

MHLA050004482019	Presented on	:	26/09/2019.
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	Decided on	:	09/06/2026.
	Duration	:	06Y: 11M: 14D

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION AHMEDPUR,

AT AHMEDPUR

(Presided over by S.N.Sarde)

:: Special Civil Suit No.29/2019 ::

Exh.87

1. **Nirmala w/o. Vitthal Kasale,** }
- Age: 36 Years, Occu.: Agri & H.H., }
2. **Vitthal s/o. Namdeo Kasale,** }
- Age: 47 Years, Occu.: Agri, }
- Both R/o. Ujana, Tq. Ahmedpur, }
- Dist. Latur. }

...Plaintiffs.

:: VERSUS ::

1. **Surekha w/o. Balbhim Kasale,** }
- Age: 50 Years, Occu.: House Hold. }
2. **Balbhim s/o. Namdeo Kasale,** }
- Age: 56 Years, Occu.: Business. }
- Both R/o. Ujana, Tq. Ahmedpur, }
- Dist. Latur. At present Tandulwadi }
- Road,Rani Sawargaon, Tq.Gangakhed }
- Dist. Parbhani. }

...Defendants.

Claim :-Suit for declaration of ownership and perpetual injunction.

Advocates : Shri. V. S. Shelke, for the plaintiffs.

: Shri. D. L. Ghogare for the defendants.

:: JUDGMENT ::

{ Delivered on : 09th June, 2026 }

The suit is filed for declaration and perpetual injunction.

Admitted facts.

02. Plaintiff No.2 and defendant No.2 are real brothers. Plaintiff No.1 is the wife of plaintiff No.1. Defendant No.1 is wife of defendant No.2.

Disputed facts.

03. Residential house bearing G.P No.509 (New No.530) at village Ujana. The plaintiff is the owner and possessor of the house from south to north with boundaries as follows ;

Towards east – Common road of the plaintiffs and the defendants and beyond that the wall.

Towards west – The land

Towards south – House of Kasale,

Towards north – Remaining portion of house No.530 of defendants.

04. The plaintiff has filed map of the suit property in the plaint.

05. The suit property was recorded in the names of plaintiff No.2 and defendant No.2. Thereafter, the names of plaintiff No.1 and defendant No.1 were recorded to the suit property along with plaintiff No.2 and defendant No.2 as per the circular of the State of

Maharashtra. There was partition between the family of the plaintiffs and defendants in the year 1991. R.C.S. No.89/1991 was filed for partition and accordingly, since the date of decree the plaintiffs and defendants are staying separate from each other.

06. As the house was old, it had leakage through the roof. The plaintiffs informed the defendants about his intention to repair the slab. Both the plaintiffs and defendants repaired slab of the house. The defendants started obstructing the plaintiffs from using the common road in the house. The house was recorded in the name of plaintiff No.1 and defendant No.1. The Gramsevak issued a certificate of house extract No.8 by recording the area of house No.509 to the tune of 58 x 11 in the extract of defendant No.1 in the year 1991. Defendants started staying at Rani Sawargaon by selling all the properties at village Ujana. Defendants are always getting the plaintiffs under threat of filing false litigation. Defendant No.2 is pressurizing the government officials by going on hunger strike. She compelled the Block Development officer to give the possession of the suit property to the defendants. Defendants are obstructing the possession of the plaintiffs. Hence, the suit is filed for perpetual injunction and declaration of the ownership.

07. Defendants filed their written statement at Exh.17 and denied the contents in the plaint except the relationship between the parties. According to the defendants, the description of the suit property is improper. The suit is not within the limitation and is improperly valued.

08. On facts, defendants have contended that, plaintiff No.2 Vitthal and defendant No.2 Balbhim are real brothers. Their parents by name Namdeo and Bhagirathi were living with them together in joint family

till the year 1991-92. The property of the joint family was partitioned in the year 1991-92 in front of panch witnesses. Since then, families of the plaintiffs and defendants and their parents started living separately.

09. Defendant No.2 Balbhim received 2 H 50 R land from Gat No.438 (village Ujana), 1 H 22 R land from Gat No.454 (village Ujana) and 1965.98 square feet are of House No.509 of village Ujana, which is specifically described in the map attached with the written statement.

