

MHLA010046302025



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IN THE COURT OF DISTRICT JUDGE-2, LATUR

(Presided over by R.B.Bhagwat, DJ-2, Latur)

Regular Civil Appeal No.132/2025

Exh. No.23.

Rajendra S/o. Kundlik Nikam,
Age : 52 years, Occu. : Labour,
R/o. Raje Shivaji Nagar, Pakharsangvi,
Tq. & Dist. Latur

.... Appellant
(Original defendant)

Versus

Feroz S/o. Musamiya Maniyar,
Age : 45 years, Occu. : Business,
R/o. Ekbal Chowk, Malwati Road,
Latur Tq. & Dist. Latur

.... Respondent
(Original Plaintiff)

Appeal under Section 96 R/w. Order 41 of the Civil Procedure Code.

Advocate for appellant :- Shri. P.B. Maradkar.

Advocate for all respondent :- Shri. N.B. Badde.

J U D G M E N T

(Delivered on this 16th day of July, 2026)

The appellant is the original defendant in the suit. He preferred this appeal against the judgment and decree in R.C.S. No.344/2020 dated 19.10.2023 passed by 6th Jt. Civil Judge, Jr.

Dn. Latur whereby the suit for prohibitory and mandatory injunction filed by respondent came to be decreed with costs. The parties are hereinafter referred to as per their status in the trial court as the plaintiff and defendant.

Facts of the suit, in brief, are as under :

2. According to plaintiff, he is the owner and possessor of the plot bearing No.55, admeasuring East-West 30 feet and North-South 40 feet situated at Pakharsangavi Tq. & Dist. Latur bounded as under:-

East- Plot No.56 of Plaintiff,

West - Private plot No.54,

South - Land of Shingan.

North - 20 feet width road, out of land Sy. No.85
(The property hereinafter referred as the Suit

Property).

3. According to plaintiff, the suit property was purchased by his father Musamiya Pirsab Maniyar along-with adjoining plot Nos.56 & 57 from one Shaikh Chand Shaikh Rashid vide registered sale deed dt. 29.02.1988. Accordingly, the name of his father was mutated in the revenue record. On the occasion of Eid-Ul-Fitra on 29.07.2014 his father executed a Hibinama on stamp paper of Rs.100/- in presence of witnesses and gifted him suit property along-with plot Nos.56 and 57. On 04.09.2014 the said Hibinama was notarized. Since, 29.07.2014 plaintiff is in possession of the suit property along-with plot Nos.56 & 57 in the capacity of owner.

4. Further according to plaintiff, the defendant does not have any right, title, possession or interest in the suit property. The defendant was ill-legally and un-authorizedly attempting to raise construction over suit property by taking undue advantage of the fact that, plaintiff resides far away from the suit property. The plaintiff asked the defendant not to raise any construction on the suit property, but the defendant was not ready to listen. Hence, present suit came to be filed with a prayer for permanent and mandatory injunction.

5. The defendant was duly served with suit summons. Despite giving sufficient opportunity, defendant failed to file his written statement. Therefore, on 17.02.2021 order was passed by the trial court that the suit to proceed without his written statement.

6. On the basis of averments in the plaint the learned trial court framed following points for determination;

Sr.	Points	Findings
1)	Whether plaintiff proves that he is owner and possessor of the suit property?	In the affirmative.
2)	Whether plaintiff proves that the defendant has made obstruction to plaintiff's suit property by attempting to construction over the suit property towards half portion of Western side of property?	In the affirmative.

3)	Whether plaintiff is entitled for the relief prohibitory and mandatory injunction as prayed?	In the affirmative.
4)	What order?	As per final order.

7. The suit came to be decreed. Against the said judgment and decree, this appeal is assailed on following grounds :-

- I. The impugned judgment and decree is bad and perverse in the eyes of law.
- II. While passing impugned judgment and decree the trial court has committed gross error of law and facts.
- III. The impugned judgment and decree is passed by violating the settled principles of law.
- IV. The impugned judgment and decree is against the principles of natural justice.
- V. The trial court has committed gross error in appreciating the evidence on record. The trial court has also failed to appreciate the evidence in its true and correct perspectives.
- VI. The Trial Court has totally misdirected itself while considering the case of the plaintiff.
- VII. The trial court was mislead and it improperly considered the pleadings and the entire evidence laid by the plaintiff.

