

MHKO130001172013



Received on	-	19/12/2012						
Registered on	-	03/01/2013						
Decided on	-	08/07/2026						
Duration	-	<table><tr><td>Yrs.</td><td>M.</td><td>D.</td></tr><tr><td>13</td><td>06</td><td>19</td></tr></table>	Yrs.	M.	D.	13	06	19
Yrs.	M.	D.						
13	06	19						

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,
(COURT NO.1), KAGAL
(PRESIDING OFFICER: A.B.Madke)

Regular Civil Suit No. 4/2013
Exh. No. 132/A

1. Shiva Rama Patil(deceased heir)

1/A. Sindhutai Maruti Patil(deceased heir)

1/A/1.Dipali Dipak Khandagale, }
Age : 49 Yrs., Occu.: Household, }
R/o. Ganesh Park, Kadamvadi, }
Kolhapur }

1/A/2.Vidhya Balasaheb Suryavanshi, }
Age : 46 Yrs., Occu.: Household, }
R/o. Near Panyachi Taki, Korochi, }
Tal. Hatkanangale, Dist.Kolhapur }

1/A/3.Krushnat Maruti Patil, }
Age : 43 Yrs., Occu.: Agril, }
R/o. Mouje Sangoan, Tal. Kagal, }
Dist.Kolhapur }

1/A/4.Sandip Maruti Patil, }
Age : 40 Yrs., Occu.: Agril, }
R/o. Mouje Sangoan, Tal. Kagal, }
Dist.Kolhapur }

1/B. Kaveri Shiva Patil, }
Age : 40 Yrs., Occu.: Agril & Household, }
R/o. Mouje Sangoan, Tal. Kagal, }
Dist.Kolhapur }

...Plaintiffs

- V E R S U S -

1. **Bapu Rajaram Patil,**
Age : 62 Yrs, Occu.: Agril, }
R/o. Mouje Sangoan, Tal. Kagal, }
Dist.Kolhapur
2. **Dinakar Vasant Patil,**
Age : 53 Yrs, Occu.: Agril, }
R/o. Benadi, Tal. Kagal, Dist Kolhapur} **..Defendants**

Suit – For Perpetual Injunction.

Adv. A.L.Patil	-	Learned Advocate for the Plaintiff No. 1(A)(1) to 1(A)(4)
Adv. D.D.Patil	-	Learned Advocate for the Plaintiff No. 1(B)
Adv. M.J.Patil	-	Learned Advocate for the Defendant No. 1.
Adv. A.J.Desai	-	Learned Advocate for the Defendant No. 2.

JUDGMENT

[Delivered on this 08th day of July 2026]

Brief facts of the plaintiffs case is as under :-

1. By way of instant suit Plaintiff has prayed for the relief of perpetual injunction to restrain the Defendant No. 1 or any person on behalf of Defendant No. 1 from interfering with the possession of Plaintiff or to oust the Plaintiff from the suit property. Suit property is land bearing Revision Survey No. 211 Hissa No. 2 and new Gat No. 1753 admeasuring 0.06 R situated at Mouje. Sangoan beyond the limits of Gram Panchayat Mouje Sangoan, Tal. Kagal, Dist. Kolhapur and bounded as follows.

Towards East – Property of Madhukar Rajaram Patil,

Towards West – Property of Bandu Balu Patil,

Towards South – Government Road,

Towards North – Property of Balu Dattu Mengane.

(Here-in-after the above property shall be referred as suit property for the sake of brevity.)

3. It is submitted that the suit property was originally owned by the father of Defendant No. 2 namely Vasant Krushna Patil. The father of Defendant No. 2 namely Vasant Krushna Patil was in need of money and therefore he executed an instrument in the form of Mortgage by conditional sale for consideration amount of Rs. 500/- bearing registration No. 1987 dated 30/12/1971 and registered before Sub-Registrar, Kagal. On the same day the possession of the suit property was handed over to the father of Plaintiff and since then the father of Plaintiff and thereafter the Plaintiff is in possession of the suit property. It is submitted that father of Plaintiff namely Shiva Rama Patil died on 10/08/1999 leaving behind Plaintiff as his heirs. It is submitted that as per the registered instrument in the form of Mortgage by conditional sale it was effected for a term period of 15 years. Hence from the date of its execution i.e. 30/12/1971 after five years and thereafter before ten years it was agreed that the Defendant No. 2 shall repay the loan amount and Plaintiff shall reconvey the mortgaged property to him. If Defendant No. 2 fails to repay the mortgaged amount the sale shall become absolute.