10. The plaintiff received 2 H 34 R land of Gat No.453 (village Ujana), 0 H 80 R land of Gat No.454 (village Ujana), House No.242 admeasuring 13.5 x 6.5 meters of village Ujana, the house No.290 (New No.6490) and subsequent No.500, area 20 x 50 feet of village Ranisawargaon, Tq. Gangakhed, Dist. Parbhani, a flour mill, an oil mill and a rice mill in the partition.

11. Their father Namdeo received 3 H land from Gat No.725 and 797.98 square feet area of Grampanchayat House No.509 of village Ujana.

12. Their mother Bhagirathi received 96 R land from Gat No.725 in the partition. Each of them having distinct possession over their respective share.

13. Defendant No.2 sold all landed property in the year 1993-94 of his share. The plaintiff also sold landed property of his share in the year 1994. The plaintiff also sold house No.242 of village Ujana which had fallen to his share. As the record of the house was standing in the name of his father Namdeo, sale deed was executed by Namdeo. The plaintiff also has sold the flour mill, the rice mill and

the oil mill to Atmaram Jadhav and Ramesh in the year 1992-93 alongwith the house at village Ranisawargaon. But as the revenue record was standing in the name of defendant No.2 of the house at Ranisawargaon, it was executed by defendant No.2. Namdeo and Bhagirathibai were holding the property of their share upto their death. After the demise of Namdeo and Bhagirathi, the landed property bearing Gat No.725 and House No.509 was succeeded by plaintiff No.2 and defendant No.2. They are joint owners and possessors of these properties.

14. By taking undue advantage of the old age of Namdeo and Bhagirathi, plaintiff No.2 got executed sale deeds of the shares of his parents in his own name. These sale deeds are false and not binding upon the share of defendant No.2.

15. The suit house was standing in the name of Namdeo and he was possessing it upto his death alongwith Bhagirathi. So, after their demise, the house is owned by defendant No.2 and plaintiff No.2 in equal proportion. Plaintiff No.1 is not related with the suit house. Her entry was recorded to the suit house by playing mischief. Defendant No.2 has received the suit house and a new number was given to his share by Grampanchayat, which is Grampanchyat No.530. The share of Namdeo in the house is numbed as Grampanchayat No.530/1. The plaintiff has falsely recorded their names to house No.530/1 and the inquiry regarding the same is pending. The suit is filed falsely to harass the defendants. Hence, it is prayed that it may be dismissed with costs.

16. Defendants have filed sketch map of the suit house alongwith their written statement.

17. On rival pleadings my learned predecessor has framed issues below Exh.19, which are reproduced along with my findings thereon as under-

<u>Sr.No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether the plaintiffs prove that, they are the owners of the suit property ?	In the affirmative
2.	Whether the plaintiffs prove that, the entry of defendant No.1 in the revenue record of Grampanchyat No.530 is false ?	In the affirmative
3.	Whether the plaintiffs prove that, defendants are damaging the East-West wall of the northern side of the suit house?	In the affirmative
4.	Whether the plaintiffs prove that, defendants are obstructing the peaceful possession of the plaintiffs in the suit property ?	In the affirmative
5.	Whether the plaintiffs prove that, they are entitled for declaration of ownership and possession of the suit property ?	Plaintiff No.2 is entitle for the relief.
6.	Whether the plaintiffs are entitled for declaration that, the entry to Grampanchayat House No.530 of defendants is not binding upon them ?	In the affirmative
7.	Whether the plaintiffs are entitled for perpetual injunction ?	In the affirmative
8.	What Order and decree ?	As per final order.

18. The plaintiffs have lead following oral as well as documentary evidence.

<u>Sr.No</u>	<u>Documents</u>	<u>Exh.</u>
1	Deposition of Vitthal (PW-1)	43

2.	Deposition of Vasantrao (PW-2)	65
3.	Deposition of Dnyanoba (PW-3)	73
4.	House extract of G.P. No. 509 of village Ujana No.2001-02	54
5.	House extract of G.P. No.530 of village Ujana No.2011-12	55
6.	House extract of G.P. No.530 of village Ujana No.2011-12	56
7.	House extract of G.P. No.530 of village Ujana No.2011-12	57
8.	Property valuation extract	58
9.	Notice and postal receipts	59
10.	Report of Extension Officer	64
11.	Report of the Deputy Superintendent of Police, Ahmedpur	74

