

MHLA090019872022



Presented on	: 20.06.2022
Registered on	: 20.06.2022
Decided on	: 08.05.2026
Duration	: 3Y.10M.18D.

**IN THE COURT OF**  
**3<sup>rd</sup> JT. CIVIL JUDGE (J.D.) AT UDGIR, DIST. LATUR**

(Presided over by Shri. Bhalchandra Raosaheb Zende)

**Regular Civil Suit No. 471/2022**

**Exhibit No.74/A**

<b>Plaintiffs</b>	<b>1. Balasaheb Gunwant Biradar,</b> Age : 35 years, Occu. : Agril., R/o. : Ekurka Road, Tal. Udgir, Dist. Latur.
	<b>2. Kailas Gunwant Biradar,</b> Age : 29 years, Occu. : Agril., R/o. : Ekurka Road, Tal. Udgir, Dist. Latur.
	<b>3. Lalita Gunwant Biradar,</b> Age : 54 years, Occu. : Agril., R/o. : Ekurka Road, Tal. Udgir, Dist. Latur.
	<b>4. Sandhya Mahesh Lohkare,</b> Age : 31 yrs., Occu.: Homemaker R/o. : Jagalpur, Tal. Jalkot, Dist. Latur.
<b>Represented by</b>	: Learned Adv. Shri. P.M. Suryawanshi
<b>Defendant</b>	: <b>Laxmibai Madhavrao Jadhav,</b> Age : 49 yrs., Occu.:Homemaker R/o. : Ekurka Road, Tal. Udgir, Dist. Latur. A/p. Yenki road, Ganeshnagar, Near Kumar Garden, Udgir, Dist. Latur.
<b>Represented by</b>	: Learned Adv. Shri. P. P. Kalegore

**J U D G M E N T**

(Delivered on 08.05.2026)

1. The suit is for simpliciter perpetual injunction.

**PLAINTIFFS' CASE :**

2. The plaintiffs' case, in nutshell, is that they and defendant are the residents of one and the same village and their agricultural lands are adjacent *inter se*. Their father namely Gunwant Raosaheb Biradar has left for heavenly abode on 05.10.2020, and the instant plaintiffs are the legal heirs of said Gunwant Biradar. According to them, their father formerly bore the name as Baburao Raosaheb Jadhav and vide Gazette he had a new name as Gunwantrao Raosaheb Biradar. After the demise of their father, vide mutation entry No.605 the names of the plaintiffs came to be mutated as against 20R land in land block No.4, located within limits of village Ekurka road, Tal. Udgir, Dist. Latur, which is bounded as under :

to the East : defendant's land ;

to the West : Nanded-Bidar road ;

to the South : defendant's land ; and

to the North : Premsaagar Dnyanoba Jadhav & other's land;

(the property mentioned within above four boundaries is

hereinafter referred to as "the suit property" for the sake of brevity and convenience).

3. It is specifically averred by the plaintiffs' that the suit property is duly recorded in their names in the revenue records and that such entries reflect not only their title but also their possession. It is contended that the defendant has no concern whatsoever with the suit property, still taking disadvantage of being a woman, kept on to pick up quarrel with the plaintiffs, just because defendant's land located at the east-south side of the suit property.

4. According to the plaintiffs, on 05.06.2022 while they were doing work in the suit property, without any lawful basis, the defendant has attempted to disturb their possession, and denied the ownership of the plaintiff over the suit property. According to them, the plaintiffs are from

economically weaker family, the defendants may dispossess them by taking law into their hands. In the event they succeed in their overt act, the plaintiff would cause such injury which can not be compensated in terms of money. Hence, the instant suit for the relief sought.

**DEFENDANT'S DEFENCE :**

5. The defendant, vide written statement (Exh.27) of her defence, has strenuously contested the suit and, at the outset, specifically denied the plaintiffs' alleged possession over the suit property. The defendant has taken a consistent stand that the plaintiffs are not in physical possession of the suit property, or at least not in possession of any definite or identifiable portion thereof. It is contended that the entries in revenue records are not conclusive proof either of title or of possession. The allegation of interference is also denied, and it is asserted that no cause of action has arisen for filing the suit. The defendant has thus denied all adverse averments made by the plaintiffs. Ultimately, he has prayed for dismissal of the suit with costs.

**ISSUES :**

6. The learned predecessor of this Court framed Issues at Exh.30, which are reproduced below along with my findings and reasons therefor :

	<b><u>ISSUES</u></b>		<b><u>FINDINGS</u></b>
1)	Whether the plaintiffs prove that they are owner and possessors of the suit property ?	:	Partly in the affirmative.
2)	Whether the plaintiffs prove that the defendant is trying to obstruct their possession over the suit property ?	:	In the negative.
3)	Whether the plaintiffs are entitled for the decree of perpetual injunction as sought for ?	:	In the negative.