- VIII. The impugned judgment and the decree are the outcome of the conjecture and surmises.
- IX. The trial court wrongly interpret the content of Exh.13 and considered that the defendant admitted that he was doing encroachment over suit property.
- X. After appearance in the suit there was COVID- 19 pandemic. Therefore, the civil courts were not functioning regularly. Almost all the government offices were closed. For these reasons there were hurdles to obtain the copies of necessary documents and to consult his advocate for preparation of his written statement.
- XI. The defendant came to know from his advocate that because of the COVID-19 pandemic, he is not required to come to court as the courts are not adjudicating any matters and he was told to come to court when he is informed.
- XII. During COVID-19 the defendant and his family members tested corona positive and suffered a lot. Therefore, they went to their village.
- XIII. Upon believing on the words of the advocate of defendant and as the defendant being a lay man, if he failed to file his written-statement and contest the suit.

- XIV. Failure to file a written statement does not automatically mean that the case of plaintiff case is admitted.
- XV. The decree was passed without considering case of defendant hence proper opportunity is required to be given to defendant.
- XVI. The learned trial court misdirected itself while decreeing the suit without following the principle of Audi Alteram Partem and proceeded against defendant without his written statement.
- XVII. By allowing the suit Ld. Trial court directed to demolish the construction of defendant in absence of his written statement and evidence, which is completely illegal and unjustifiable.
- XVIII. If defendant is not given proper opportunity to file his pleadings and adduce evidence, it will cause great hardship and injustice to defendant. If the present appeal is allowed no prejudice is likely to cause to the plaintiff.
- XX. For fair and legal trial the defendant is required to be given a proper chance to defend himself. Hence, the impugned judgment and decree is required to be set aside and suit is required to be remanded to trial court for re-trial.

XXI. In view of the above grounds interference in judgment and decree of the trial court, is warranted and directions are prayed for remanding back the suit for re-trial.

8. The advocate for plaintiff did not file any written reply to this appeal. He advanced oral argument. He supported the judgment and decree. According to him the impugned judgment and decree is legally correct. It does not suffer from any illegality or perversity. Principles of natural justice were not violated by the learned trial court. Ample opportunity was given to the defendant to file written statement and to contest the suit. The defendant choose not to file the written statement and contest the suit. On the basis of the credible evidence adduced by plaintiff on merits, the suit came to be decreed. According to him there are no grounds to set aside the impugned judgment and decree. Further according to him there is no substance and merit in the prayer of advocate for defendant to remand the suit for fresh trial. He prayed that appeal be dismissed with costs.

9. Heard learned advocate for both the sides at length. Perused this appeal and the record of trial court. On the basis of argument advanced by the learned advocates of both the sides following points arise for my determination. I have recorded my findings to each of them for the reasons that follow.

Sr.	Points	Findings
1)	Whether plaintiff proves that he is owner and possessor of the suit property?	In the affirmative.
2)	Whether plaintiff proves that the defendant has made obstruction to plaintiff's suit property by attempting to construction over the suit property towards half portion of Western side of property?	In the affirmative.
3)	Whether plaintiff is entitled for the relief prohibitory and mandatory injunction as prayed?	In the affirmative.
4)	Whether the findings of trial court in the impugned are illegal and perverse so as to warrant interference of this court?	In the Negative.
5)	Whether there are grounds for remanding back the suit for re-trial?	In the Negative.
6)	What order?	Appeal is dismissed.

REASONS

As to Point No.1:-

10. To prove his ownership and possession over suit property, plaintiff examined himself as PW-1 vide Exh.22. He has also examined Sunita Prabhu Mane as PW-2 vide Exh-38. The plaintiff relied upon the following documents; 8-A extract of property No.2742 of Grampanchayat Pakharsangavi dt. 14.10.2019 (Exh-26), Certified copy of 7/12 extract of land Gat No.85 (Exh-27), Certified copy of Mutation Entry No.10008

dated 05.11.2014 (Exh-28), Certified copy of Mutation Entry No.2536 dated 29.09.2007 (Exh-29), N.A. Tax receipt of 25.11.2014 and 31.07.2008 (Exh-30), Office copy of complaint given to MIDC police station, Latur on 22.9.2020 (Exh-31), Original Hibbanama dt.04.09.2014 (Exh-32), Certified copy of 8-A extract of house No.2742 dt.21/11/2022 (Exh-33), Tax receipt of Grampanchayat House No.2742 dt.21/11/2022 (Exh-34), Certified copy of sale-deed bearing day book No.1082/1988 dt. 29/02/1988 (Exh-39).