4. It is submitted that as per the registered instrument dated 30/12/1971 Defendant No. 2 failed to repay the loan amount in prescribed time and re-execute the Re-conveyance Deed in his

favour. Therefore on 29/01/1986 i.e. after 15 years after registration of instrument in the form of Mortgage by conditional sale dated 30/12/1971 Plaintiff and his ancestors became the owners of the suit property. After the death of the father of Plaintiff on 19/09/1999 Plaintiff is enjoying the suit property as owner. He has cultivated lemon and coconut orchard in the year 2001 in the suit property.

5. It is submitted that since the father of Plaintiff was illiterate he has not mutated his name over the revenue record i.e. the 7/12 extract on the basis of registered instrument dated 30/12/1971. It is submitted that taking disadvantage of this fact father of Defendant No. 2 Vasant mutated his name over the 7/12 extract of the suit property and thereafter Defendant No. 2 mutated his name as the legal heir over the 7/12 extract of the suit property. On the basis of this mutation entry Defendant No. 2 executed Sale Deed dated 19/06/2003 in favour of Defendant No. 1. It is submitted that the said Sale Deed is illegal and bogus. It is submitted that on the basis of Sale Deed executed in his favour Defendant No. 1 is obstructing the possession of Plaintiff over the suit property. Hence the Plaintiff was constrained to file the present suit.

6. On issuance of suit summons Defendant No. 1 appeared and filed his Written Statement at Exh. 20. It is admitted that land Gat No. 1753 i.e. the suit property situated at village Mouje Sangoan was originally owned by father of Defendant No. 2 namely Vasant Krushnat Patil. After the death of Vasant Krushnat Patil the suit property was succeeded by his son i.e. Defendant No. 2 and accordingly his name was mutated over the 7/12 extract. It is submitted that Defendant No. 2 was in need of money and therefore

he executed Sale Deed of the suit property in favour of Defendant No. 1 on 19/06/2003 bearing No. 2004/2003 and on the same day possession of suit property was handed over to Defendant No. 1. It is submitted that on the same day Defendant No. 1 got mutated his name by preferring an application before the revenue authorities and accordingly his name was mutated vide Mutation Entry No. 3110 on 11/08/2003. Thereafter Plaintiff preferred an appeal before the Sub-Divisional Officer, Karvir which was dismissed on 21/07/2009. The order of Sub-Divisional Officer, Karvir was assailed before Collector, Kolhapur which was again dismissed vide order dated 19/10/2011. This fact has been suppressed by Plaintiff. It is denied that the father of Defendant No. 2 had executed a registered instrument in favour of the father of Plaintiff namely Shiva Rama Patil for an amount of Rs. 500/- for a term period of 15 years. The execution of an instrument bearing No. 1987 dated 30/12/1971 is denied by Defendant No. 1. It is submitted that therefore there is no question of handing over possession of suit property to the Plaintiff. It is submitted that if at all such instrument was executed then 7/12 extract would have the name of Plaintiff or his father mutated. It is submitted that the said instrument dated 30/12/1971 is false and bogus. Plaintiff has not proved the execution of said instrument dated 30/12/1971. Defendant No. 1 is in possession of suit property bearing Gat No. 1753 since 2003 and since then Defendant No. 1 is cultivating crop such as hybrid Jowar in the suit property and therefore there is no question of possession of Plaintiff over the suit property. Hence it is prayed that suit of Plaintiff be rejected.

7. Defendant No. 2 filed his Written Statement at Exh. 22 and denied the contention of Plaintiff and the averments in the

plaint. Defendant No. 2 has admitted the description of suit property but denied the boundaries of the suit property. It is denied that the father of Defendant No. 2 namely Vasant Krushnat Patil had executed registered instrument dated 30/12/1971 and handed over the possession of the suit property to the father of Plaintiff. Defendant No. 2 has denied the execution of such instrument dated 30/12/1971. It is submitted that the father of Defendant No. 2 namely Vasant Krushnat Patil on 19/08/1966 had transferred the suit property in the name of Defendant No. 2. Accordingly Mutation Entry bearing No. 4606 was effected on 17/03/1967. It is submitted that Defendant No. 2 Dinkar Vasant Patil was the owner and possessor of the suit property since then onwards. Since Defendant No. 2 was minor without the permission of Court it was not possible for the father of Defendant No. 2 to execute Sale Deed of the suit property therefore the contention of Plaintiff that Defendant No. 2 had executed a registered instrument in the form of Mortgage by conditional sale does not hold any ground and such instrument if any is illegal.