19. The defendants have lead following evidence in the form of documents.

<u>Sr.No</u>	<u>Documents</u>	<u>Exh.</u>
1	Deposition of Balbhim (DW-1)	77

Argument advanced by the Ld. Advocate of Plaintiff

20. Ld. Advocate submitted that, there was decree in R.C.S. No.89/91, which was a compromise decree. There is no heirship certificate filed in the matter by the defendants. The suit house does not stand in the name of defendant No.2 and his father. Defendant No.2 sold all his property. There is no document of partition or

ownership of defendant No.1 over the suit property. Defendants are in a habit of applying pressure tactics by way of hunger strike against all Revenue Officers and other Officers of the State. The name of defendant No.1 and 2 is falsely recorded to the suit property. Plaintiffs have their exclusive possession over the suit property and therefore, the suit may be decreed.

Argument advanced by the Ld. Advocate of defendants.

21. Ld. Advocate submitted that, the suit is hit by Order VII Rule 3 of the C.P.C. for not giving description of the suit property. The entries in the record of the suit property are forged. There is no document regarding R.C.S. No.89/1991. There is no document regarding partition. The suit property was excluded in the partition taken place in the year 1991-92. After the demise of the parents of defendant No.2 and plaintiff No.2, the suit property was succeeded by them. As both plaintiffs and defendants are in joint possession of the suit property, injunction cannot be granted against co-owners. Therefore, the suit may be dismissed.

REASONS

AS TO ISSUE NO.1 :-

22. Plaintiffs claim themselves to be owner of the suit property. According to the deposition of Vitthal (PW-1) the suit property is described in the sketch mentioned in paragraph No.1 of the plaint. The suit property was orally partitioned and the southern portion of it was fallen to the share of Vitthal (PW-1) and the northern portion of it was fallen to the share of defendant No.2. Vitthal (PW-1) has mentioned in his deposition Exh.43 about the separate possession of the plaintiffs and defendants in the suit property.

23. The plaintiff has not filed evidence about oral partition, which, according to them, took place in the year 1991. In the cross-examination of Vitthal (PW-1) he has admitted in paragraph No.28 that, the suit property was received by him and defendant No.2 by way of succession after the death of their father. But, there is no document about its partition. Their names were recorded to the revenue extracts and the suit property is owned jointly by him and defendant No.2.

24. Balbhim (DW-1) has admitted that, he has not mentioned the suit property in R.C.S. No.89/1991. He also has admitted that, there is no mention in R.C.S. No.89/1991 that the total area of House No.509 is 2763.93 square feet and out of it 797.98 square feet area is given in partition to his father Namdeorao.

25. In absence of any documentary evidence regarding the alleged partition in the year 1991, the oral evidence of the parties would be relevant. The name of defendant No.1 is recorded to the suit property without any document. Ld. Advocates argued that, due to Laxmi Yojana of the State, names of wives/ women in the house are recorded to the houses. There is no document regarding Laxmi Yojana filed in the matter. Naming a person to the revenue extract does not confer his title upon such property. The title is approved either by way of succession/adoption or by way of application of the modes of transfer mentioned in the Transfer of Property Act, 1882. Plaintiff No.2 and defendant No.2 are the successors of Namdeorao and Bhagirathibai. So, entering their names to the revenue record after the demise of their parents is the legal act of the Revenue Officers. So, plaintiff No.2 and defendant No.2 became the owners of House No.530 by virtue of succession.

26. The plaintiffs have contended that, he built certain slabs, walls over the area in their possession. This particular act of the plaintiff was not challenged by the defendants at the relevant time. Number of questions are asked to the witnesses by each party regarding the earlier partition, but no question is asked regarding the developments made by the plaintiff in the area in their possession. Vitthal (PW-1) has admitted the area towards northern side and eastern side of suit property was given to the share of defendant No.2 and he is the owner and possessor of that particular area. This suggestion indicates that, defendant No.2 is possessing that particular area as owner and he has no concern with the suit property and its possession. So, the suit property which is described by the plaintiff is in their possession as owners.

