 therefore had no authority to transfer a specific demarcated portion with exclusive boundaries so as to confer absolute ownership and exclusive possession upon Defendant No. 1 without prior partition and without consent of the remaining co-sharers.

63. Accordingly, the sale deed dated 23.05.2016 bearing Document No. 1644 cannot be treated as binding upon the plaintiff's undivided share and rights. At the most, Defendant No. 1 may work out whatever rights he has through appropriate

partition proceedings in accordance with law. However, he cannot claim exclusive ownership or possession over the specific 3 Guntha portion solely on the basis of the said sale deed. Hence, Issue Nos. 1 and 2 are answered in the Affirmative and in favour of the plaintiff.

AS TO ISSUE NO.2A :-

64. This issue came to be framed as an additional issue by order dated 04/08/2025. Since it concerns the independent validity of the sale transaction under the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, it requires separate consideration. Even assuming for the sake of argument that the defendants had proved prior partition, which this Court has already found they have failed to do the transaction would still have to satisfy the requirements of the Fragmentation Act.

65. The plaintiff has contended that the suit land is irrigated bagayat agricultural land and that the portion sold under the impugned sale deed measures only 3 Gunthas. According to the plaintiff, as per Government notification applicable to Kolhapur District, the minimum standard area prescribed is 10 Gunthas for bagayat land and 20 Gunthas for jirayat land. Therefore, according to the plaintiff, transfer of only 3 Gunthas is prohibited under the provisions of the Fragmentation Act. In

support of this contention, the plaintiff has relied upon Government Gazette Notification dated 08/08/2023.

66. On the other hand, Defendant No. 1 has contended that the suit property is situated within 200 meters from Gavthan area and therefore exempted from the operation of the Fragmentation Act when purchased for residential purpose. He has also relied upon the fact that non-agricultural permission was subsequently granted by the Tahsildar on 08.06.2024. Another objection raised by the defendants is that Section 36-A of the Fragmentation Act bars jurisdiction of Civil Court to decide such issue.

67. Before considering the legal effect of the Fragmentation Act, it becomes necessary to determine the nature of the land as it existed on the date of transaction.

68. The sale deed itself at Exhibit-64 clearly recites that the land was purchased for agricultural purpose. This recital is significant because it is an admission contained in the very document relied upon by Defendant No. 1. Further, the 7/12 extract annexed with the sale deed contains entries regarding well and bore in the encumbrance column, indicating existence of irrigation facilities and supporting the case that the land was bagayat in nature.

69. Apart from documentary record, even the oral evidence supports this position. During cross-examination, DW-1 Santosh admitted that the land was bagayat at the time of the transaction. Similar admissions were also given by DW-2 Daddikar and DW-3 Todkar. Though Defendant No. 1 attempted in his examination-in-chief to describe the land as barren and jirayat, such stand is inconsistent with his own admissions and with the recitals in the sale deed itself.

70. A party cannot be permitted to avoid clear admissions made in evidence or recitals appearing in a document upon which he himself relies. Therefore, this Court has no hesitation in holding that at the time of execution of the sale deed dated 23.05.2016, the suit property was bagayat irrigated agricultural land.

71. The Government Gazette Notification dated 08/08/2023 produced on record prescribes minimum standard area for Kolhapur District as 10 Gunthas for bagayat land and 20 Gunthas for jirayat land. The disputed transaction admittedly relates only to 3 Gunthas of land. Thus, whether the land is treated as bagayat or jirayat, the area transferred is substantially below the prescribed standard area under both categories.

72. Therefore, even if the defendants attempt to change

their stand regarding the nature of the land, the transaction still remains below the permissible limit under either classification.

73. The object behind the Fragmentation Act has been explained in the Judgment reported in ***Tukaram Shinde V/s. Bhimrao Khandele (cited supra)***, wherein it has been observed that the legislation is intended to prevent fragmentation of agricultural holdings and to avoid creation of uneconomic and impractical small pieces of land. In the present case, carving out a separate piece of only 3 Gunthas from agricultural land and treating it as an independent parcel directly defeats the very object and purpose of the statute.

74. The defendants have relied upon Government Resolutions dated 23/08/1999, 20/08/2011, 07/09/2017 and 14/12/2018 to contend that lands situated near Gavthan area and purchased for residential purpose are exempted from the provisions of the Fragmentation Act. This contention has been carefully considered. However, in the facts of the present case, the said Government Resolutions do not assist the defendants.