8. The suit of Plaintiff simplicitor of perpetual injunction without praying for declaration of ownership is also not tenable. It is submitted that since Defendant No. 2 was in need of money he alienated the suit property to Defendant No. 1 by execution of a registered Sale Deed on 19/06/2003. The suit of Plaintiff being without any merit be dismissed with costs.

9. Considering the pleadings of the Plaintiffs and Defendants with the documents on record following issues arose for consideration of my learned predecessor at Exh. 23 to which I am

recording my findings with reasons.

Sr.No	Issues	Findings
1.	Whether plaintiffs prove that they are in absolute possession of suit property from their predecessor Shiva Patil by virtue of sale deed dated 30/12/1971?	Disproved
2.	Whether plaintiffs prove that defendants have made obstruction to the peaceful possession of suit property?	Disproved
3.	Whether plaintiff is entitled for permanent injunction, as prayed?	No.
4.	What Order and Decree?	As per final order.

:-Reasons:-

As to Issue No. 1 & 2:-

Issue No. 1 and 2 being inter-related are discussed conjointly for sake of convenience.

10. Plaintiff has examined Krushnat Maruti Patil as power of attorney holder on behalf of Plaintiff No. 1A Sindhutai Maruti Patil and Plaintiff No. 1B Kaveri Shiva Patil as PW1 at Exh. 39. He has reiterated the averments in the plaint. PW1 has also given additional affidavit at Exh. 53. The cross-examination of this witness at Exh. 39 and Exh. 53 was taken by learned advocate for Defendant. He deposed that Plaintiff No. 1A and 1B due to old age are unable to travel. He deposed that towards the Eastern side of the suit property Defendant and Defendant's brother Madhukar resides. He admitted that towards North side of suit property there is plot of one Mengane. He admitted that towards the East side of suit property there is a house and plot of one Mengane. In cross-examination he admitted

that there is no crop cultivated in the suit property. He further admitted that there is no tree in the suit property. He further admitted that since 1995 village Mouje Sangoan became Bagayat and hitherto it was partially Bagayat.

11. He admitted that after the death of Vasant name of Defendant No. 2 Dinakar was mutated over the 7/12 extract of suit property. He admitted that Dinakar Vasant Patil has sold the suit property in the year 2003 to Defendant No. 1. He further admitted that he got knowledge about the execution of Sale Deed in the year 2003. He further admitted that he had challenged the mutation entries over the suit property. The Revenue Authorities had rejected his application. In cross-examination he further deposed that there are tress of Tamarind and Umbar in the suit property. He further admitted that he has not filed any police complaint with respect to the fact that Defendant is cultivating the suit property. He further deposed that he has cultivated fruit trees such as Chicoo, Lemon, Coconut in the suit property. He further admitted that he was engaged in agricultural work from the year 2010 to 2015. He has opened the agricultural shop in the year 2015. He deposed that Plaintiff No. 1A is his mother.

12. Plaintiff has filed 7/12 extract of suit property bearing Gat No. 1753 on record. Plaintiff has also filed the village form No. 8A, the consolidation extract at Exh. 45 on record. The Mortgage by Conditional Sale is at Exh. 49 on record. The power of attorney is at Exh. 50.

13. Plaintiff has examined Shamrao Sakharam Patil as PW2 at Exh. 66. PW 2 deposed that he identifies the suit property and he knows both the Plaintiffs and Defendants. He deposed that suit property was originally owned by father of Defendant No. 2 Vasant Krushna Patil and he has executed Mortgage by Conditional Sale for consideration of Rs. 500/- for a term period of 15 years in favour of father of Plaintiff namely Shiva Rama Patil bearing registration No. 1987 dated 30/12/1971 in presence of Sub-Registrar, Kagal. He deposed that since the father of Defendant No. 2 has not repaid the loan amount and got reconveyed the suit property, the Mortgage by Conditional Sale became absolute and accordingly the Plaintiff became the owner of suit property. He deposed that since 19/01/1986 Plaintiff has become the owner of the suit property and he is in possession of the suit property. He deposed that the Sale Deed executed by Defendant No. 2 in favour of Defendant No. 1 is illegal.