11. The documents filed by plaintiff on record as referred para 10 (Supra) support his oral testimony that his father Musamiya Maniyar had purchased the suit property along-with plot No.56 & 57 vide registered sale deed dt.29.02.1988 from one Shaikh Chand Shaikh Rashid. After purchasing the said plots, the father of plaintiff got his name mutated in the revenue record vide mutation entry No.2536 (Exh-29). The Hibbanama (Exh-32) supports the contention of plaintiff that, the suit property along-with plot Nos.56 & 57 were gifted to him by his father in presence of panchas. On the basis of the said Hibbanama the suit property came to be mutated in the name of plaintiff vide mutation entry No.10008 (Exh-28). The 8-A extract (Exh-26 & 33) and N.A. receipt (Exh-30) support the contention of plaintiff that he is owner of suit property and is in possession of the same.

12. The evidence adduced by plaintiff pertaining to his

ownership and possession over suit property went unshaken and unchallenged as the defendant did not adduce any evidence in rebuttal nor cross-examined the plaintiff and his witness. The evidence adduced by plaintiff is credible. Hence, there is no reason to disbelieve his evidence regarding ownership and possession over suit property. In view of the evidence and the reasons discussed in para Nos.10 and 11, I answer my finding to point No.1 in affirmative.

As to Point No.2:-

13. The plaintiff testified before the trial court that, defendant is making illegal construction on the suit property. In support of his contention he filed photographs of the suit property on record. His contention is supported by office copy of police report dated 22.09.2020 (Exh-31).

14. The oral and documentary evidence of plaintiff regarding alleged illegal construction of defendant over suit property as discussed in para No.13 (supra) went unchallenged and un-rebutted. There is no evidence on record to counter this evidence of plaintiff. No reasons made out to disbelieve the plaintiff. Hence, it will have to be held that, the defendant was making illegal construction over suit property without any right, permission or authority. Therefore, I answer point No.2 in affirmative.

As to Point Nos.4 & 5:-

15. Apart from the grounds raised in present appeal

regarding the illegality of the findings in the impugned judgment, the advocate for defendant contended that, the defendant did not get fair opportunity to file his written statement and adduce evidence in the suit. According to him after defendant appeared in the suit there was COVID-19 pandemic. The civil courts were not functioning properly and also many Government offices were closed. There were hurdles for the defendant to obtain copies of the documents on which he wanted to rely. For these reasons he could not consult with his advocate for preparing written statement and for adducing evidence. Further, that because of the COVID pandemic the defendant and his family members went to their village and so could not attend the given dates. According to him this is a fit case for re-trial as the defendant needs to be given an opportunity to defend himself in the suit. According to him the principles of natural justice demand that, fair and reasonable opportunity should be given to a party before any order is passed against him. According to him re-trial is the only way to do justice to the parties and it will help in proper adjudication of the suit. He relied upon an authority of Hon'ble Apex Court in the case of **Jegannathan Vs. Raju Sigamani & Anr on 2 April, 2012 AIR 2012 SC 3788.**

16. On perusal of the record of the suit it is apparent that, the defendant was duly served with the suit summons on 20.10.2020. He appeared in the suit through his advocate on

26.10.2020 and sought time to file written statement. On 28.10.2020 vakalatnama came to be filed for defendant under signature of three advocates. From that date till 11.04.2022 the defendant went on seeking dates without any justified reasons. In none of his adjournment applications it is mentioned that he is not getting copies of the documents from Government offices because of COVID-19 pandemic and so he is not able to file his written statement. Also in none of the adjournment application it is mentioned that the defendant suffered from COVID-19 disease and so he and his family shifted to their village, because of which he could not consult his advocate to prepare written statement.