75. The exemption contemplated under those Government Resolutions applies to lands purchased for residential or non-agricultural purpose. In the present matter, the sale deed dated 23.05.2016 itself specifically recites that the property was purchased for agricultural purpose. This recital appears in the very

document relied upon by Defendant No. 1. Therefore, the defendant cannot now turn around and claim benefit of exemption meant for residential or non-agricultural transactions when his own document contradicts such stand.

76. Even otherwise, the non-agricultural permission relied upon by Defendant No. 1 came to be granted only on 08.06.2024, nearly eight years after execution of the sale deed dated 23.05.2016. The legality and validity of a transaction under the Fragmentation Act must be examined with reference to the date of the transaction itself and not on the basis of subsequent developments.

77. On the date of execution of the sale deed, the land admittedly remained agricultural bagayat land and no non-agricultural permission existed. Therefore, a subsequent conversion order obtained years later cannot cure or validate a transaction which was otherwise hit by the provisions of the Fragmentation Act on the date it was entered into.

78. The defendants have also raised an objection under Section 36-A of the Prevention of Fragmentation and Consolidation of Holdings Act contending that this Court has no jurisdiction to examine whether the transaction is hit by the provisions of the Fragmentation Act.

79. The present suit is essentially a civil suit for declaration and injunction. The plaintiff has not approached this Court seeking any relief directly under the Fragmentation Act. The question regarding applicability of the Fragmentation Act arises only incidentally while examining validity and enforceability of the sale deed relied upon by Defendant No. 1.

80. It is well settled that a Civil Court is competent to examine legality and civil consequences of a transaction when such question arises incidentally in adjudication of civil rights between parties. In the present case, this Court is not exercising powers of Fragmentation Authority nor is it deciding proceedings under the Act independently. It is only examining whether the sale deed relied upon by the defendants can legally bind the plaintiff's rights. Therefore, the bar under Section 36-A does not apply to the present proceedings.

81. After considering the entire oral and documentary evidence, the admissions given by the defendants' own witnesses, the recitals in the sale deed, the Government notification prescribing minimum standard area, and after examining the objections raised regarding exemption and jurisdiction, this Court arrives at the conclusions that the transaction dated 23.05.2016 is hit by the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act and therefore cannot be enforced against the plaintiff's rights. The additional issue is accordingly

answered in the affirmative in favour of the plaintiff.

AS TO ISSUE NOS.3 AND 4 :-

82. Issues No. 3 and 4 are being considered together since both are connected and depend upon the findings already recorded on earlier issues.

83. The defendants have contended that the present suit, which seeks declaration and permanent injunction, is not maintainable under Sections 34 and 41(h) of the Specific Relief Act. According to them, the plaintiff ought to have sought further relief such as partition or possession instead of filing only a suit for declaration and injunction. In support of this objection, reliance has been placed on the Judgment of the Madras High Court in *S. Umamaheshwari V/s. P. Murugesan (cited supra)* and also on *State of UP V/s. Tara Singh Jaiswa (cited supra)*. This Court has carefully considered the objection as well as the authorities relied upon.

84. Section 34 of the Specific Relief Act permits a person claiming any legal right in property to seek declaration against a person denying or interested in denying such right. The proviso says that where a person is capable of seeking further relief but omits to do so, mere declaration should not ordinarily be granted. Similarly, Section 41(h) provides that injunction cannot be granted where equally effective relief is available by some other

ordinary remedy.

85. However, the objection raised by the defendants does not fit the facts of the present case. The plaintiff is not denying the rights of other co-sharers nor is he seeking to dispossess any family member. His grievance is limited and specific. According to him, an outsider purchaser has obtained a sale deed from one co-sharer and is trying to claim exclusive possession over a particular portion of joint property and raise construction thereon. Therefore, the dispute is essentially between the plaintiff and the outsider purchaser regarding enforceability of the sale deed against the plaintiff's undivided rights.

86. In such circumstances, a suit seeking declaration that the sale deed is not binding on the plaintiff's share along with injunction against further construction is an appropriate and effective remedy. A partition suit between co-sharers would not directly resolve the plaintiff's immediate grievance regarding illegal assertion of exclusive rights by the purchaser.