14. In cross-examination he admitted that he did not know about the transaction between Dinakar and Defendant No. 1. In cross-examination he deposed that his date of birth is 01/11/1953. He further admitted that he was not present at the time of execution of alleged Mortgage by conditional Sale dated 30/12/1971. He further admitted that he was not personally present at the time of handing over of possession of the suit property as per the Mortgage by Conditional Sale. He further admitted that the ancestor of Plaintiff namely Shiva and Rajaram are real brothers and Shiva has two daughters. Rajaram has Bapu Rajaram Patil i.e. Defendant No. 1 as legal heir. He further admitted that Plaintiff and Defendants are Bhavaki persons. In cross-examination he deposed that in the year 2001 the suit property had fruit bearing trees namely Coconut,

Lemon. He further admitted that he had filed the complaint against Defendant No. 1 Bapu Rajaram Patil with respect to Gat No. 1868 before the MSEB due to which the electric connection of Defendant No. 1 was disconnected by MSEB. Plaintiff has closed his evidence vide evidence close pursis vide Exh. 70.

15. Defendant No. 1 has examined himself at Exh. 71 and has also examined himself at Exh. 91. On evidence affidavit at Exh. 71 Defendant No. 1 has reiterated the averments in the Written Statement. At Exh. 91 Defendant No. 1 deposed that he has filed the original Sale Deed dated 19/06/2003 on record. It is registered as registration No. 2004/2003 for consideration of Rs. 25,000/-. He deposed that Dinakar Vasant Patil i.e. Defendant No. 2 has initialed his signature as vendor. Witnesses Mahadeo Appaji Magdum, Sambhaji Korane have initialed their signature as witnesses. He has also filed the copy of order of RTS Appeal No. 51/2008 and second Appeal No. 129/2009. He admitted that the suit property was originally owned by the father of Defendant No. 2 namely Vasant Krushna Patil and Vasant Krushna Patil died approximately in the year 2008. He has denied the execution of the document in the form of Mortgage by Conditional Sale bearing registration No. 1987 dated 30/12/1971. He further admitted that Shiva Rama Patil has died on 10/09/1999. He admitted that Vasant Krushna Patil in the year 1975 had sold 12 R land in Gat No. 1476 to him and he is in possession of that land. He admitted that he has not taken any action against Plaintiff with respect to document at Exh. 49.

16. Defendant has examined Sambhaji Keshav Patil as defence witness No. 2 at Exh. 72. DW2 Sambhaji deposed that he

knows both the Plaintiff and Defendants and also the suit property. He deposed that Defendant is cultivating the suit property. He has cultivated crops such as Groundnut, Jowar and other crops. In cross-examination he admitted that he does not know the factual position of the suit property.

17. Defendant have examined Pallavi Pramod Redekar as DW3 at Exh. 97. DW3 deposed that since last 24 years she is engaged in sale of Stamp Duty. She is also working as Bond Writer and Typist. She was shown the Sale Deed dated 19/06/2003. She acknowledged her signature as Stamp Vendor. She admitted its contents to be true and correct. In cross-examination she admitted that she has not filed any documents to evidence her license for Stamp Vendor has been renewed. She admitted that she has not brought with her the register of stamp duty.

18. Defendant have examined Mahadeo Appaji Magdum as DW 4 at Exh. 99. He deposed that he had initialed his signature on the document whereby Defendant had sold the suit property to Defendant No. 1 i.e. Bapu Rajaram Patil. He admitted the signature on the said document. In cross-examination he admitted that since last 20 years he is residing at Gokul Shirgoan. He admitted that he can not tell the Revision Survey Number and the boundaries of the suit property. Defendant No. 1 has closed his evidence vide evidence close pursis at Exh. 100.

19. Defendant No. 2 has examined himself at Exh. 107. He has reiterated the averments in the Written Statement. He admitted

that the old Revision Survey Number of suit property is 211/2/B. He admitted that his father died in the year 1981. He denied that on 30/12/1971 his father Vasant Krushna Patil had executed Mortgage by Conditional Sale in favour of Plaintiff's father Shiva Rama Patil bearing registration No. 1487/1971 for 15 year term period. Defendant No. 2 closed his evidence vide evidence close pursis at Exh. 110.

20. Plaintiff has instituted the present suit for perpetual injunction and to restrain the Defendant from ousting him from the suit property. The suit of Plaintiff is based on the registered agreement in the form of Mortgage by Conditional Sale. The original document in the form of Mortgage by Conditional Sale is at Exh. 49.