4)	What order and decree ?	:	The suit is dismissed with costs.
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**EVIDENCE :**

7. In order to substantiate their claim, the plaintiffs have examined in all 3 witnesses, inclusive of himself, and thereafter closed his oral evidence by filing pursis at Exh.54. The witnesses of the plaintiff are tabulated as under :

RANK	EXHIBIT NO.	NAME	RELEVANCE
PW1	33	Balasaheb Gunwant Biradar	Plaintiff No.1
PW2	39	Madhav Ganpat Mane	Salgadi
PW3	45	Sanjay Datto Jadhav	Headquarter Assistant at DSLR Office

8. In support of his above oral evidence, the plaintiff has heavily relied upon following documentary evidence :

- i) Hissa Form No.4 (Exh.46) ;
- ii) map after conversion of survey No.7 into block (Exh.47) ;
- iii) Form No.9(3) and 9(4) (Exh.48) ; and
- iv) Field Book of village Ekurka Road (Exh.49).

9. As against this, the defendant has examined only herself to make her defence concrete and thereafter closed her oral evidence by filing pursis at Exh.65. The defendant witness is tabulated as under :

RANK	EXHIBIT NO.	NAME	RELEVANCE
DW1	55	Laxmibai Madhavrao Jadhav	Defendant

10. In support of her above oral evidence, the defendant has placed on record following documents :

- i) Form No.8-A of defendant's land (Exh.57) ;
- ii) 7/12 extract of defendant's land block No.3 (Exh.58) ;
- iii) decree in RCS No.235/2014 (Exh.59) ;

- iv) compromise decree in RCS No.165/2004 (Exh.60) ;
- v) mutation entry No.322 (Exh.61) ;
- vi) village Form No.8-A of her land (Exh.62) ; and
- vii) Form No.9(3) and 9(4) (Exh.63 and 64).

### **FINAL ARGUMENTS :**

11. I have heard learned Advocate Shri. P. M. Suryawanshi, for the plaintiffs, and learned Advocate Shri. P. P. Kalegore, for the defendant, at considerable length. I have also considered the entire matters on record. The rival submissions shall be dealt with at the appropriate places hereinafter.

### **UNDISPUTED FACTS :**

12. The plaintiffs have 20R land in block No.4 whereas defendant has 71R land in land block No.3, is not in dispute. The defendant has got her land vide compromise decree in RCS No.235/2014 and RCS No.165/2004 is also undisputed. The defendant has taken strong exception to the possession of the plaintiffs on the specific portion as averred. Thus, the entire case revolves around the possession.

## **REASONS**

### **AS TO ISSUE NO. 1 :**

13. At the outset, it is clarified that in a suit for simpliciter injunction, the core issue is the plaintiff's possession and any obstruction thereto by the defendants. However, where the defendants specifically deny the plaintiff's possession and question the very basis of his claim, the Court must necessarily examine the plaintiff's title or lawful right to possession for a limited purpose. The initial onus to prove ownership and lawful possession over the suit property squarely rests on the plaintiff vide section 104 of the Bharatiya Sakshya Adhinyam, 2023. With this premise, the instant issues are taken up for consideration, particularly to

determine whether the plaintiffs have discharged such initial onus.

14. To substantiate their claim of ownership and lawful possession, plaintiff No.1 Balasaheb (PW1) has deposed (Exh.33) that after the demise of his father namely Gunwant Raosaheb Biradar, vide mutation entry No.605, they have become owner in possession of the suit property. He went on to depose that Nanded-Bidar road bifurcated erstwhile survey No.7 and divided into 6 sub-divisions/hissas. Accordingly, hissa No.1, 3 and 4 was owned by their grand-father Bajirao Jadhav. During consolidation scheme, hissa No.4 and 6 both were towards eastern side of the said road, converted into land block No.4, and which is the instant suit property. He further testified that the defendant possess her land in land block No.3 which is located just adjacent to the suit property from the east-south side.

15. During cross-examination, he has categorically admitted that the defendant has 71R land in block No.3. By going a step forward he has invariably admitted that the suit property has a triangular shape. He has stated the tri boundaries of the suit property as well. Not only this but also Sanjay Jadhav (PW3), who is from DSLR office, has clearly admitted during his cross-examination that ; the suit property is a triangular land, there is Nanded-Bidar road towards eastern side of the suit property, per Village Map Nanded-Bidar road has bifurcated land block Nos. 3 and 4 etc.