87. The Judgments relied upon by the defendants lay down the general principle that a bare declaration suit without consequential relief may not be maintainable where additional relief is available and ought to have been sought. There is no dispute about that legal proposition. However, those Judgments are distinguishable on facts.

88. In the present case, the plaintiff is not merely seeking declaration of title simpliciter. He has specifically challenged the binding nature of a particular sale deed insofar as his undivided rights are concerned and has also sought consequential relief of permanent injunction. Therefore, this is not a case of mere declaration without further relief.

89. The plaintiff has already sought consequential relief in the form of injunction restraining Defendant No. 1 from carrying out construction over the suit property. Thus, the requirement of proviso to Section 34 stands satisfied. For these reasons, the objection regarding maintainability of the suit cannot be accepted and the same stands rejected.

90. Coming to the declaration sought by the plaintiff, this Court has already recorded findings under Issues No. 1 and 2 that the suit property continued to remain joint and undivided at the time of the transaction and that Defendant No. 2 had no authority to carve out and transfer a specific defined portion so as to confer exclusive title and possession upon Defendant No. 1 without consent of other co-sharers and without prior partition.

91. This Court has also held while deciding the additional issue that the transaction is independently hit by the provisions of the Prevention of Fragmentation and Consolidation of Holdings

Act and is therefore unenforceable on that ground also.

92. Both these findings clearly establish that the sale deed dated 23.05.2016 bearing Document No. 1644 cannot bind the plaintiff's undivided rights in the suit property. The evidence further shows that the plaintiff came to know about the transaction only in July 2018 and immediately thereafter he initiated proceedings before the revenue authorities. Subsequently, when Defendant No. 1 started excavation and construction activity on 28/02/2021, the plaintiff promptly approached this Court. Therefore, the suit cannot be said to be barred by limitation or delayed due to negligence.

93. In view of the findings already recorded and the evidence available on record, this Court finds that the plaintiff is entitled to declaration that the sale deed dated 23.05.2016 executed by Defendant No. 2 in favour of Defendant No. 1 is not binding on the plaintiff's undivided share and rights in the suit property. Accordingly, Issue No. 3 is answered in the affirmative in favour of the plaintiff.

94. For grant of permanent injunction, the plaintiff must show three things first, that he has a legal right in the property; second, that such right is being violated or threatened by the defendant; and third, that monetary compensation would not be an adequate remedy. In the present matter, all these requirements

stand satisfied.

95. The plaintiff has successfully established his undivided co-sharer's right in the suit property. The evidence further shows that Defendant No. 1, on the basis of a sale deed which has already been held not binding on the plaintiff's rights, started excavation and construction activity on 28/02/2021 without consent of the plaintiff and without lawful authority.

96. The plaintiff has stated that when he personally objected to the construction activity, Defendant No. 1 refused to stop the work and asserted his intention to continue. Thus, the threat to the plaintiff's rights is not imaginary or speculative but actual and continuing in nature.

97. If construction is permitted to continue on joint and undivided property on the strength of a transaction which does not bind the plaintiff's rights, the plaintiff's undivided share and enjoyment in the property would suffer permanent prejudice. Such injury cannot be adequately compensated merely by awarding money at a later stage. Therefore, permanent injunction becomes the proper and necessary remedy in the facts of the case. Accordingly, this Court finds that the plaintiff is entitled to protection of his rights by way of permanent injunction. Issue No. 4 is therefore answered in the affirmative in favour of the plaintiff.

AS TO ISSUE NO.5 :-

98. In view of the findings recorded on Issues Nos. 1, 2, Additional Issue, 3 and 4, the following order is passed :-

ORDER

- 1] The suit is decreed with cost.
- 2] It is hereby declared that the sale deed bearing Document No. 1644 dated 23.05.2016 executed by Defendant No. 2 in respect of suit property, is not binding upon the plaintiff's undivided share and rights in the suit property.
- 3] Defendant No. 1 Santosh Tanaji Sarang, his agents, servants, representatives or anybody claiming through him are permanently restrained from carrying out any construction, excavation or any other activity over the suit property.

(Decree be drawn up accordingly.)

Place : Gadhinglaj.
Date : 26.05.2026.

(N. S. Puri)
Civil Judge Senior Division,
Gadhinglaj