21. **Chapter IV of the Transfer of Property Act 1982 defines Mortgage of immovable property and charges.** Section 58 defines the term Mortgage, Mortgagor, Mortgagee, Mortgage-money and Mortgage-Deed and the types of Mortgage.

Section 58:- (a) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

Mortgage by conditional sale is defined under Section 58(c).

Section 58(c):- Mortgage by conditional sale. - Where the mortgagor ostensibly sells the mortgaged property-

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]

22. On perusal of the document at Exh. 49 the recitals reveal that the said document is executed on 30/12/1971. The heading denotes that it is executed for a term period of 15 years by Vasant Krushna Patil in favour of Shiva Rama Patil. The averments in this document state that 0.06 R land in Revision Survey No. 211 Hissa No. 2B owned by Vasant Krushna Patil at Mouje Sangoan is mortgaged to Shiva Rama Patil for an amount of Rs. 500/- for a term period of 15 years. It states on the same day Rs. 500/- was given to Vasant Krushna Patil and he has to return the said money after a period of 5 years and thereafter before 10 years. On returning the money Shiva Rama Patil has to reconvey the suit property in his name. It also states that if Vasant Krushna Patil is unable to repay the amount of Rs. 500/- within prescribed time the said mortgaged property shall vest in Shiva Rama Patil and after the death of Shiva

Rama Patil in his heirs. It is pertinent to note that this document in the form of Mortgage by Conditional Sale at Exh. 49 does not prescribe the property with boundaries.

23. Plaintiff has also filed the 7/12 extract of the suit property on record. It is filed vide list at Exh. 3 on record. On perusal of this 7/12 extract it reveals the name of Bapu Rajaram Patil in the possession column of the suit property. This 7/12 extract is for the period 2007-2008 and the mutation is effected vide Mutation Entry bearing No. 3755. The Plaintiff has also filed the village form No. 8 of account No. 1792 possessed by Defendant No. 1 Bapu Rajaram Patil. On perusal of this village form No. 8A amongst the other properties Defendant No. 1 Bapu Rajaram Patil also has 0.06 R land in Gat No. 1753 in his name i.e. the suit property. This village form No. 8 is of the year 2012.

24. Defendant has filed the Sale Deed bearing No. 2004/2003 dated 19/06/2003 on record. On perusal of this Sale Deed it reveals that it is executed by Dinkar Vasant Patil in favour of Defendant No. 1 Bapu Rajaram Patil on 19/06/2003 and the subject matter of this Sale Deed is suit property bearing No. 1753 admeasuring 0.06 R land. Defendant has also filed the village form No. 6 i.e. record of Diary extract at Exh. 112 i.e. the Mutation Entry bearing No. 4606 dated 19/08/1966. The Defendant has also filed the 7/12 extract at Exh. 114 of the suit property wherein the possession column reveals the name of Defendant No. 1 i.e. Bapu Rajaram Patil vide Mutation Entry No. 3110. The Defendant has also filed the copy of orders passed by Sub-Divisional Officer, Karvir with respect to Mutation Entry bearing No. 3110 of Gat No. 1753 and copy

of order passed by Additional Collector with respect to Mutation Entry of suit property at Exh. 116 and 117 respectively. Both these orders of revenue authorities reflect that Defendant No. 1 and Defendant No. 2 are in possession of the suit property. These orders are intact till today.

25. Defendant has also filed the certified copies of the 7/12 extract of Revision Survey No. 211/2B for the year 1965-66 to 1974-75 at Exh. 128, 7/12 extract of the suit property for the year 1977-78 to 1987-88 at Exh. 129, 7/12 extract of the suit property for the year 1988-89 to 1997-98 at Exh. 130 and 7/12 extract of the suit property for the year 1998-99 to 2011-12 at Exh. 131 vide list at Exh. 127. All these 7/12 extract from the year 1965 till 2012 reveal the possession of the father of Defendant No. 2 namely Vasant Krushna Patil and thereafter the possession of Defendant No. 2 Dinkar Vasant Patil in the possession column and presently it reveals the possession of Defendant No. 1 Bapu Rajaram Patil. The revenue authorities have also decline to interfere with these entries on the 7/12 extract in the name of Defendant No. 1 and Defendant No. 2. The documentary evidence is further corroborated by the admission of PW1 that Defendant is cultivating the suit property. Thus possession of Defendant No. 1 over the suit property has been proved and Plaintiff has failed to prove his possession over the suit property.