27. As both parties admit that, there was a partition in the year 1991, it is presumed to be of all the joint family properties. The reason of presumption is that, neither of the parties have mentioned that, House No.530 (Old House No.509) was not partitioned. Only difference is that, the plaintiffs claim the suit property to be put in their possession and defendant No.2 claims that almost 2/3rd of G.P. No.509 was put to his share in partition. The plaintiffs have incurred expenses on the construction in the suit property. So, while the slab was laid and while the wall was built, defendants did not obstruct plaintiffs from doing so. This conduct of defendants estop them from raising further defence of possession over 2/3rd area of G.P. No.530.

28. So, the plaintiffs are owners and possessors of the suit property. Hence, issue No.1 is answered in the affirmative.

AS TO ISSUE NO.2:-

29. It is the contentions of plaintiffs that name of defendant No.1 was recorded to House property No.530. Defendant No.1, by applying pressure tactics has recorded her name to the suit property. In that respect Vasantrao (PW-2) has deposed below Exh.65 and has submitted a document Exh.66, which is inquiry report prepared by him. He has contended that, defendant No.1 has not given any document showing her ownership to House No.509 and this fact was revealed in his inquiry. He further states that, House No.530 was standing joint in the name of plaintiff No.2 and defendant No.2. He further has stated that, defendant No.1 was on hunger strike against the Grampanchayat Official Naru Chafe as he removed her name from the Grampanchayat extract.

30. Plaintiff No.2 and defendant No.2, being successors of Namdeorao have a legal right in the property standing in the name of Namdeorao. So, is not the case with defendant No.1. She got no right to enter her name as an owner to the suit property. The scheme of the Government to record the name of a woman to the house property may be a part of their objects, but that does not confer title of such woman upon a property.

31. The conduct of defendant No.1 is narrated by Vasantrao (PW-2). He submitted that, she was not ready to have food unless her name was recorded to the Grampanchayat extract. It is because of her hunger strike, the Block Development Officer, Ahmedpur directed the Grampanchayat to record her name to the Grampanchayat House No.530. Incompetency of the Block Development Officer of Ahmedpur to tackle the hunger strike of defendant No.1 has resulted

in entering name of defendant No.1 into the Grampanchayat extract and creating various problems and disputes of civil nature.

32. So, the fact is uncovered that, without any legal status, and legal right, name of defendant No.1 was recorded. That is ipso-facto illegal. Without having any legal right, no one can claim that her name be registered to the revenue extract. Even if such name is entered, it is value-less in absence of any right, title and interest. Therefore, it is proved that, name of defendant No.1 is wrongly entered to the G.P No.530 of village Ujana. Therefore, issue No.2 is answered in the affirmative.

AS TO ISSUE NO.3 AND 4:-

33. It is the contention of the plaintiffs that defendants are about the pull down or damage the wall, which is towards northern side of the suit property and which runs in East-West direction. The suit property describes two walls, which run in East-West direction. The first wall is towards extreme western side and the second wall is just adjacent to the Western Ladani portion of the suit property near the channel gate shown in the hand sketch attached with the suit. Vitthal (PW-1) has mentioned in his oral evidence about obstruction by defendants regarding the wall. The plaintiff also has given notice to defendants and officers of the State in which they have specifically mentioned that, defendant No.1 should not demolish the common wall in the suit property. Defendants have not denied that any such notice was received by them.

34. During the cross-examination of Vitthal (PW-1) no suggestion is given regarding the wall or obstruction by the defendants. The plaintiff though has mentioned that, defendants are obstructing their possession in the suit property, there is no ouster of plaintiffs at the

hands of defendants. Defendants may be filing various applications with government authorities, but that act of defendants do not fall within the purview of physical obstruction. Their applications may be true or false. Competent authorities may deal with it. Obstruction should be physical to oust one party by the other party from the possession of the suit property. As on today plaintiffs are staying in the same premises. So, there is no physical ouster or obstruction to the possession of plaintiffs by defendants. But, filing of applications with hunger strike by defendant No.1 and 2 has reasonably raised apprehension that, defendants would oust plaintiffs from the suit property with the help of pressurized revenue officers. Possession of the plaintiff in the suit property has to be protected.

35. Therefore, as defendants did not resist the claim of the plaintiff regarding causing damage to the common wall, the issue No.3 is proved and is answered in the affirmative. The apprehension of obstruction to the possession of plaintiffs in the suit property with the help of filing various applications against plaintiffs with the officers of the State, and to pressurize revenue officers, has led this Court to believe that, the defendants are causing obstruction to the possession of the plaintiffs in the suit property. Therefore, issue No.4 is answered in the affirmative.