16. Upon minute scrutiny of the above evidence it go to clear enough that the plaintiffs' evidence establishes that the plaintiffs' have 20R land in block No.4. However, when it comes to actual possession thereon the case put forth by the plaintiffs fall short. On the point of possession, the plaintiffs have come with the case that their father in his lifetime and after his demise they have been in possession of the suit property. The defendant has taken strong exception to the location and

description of the suit property. Since the location and description of the suit property is highly called in issue, the documentary evidence needs to be gone through.

17. The plaintiffs have relied heavily on the mutation entries and the 7/12 extract of the suit property. These documents, to be more specific, 7/12 extract (Exh.70) no doubt, show that the names of the plaintiffs are recorded in the revenue records in respect of the suit property. Under the settled position of law, such entries carry a presumption of correctness until rebutted. However, it is equally well established that revenue entries are primarily maintained for fiscal purposes and do not confer title. At the most, they may raise a rebuttable presumption regarding possession. However, considering the admissions at the instance of the plaintiff and his witness (PW3), the shape of the suit property is also not getting clear and it is totally mismatched with their pleadings, and thus no such presumption can be raised here.

18. In the present case, the defendant has not led any documentary evidence to directly challenge or nullify these entries. Therefore, I hold that the plaintiffs have some recorded interest in the suit property. However, the real difficulty arises while ascertaining whether such recorded interest translates into actual, physical, and settled possession. The plaintiffs have sought to bridge this gap by producing survey-related documents such as Hissa Form, survey map, field book, and consolidation scheme maps. Perusal of these documents show that originally the suit property was part and parcel of Hissa No.4 and 6 of old survey No.7, after the implementation of consolidation scheme in village Ekurka Road, formed land block No.4. Further it depicts therefrom that Hissa No.4 was 7R area whereas Hissa No.6 was 13R area. Thus, it is clear enough that block No.4 has *in toto* 20R land area.

19. Considering these documents it is crystal clear that these

documents undoubtedly assist in identifying the survey number, subdivisions, and boundaries of the land. Thus, I hold that the plaintiffs are the owners of the suit property. However, identification of property is distinct from proof of possession. None of these documents, either individually or collectively, conclusively demonstrate that the plaintiffs are in actual occupation of a specific and defined portion of the suit property.

20. The oral evidence led by the plaintiffs also does not satisfactorily clarify this aspect, just because the plaintiff has admitted the the suit property has a triangular shape. He has stated the tri boundaries of the suit property as well. Further Sanjay Jadhav (PW3) has also admitted the shape of the suit property as triangular land and Nanded-Bidar road has bifurcated land block Nos. 3 and 4. If these express admissions are considered in juxtaposition with the case put forth by the plaintiffs, it is observed that the suit property is having triangular shape. When a piece of land is having triangular shape, it cannot be described in four boundaries. The plaintiffs have clearly stated the four boundaries of the suit property in the plaint. Therefore, the case put forth by the plaintiff does not appear to be convincing and reliable.

21. Though the plaintiff witnesses have generally supported the plaintiffs' claim, their testimonies lack specificity regarding the exact portion under possession, the nature of such possession, and its continuity. There is no clear evidence of cultivation, fencing, construction, or any other act indicative of settled possession. On the contrary, the defendant-Laxmibai (DW1) has taken strong exception to the description of the suit property and possession of the plaintiffs. Thus, it is clear that the defendant has raised a clear and consistent challenge to the plaintiffs' possession. Though the defendant has examined only herself, her evidence has effectively created a doubt regarding the plaintiffs' actual

possession. In such circumstances, I hold that no prudent person would accept mere oral assertions of the plaintiff and his witnesses as sufficient to establish his lawful possession.

22. Shri. P. M. Suryawanshi, learned advocate appearing for the plaintiffs invited the attention of the Court towards documents (Exh.46 to 49) relied on by them and would submit that those documents depicts ownership and possession of the plaintiffs over the suit property. He went on to submit that their evidence is in consonance with these documents. He concludes with a submission that their possession is clarified therefrom. Per contra, Shri. P. P. Kalegore, learned advocate appearing for the defendant has taken strong exception to the possession of the plaintiff over the suit property and would submit with vehemence that the four boundaries mentioned in the suit and the actual status on the spot are different altogether. He would further submit that they have got their 71R land from and out of land block No.3 vide compromise decrees, and not in a single boundaries the land block No.4 is shown. Ultimately he submits that actually the suit property is a triangular shape and located beyond Nanded-Bidar road, and therefore not concerned at all with their property.