26. Suit of Plaintiff is for perpetual injunction Section 38 of the Specific Relief Act signifies instances when perpetual injunction can be granted.

Section 38:- Perpetual injunction when granted-

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.

3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

((c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

27. Thus perpetual injunction may be granted to the Plaintiff to prevent the breach of an obligation existing in his favour whether expressly or impliedly. Suit of Plaintiffs rests on the creation of an obligation in the form of contract namely the document in the form of Mortgage by Conditional Sale dated 30/12/1971. So far as document at Exh. 49 in the form of Mortgage by Conditional Sale is concerned certainly this document is more than 30 years old. As per Section 90 of the Indian Evidence Act when any document is 30 years old and is produced from proper custody the Court may presume that the signature and every other part of such document which purports to be in the hand writing of a particular person is in that person's

hand writing and in the case of document executed or attested i.e. it was duly executed and attested by the persons by whom it purports to be executed and attested. The explanation to Section 90 explains about the production of document from proper custody. A document is said to be produced from proper custody if it is produced from the care of a person with whom it would naturally be. Certainly the document at Exh. 49 is produced from proper custody. However it speaks of presumption in the form of “may presume”.

28. **Section 2(1)(h) of Bharatiy Sakshya Adhiniyam, 2023** defines “may presume” as whenever it is provided by this Act that the Court may presume a fact it may either regard such fact as proved unless and until it is disproved or may call for proof of it.

29. Moreover Suit of Plaintiff is for perpetual injunction on the basis of possession. **“The Hon’ble Supreme Court in Anathula Sudhakar Vs. P. Buchi Reddy(Dead) By Lrs and Ors[AIR 2008 Supreme Court Page No. 2033] held that where the title of Plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the Plaintiff will have to file a suit for declaration, possession and injunction. A prayer for declaration will be necessary only if the denial of title by the Defendant or challenge to Plaintiff’s title raises a cloud on the title of Plaintiff to the property. A cloud is said to raise over a person’s title when some apparent defect in his title to a property or when some prima facie right of a third party over it is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property.”** Plaintiffs has prayed for the relief of perpetual injunction on the ground that he is in possession over the suit property in view

of the alleged document in the form of Mortgage by Conditional Sale which is at Exh. 49. No doubt this document is more than 30 years old but the claim of Plaintiff rests on this document dated 30/12/1971. Defendant No. 1 and 2 have in their Written Statement denied the execution of the document at Exh. 49 dated 30/12/1971 allegedly in the form of Mortgage by Conditional Sale. Therefore certainly there is cloud on the title of Plaintiff. Plaintiff has not sought any declaratory relief to that effect. The crop statements are prepared every year and certainly the 7/12 extract has presumptive value for possession and cultivation of agricultural land of the crop statements and 7/12 extracts filed on record since last more than 15 years are in the name of Defendant No. 1 and Defendant No. 2 respectively. There are no such crop statements and 7/12 extract filed on record arising from the execution of the document dated 30/12/1971 in the name of Plaintiff or his father. Therefore certainly adverse inference can be drawn against Plaintiff and his ancestors. These revenue entries infer continuous possession of the father of Defendant No. 2 and thereafter Defendant No. 2 and thereafter Defendant No. 1 over the suit property. The suit is simplicitor instituted for perpetual injunction. Therefore in the absence of declaratory relief in the form of ownership on the basis of basic document dated 30/12/1971 certainly the suit for perpetual injunction can not be said to be maintainable.

30. The revenue entries of the suit properties from the year 1965 till 2012 in the name of Defendant No. 1 and Defendant No. 2 certainly go to show that Defendants are in possession of suit property. In such circumstances the Plaintiffs have failed to prove that they are in absolute possession of the suit property from their

predecessor by virtue of document dated 30/12/1971. The Plaintiffs have also failed to prove obstruction at the hands of Defendants because Plaintiffs have not proved their possession over suit property. Accordingly Issue No. 1 and 2 are answered in the negative.

As to Point No. 3:-

30. Since I have answered Issue No. 1 and 2 in the Negative Plaintiff is not entitled for the relief of perpetual injunction. Issue No. 3 is answered accordingly in the Negative. In answer to Issue No. 4 I pass following Order.

ORDER

1. Suit is dismissed.
2. Parties to bear their own costs.
3. Decree be drawn up accordingly.

(Declared in open Court).

Date : 08/07/2026.

(A.B.Madake)
Civil Judge Junior Division,
Kagal.