17. The reasons discussed in para 16 (Supra) show that, ample opportunity was granted to the defendant by the trial court to file written statement and to contest the suit. It appears that, the defendant willingly and deliberately avoided to file written statement and contest the suit. The grounds raised by him that, the restrictions of COVID-19 pandemic prevented him from filing written statement and contesting the suit appears to be an unreliable, unacceptable and unjustified ground. If the other litigants such as plaintiff could attend the court, also if the advocates of defendant could attend the court, there was no reason why the defendant was prevented from appearing before the court to contest the suit. By June-2021 much of the restrictions imposed during COVID-19 pandemic were relaxed by the Government and there was only limited restriction on the

movement of people. None of the Government department was closed during the pandemic period. All the departments were functioning with limited staff. For the above reasons I do not find any reason to accept the submission of advocate for defendant that, because of COVID-19 pandemic the defendant was prevented from consulting him or appearing before the trial court.

18. The record of the trial court shows that, ample opportunity was already granted to the defendant to file his written statement and contest the suit. The impugned judgment was delivered on 19.10.2023 i.e. after a period of about three years from the date of service of suit summons on the defendant. This shows that, more than reasonable opportunity was given by trial court to the defendant. No attempts were made by the advocate for defendant to get the no written-statement order set aside. Also no attempts were made by the advocate for defendant to cross-examine the plaintiff and his witnesses. If the defendant and his advocates willfully choose not to contest the suit, they can not come up with a contention before the appellate court that opportunity was denied by the trial court to them to contest the suit. If the judgment and decree went against the defendant it is because of his sheer negligence and irresponsibility. It is a settled law that law favours the vigilant and not the dormant. The defendant has been sleeping over his right to contest the suit. He willfully did not exercise that right. Hence, now in appeal he can

not be given a fresh opportunity to contest the suit by ordering re-trial. If such order of re-trial is passed it will be a mockery of the legal system and of the vigilant litigants who endeavour hard to fight for their rights see that, their matters get decided by the court at the earliest. The plaintiff would be subjected to irreparable hardship and monetary loss by asking him to face another trial for no fault on his part.

19. Order 41 Rule 23 (a) of the Code of Civil Procedure empowers the appellate court to remand the suit to the trial court even though such suit has been disposed on merits if re-trial is necessary. In view of reasons discussed in para Nos.16 to 18 there are no justifiable ground for re-trial. The authority cited by Advocate for defendant as referred in para No.15 (Supra) explains the powers of appellate court under Order 41 Rule 23 (a) of the Code of Civil Procedure. But, it does not lay any law on the point that, even if a party is sleeping over his right before the trial court and willfully choose not to contest the suit, still the suit should be remanded for fresh trial to give him an opportunity. Hence, the cited authority would be of no help to the defendant.

20. On perusal of impugned judgment and order, it appears that, the learned trial court has correctly framed the points for determination. The evidence adduced before the trial court has been properly evaluated and appreciated by the trial court. There is no evidence which is ignored or wrongly

interpreted by the trial court. The findings of this court are concurrent to the findings of trial court. Hence, I find no reasons to interfere in the impugned judgment and order.

21. In view of the reasons discussed in para No.16 to 20 I answer my findings to point Nos.4 & 5 in negative.

As to Point No.3:-

22. The suit is for perpetual and mandatory injunction. As per section 38 (3) of the Specific Relief Act, the plaintiff is entitled for perpetual injunction to restrain defendant and any person claiming through him from disturbing his peaceful possession over suit property and from carrying out any activity on the suit property. Also, as per section 39 of the Specific Relief Act, plaintiff is entitled for direction to the defendant to remove the construction raised by the defendant on the suit property.

23. In view of findings to Point No.1, 2, 4 & 5 and the reasons discussed in para No.22 (supra), I hold that, the suit deserves to be decreed. I therefore answer my finding to point No.3 in affirmative.

As to Point No.6:-

24. In view of findings to Point Nos.1 to 5, I hold that, there are no merits in this appeal and so this appeal is liable to be dismissed with costs.

ORDER

- (i) Appeal is hereby dismissed with costs.
- (ii) The impugned judgment and decree passed by trial court in R.C.S. No. No.344/2020 (Feroz Vs. Rajendra) is hereby confirmed.
- (iii) Decree be drawn up accordingly.
- (iv) R & P be sent back to the concerned Court forthwith.

Date : 16.07.2026

Sd/-
(R.B.Bhagwat)
District Judge-2
Latur.