23. I have given my thoughtful considerations to the above rival submissions. Considering the same vis-a-vis the express admissions given by the plaintiff and his witness in juxtaposition with the documents (Exh.46 to 49) relied on by the plaintiff, it reveals that the description of the suit property given by the plaintiff is totally unconcerned with the documents (Exh.46 to 49). Further considering the express admission that the suit property is a triangular shaped piece of land, I find no merit in the arguments advanced by the learned advocate appearing for the plaintiffs, and thus these submissions are not useful to their case.

24. The standard of proof in civil cases is based on preponderance of probabilities, i.e., the party which succeeds in

producing more probable evidence prevails. Applying this principle to the facts at hand, the plaintiffs' case regarding lawful possession appears inherently improbable when weighed against the defendants denial and the infirmities in the plaintiffs evidence.

25. In a case where possession is seriously disputed, the burden lies heavily on the plaintiffs to establish the same with cogent and convincing evidence. However, considering the matters before the Court I hold that such nascent burden, in the present case, has not been satisfactorily discharged. Therefore, while the plaintiffs may be said to have shown their names in the revenue record, they have failed to establish actual and physical possession over the suit property. For these reasons, I hold that the plaintiff has failed to prove his lawful possession over the suit property. Hence, I answer Issue No.1 partly in the affirmative to the limited extent of recorded ownership, but in the negative so far as possession is concerned, and record my findings accordingly.

**AS TO ISSUE NO. 2 :**

26. The question of interference necessarily presupposes the existence of possession. Unless the plaintiffs' establish that they are in lawful and peaceful possession, the allegation that the defendant interfered with such possession cannot be sustained.

27. To say that his possession over the suit property is obstructed and interfered with at the instance of the defendant, the plaintiff has deposed (Exh.33) that on 05.06.2022 the defendant has obstructed his possession over the suit property. Their witness Madhav (PW2) has also deposed (Exh.39) in line with the earlier witness. He has deposed in the capacity of Annual Farm Servant (locally known as "Salgadi") of the plaintiffs' and having detail information of the suit property. However,

Madhav (PW2) has invariably admitted that to get the suit property the instant suit is brought.

28. Be that as it may, as already discussed, the plaintiffs have failed to prove their possession over any definite portion of the suit property. In absence of such proof, the allegation of interference becomes tenuous and unsubstantiated. The plaintiffs have not produced any independent or convincing evidence to show specific acts of obstruction or interference by the defendant. Thus, I hold that pleadings in this regard are general in nature and are not supported by concrete evidence. Hence, I answer Issue No.2 in the negative and record my findings accordingly.

**AS TO ISSUE NO. 3 :**

29. With regard to Issue No.3, it is a settled principle that the relief of perpetual injunction is discretionary and equitable in nature. The plaintiff must approach the Court with a clear and established case of lawful possession. The Court cannot grant injunction merely on the basis of doubtful or disputed possession.

30. In the present case, the plaintiffs have failed to establish a fundamental requirement for grant of injunction, namely their actual possession over the suit property. The revenue entries relied upon by them do not suffice to prove possession in the face of a serious and specific challenge by the defendant. At the cost of repetition, while adjudicating the preceding issue, the Court has already held that the plaintiff has failed to prove his antecedent lawful possession over the suit property on the date of suit or the date of alleged obstruction. No obstruction can be said to have occurred where no lawful possession exists to begin with. The law is trite that in suit for bare injunction, the plaintiff must establish ; actual possession on the date of suit better than the defendants, and wrongful obstruction thereto. Having failed the possession test, the obstruction

claim collapses. On this premise, the plaintiff is not entitled to any equitable protection against obstruction by the defendant or persons claiming under her. Thus, I hold that the relief of perpetual injunction is wholly misconceived and cannot be granted. As a result, I answer Issue No.3 in the negative and record my findings accordingly.

**AS TO ISSUE NO. 4 :**

31. In light of the aforesaid discussion and the findings recorded on the preceding issues, this Court has categorically held that the plaintiffs have failed to establish their lawful possession over the suit property. They have also failed to prove any obstruction or interference thereto by the defendant. The foundational pillars of their case viz. lawful possession and actionable obstruction, having crumbled, I hold that the plaintiffs are not entitled to the equitable relief of perpetual injunction as prayed for. The suit, being devoid of merits and the plaintiffs having failed to discharge the initial onus, deserves dismissal with costs. In continuation of my earlier findings, and in response to Issue No.4, the following order is passed :

**ORDER**

1. The suit is dismissed with costs.
2. Draw the decree accordingly.
3. Since the Hon'ble High Court was pleased to make the instant suit time bound and directed to decide it within 1 year by order dated 14.07.2025, compliance be reported accordingly.  
(Dictated and pronounced in open Court).

Date : 08.05.2026  
Place : Udgir

(Bhalchandra R. Zende)  
3<sup>rd</sup> Jt. Civil Judge (J.D.),  
Udgir.