AS TO ISSUE NO.5:-

36. Plaintiff No.2 and defendant No.2 are the owners of the suit property. Names of plaintiff No.1 and defendant No.1 is a mere ministerial act of the government employees by virtue of government orders. That does not confer title upon plaintiff No.1 and defendant No.1. The fancy ideas of government to register names of woman to the house extract has no locus in law. Therefore, plaintiff No.2 is the

owner of the suit property mentioned in the plaint and not plaintiff No.1. Therefore, issue No.5 is answered accordingly.

AS TO ISSUE NO.6:-

37. Registering names or recording and maintaining entries of names in the revenue record is a job of revenue department of the State. Separate law is provided for the same. Separate mechanism is established to record names, to make changes, alter, delete or challenge the entries. The Civil Court need not peep into jurisdiction of State in such matters. If undue advantage is taken of such entries by any person, then the aggrieved party has a right to knock the doors of the Civil Court. The entry of the name of defendant No.1 in G.P. No.530 has no locus. It does not make any effect upon rights of plaintiff No.2 and defendant No.2. So, such name of defendant No.1 which is entered without following due process of law, shall not be binding for any purpose on anybody. Declaratory relief is a discretionary relief. The plaintiff has proved that, the name of defendant No.1 is not entered with any legal sanctity. Therefore, issue No.6 is answered in the affirmative.

AS TO ISSUE NO.7:-

38. Plaintiff No.1 is the owner of the suit property. He has developed the suit property by raising construction in it. Both parties admit partition. Plaintiff No.2 and defendant No.2 have succeeded to their father Namdeorao. The possession of the plaintiff in the suit property is established. If it is not protected he will be suffering irreparable loss. The possession of the defendant is over the area otherwise than the suit property. So, possession of both plaintiffs and defendants is distinct in G.P. No.530 of village Ujana.

39. Causing damage to the property of the plaintiff by defendants, or apprehension of doing so at their hands also can be considered to be the ground to pass perpetual injunction order. Ld. Advocate for the defendant submitted that, perpetual injunction cannot be granted against co-owners. The fact is true, but again there are certain exceptions. If one co-owner is about to be ousted by other co-owner or part of undivided property is about to be alienated by one co-owner without the consent or knowledge of the other co-owner, perpetual injunction can be granted. In the matter on hand, possession of the suit property is specifically established by the plaintiff. His ownership cannot be disputed by the defendants as both plaintiff No.2 and defendant No.2 are standing in the same shoe of legal right. Defendants have not established that they have got share in house No.530 by virtue of partition. Not a single document is produced by the defendants to show that, they have 2/3rd portion of G.P No.530 in their possession. Injunction can be granted to protect possession of the plaintiff in the suit property. Hence, issue No.7 is answered in the affirmative.

AS TO ISSUE NO.8:-

40. The plaintiff has proved his possession and ownership over the suit property specifically mentioned in the sketch filed with the suit. The apprehension to cause damage to the wall and to obstruct the possession of the plaintiff in the suit property is also proved. Name of defendant No.1 as well as plaintiff No.1 are entered not by virtue of ownership over the property. So, their names have no value in the eye of law. Hence, plaintiffs are entitled for reliefs claimed. Therefore, in answer to issue No.8 I pass the following order-

:: O R D E R ::

1. The suit of the plaintiff is partially decreed with respect to the prayer of declaration of ownership and is decreed for both plaintiffs with respect to the relief of perpetual injunction.
2. Defendants, their agents, assignees, relatives, or anybody on their behalf are hereby perpetually restrained from causing obstruction to the possession of plaintiffs in the suit property as well as from causing damage to the wall specifically mentioned in the suit property.
3. Plaintiff No.2 is declared to be the owner and plaintiff No.1 and 2 are declared to be possessors of the suit property.
4. It is hereby declared that, the entry of defendant No.1 in G.P. No.530 Ujana is not binding upon plaintiffs.
5. Parties to bear their own costs.
6. Decree be drawn up accordingly.

[Dictated and Pronounced in open Court.]

Sd/-

(S.N.Sarde)

Date:09/06/2026.

Civil Judge Senior Division,
Ahmedpur.