

MHLA110007842018



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Decided on : 15/07/2026

Duration : Ys. Ms. Ds.
11 01 20

IN THE COURT OF JT. CIVIL JUDGE SENIOR DIVISION, NILANGA,
DIST. LATUR.

(Presided over by Smt. V. D. Bhosale)

Regular Civil Suit No.191/2015
Exh. No. / A

Ashokappa Shivbasappa Sorde,

Age – 54 Years, Occu. Agri.,

R/o. Nilanga, Tal. Nilanga, Dist. Latur. ----**Plaintiff**

- **Versus** -

1. Bhagwan Venkatrao Bhosale – Died
through L.Rs.

1/1. Asha Bhagwan Bhosale,
Age – 67 Years, Occu. H.H.,

1/2. Abhijit Bhagwan Bhosale,
Age – 47 Years, Occu. Agri.,

1/3. Rohini Sudip Samale,
Age – 44 Years, Occu. H.H.,

2. Subhash Venkatrao Bhosale,
Age – 60 Years, Occu. Service,
All R/o. Khushalsing Nagar, Near Dr.
Muttewar Hospital, infront of Hotel Chandalok,
Nanded, Tal. & Dist. Nanded.

3. Ashok Venkatrao Bhosale,
Age – 55 Years, Occu. Service,
R/o. Parli Thermal, Parli.

4. **Arun Venkatrao Bhosale,**
Age – 48 Years, Occu.
R/o. Khushalsing Nagar, Near Dr.
Muttewar Hospital, infront of Hotel Chandalok,
Nanded, Tal. & Dist. Nanded.
5. **Kumar Venkatrao Bhosale,**
Age – 45 Years, Occu. Service,
R/o. State Transport Co.-Op. Bank,
Near Shere Hospital, Shivaji Nagar,
Nilanga, Tal. Nilanga, Dist. Latur.
6. **Vishwaraj Sanjayraj Halgarkar – Died,**
through L.Rs.
- 6/1. **Sanjayraj Pramodrao Halgarkar,**
Age – 48 Years, Occu. Trade and Agri.,
- 6/2. **Priyadarshani Sanjayraj Halgarkar,**
Age – 48 Years, Occu. H.H.,
- 6/3. **Usha Rani Vishwaraj Halgarkar,**
Age – 21 Years, Occu. Agri.,
R/o. Nilanga.
7. **Nilesh Bapurao Jadhav,**
Age – 25 Years, Occu. Agri.,
R/o. Ambewadi (Bk.), Tal. Nilanga. -----**Defendants**

Appearances :-

Shri. R.K. Kulkarni, Ld. Advocate for plaintiff.
Shri. H.V. Gaikwad, Ld. Advocate for defendant Nos.1 to 3
and 5.
Exparte against defendant No.4, 6/3 and 7.

J U D G M E N T

(Decided on 15th day of July, 2026)

1. This is a suit for recovery of possession in respect of 80.5
R each land out of Survey No.37/B situated at village Nilanga, Tal.

Nilanga Dist. Latur (hereinafter for the sake of brevity referred to as “the suit property”).

The factual matrix of the suit is as under:-

2. Defendants are real brothers interse and having goods relations with Plaintiff. Defendants are joint owner of land admeasuring 80.5 R each i.e. 10 acre land out of Survey No.37/B. There had been oral agreement between plaintiff and defendants for the sale of the suit land on Gudipadwa-2015. As per the terms and conditions mentioned in the agreement, it was agreed that the suit land would be sold jointly by defendants to plaintiff for consideration amount of Rs.2 Crore. It was further agreed that the amount of Rs.5,00,000/- will be paid on Gudipadwa-2015, amount of Rs.50,00,000/- would be paid on 06/06/2015, the amount of Rs.50,00,000/- would be paid on 20/12/2015 and the remaining amount of Rs.95,00,000/- was agreed to be paid on Gudipadwa-2018 by executing the sale deed and the possession was agreed to be delivered on Gudipadwa-2015 in the presence of witnesses Pradeep Sherkar and Pandurang Deshmukh. It was also agreed that the written agreement to sell would be executed at the time of payment Rs.50,00,000/- in June-2015. Defendants also agreed that they would brought their sisters at the time of execution of agreement to sell to obtain their consent. Accordingly, plaintiff paid the amount of Rs.5,00,000/- to the defendants and obtained possession of property. However, the defendants retracted from their commitment and executed the contract with others. Defendants dispossess plaintiff from the suit land on 20/05/2015. Since thereafter, plaintiff lost his right and control over the suit

land. Hence, this suit.

3. Defendant Nos.1 to 3 and 5 resisted the suit by filing written statement at Exhibit No.29 and contended that, the suit is not maintainable as it was not based on previous possession or title. There is no title and ownership shifted by the defendants in favour of plaintiff. So the question of recovery of possession does not arise. The suit of plaintiff is not for specific performance of agreement to sell under Specific Relief Act. Therefore, without the suit for specific performance, the suit of plaintiff for recovery of possession is not maintainable. So also plaintiff has not claimed the relief of execution of sale-deed on the basis of agreement to sell. The plaintiff is arrogant person and filed number of cases against the many persons without any document and cases are pending before different Courts. Plaintiff has filed false and frivolous suit against the defendants and defendants have suffered heavy loss to their reputation. Therefore, defendants prayed to dismiss the suit.

4. During the pendency of the suit, defendant No.1 died and his L.Rs. are brought on record as defendant Nos.1/1 to 1/3. They adopted the written statement of defendant Nos.1 to 3 and 5 by filing pursis below Exh.111. Defendant No.6 died and his L.Rs. are brought on record as defendant Nos.6/1 to 6/3.

5. Despite of service of summons, defendant Nos.4, 6/3 and 7 failed to appear. Hence, suit proceeded ex parte against them. Defendant Nos.6/1 and 6/2 failed to file their written statement. Hence, suit proceeded without their written statement.

6. The issues were framed by my Ld. predecessor at Exh.91 and I have given my findings against each issue for the reasons given below.

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1]	Does plaintiff prove that defendants had orally agreed to sale the suit land for consideration of Rs. Two Crores in the presence of witnesses?	<u>In the Negative.</u>
2]	Does plaintiff prove that the possession of the suit land was handed over to him by defendants after accepting an amount of Rs.5,00,000/- from him?	<u>In the Negative.</u>
3]	Does plaintiff prove that on 20/05/2015 the defendants have dispossessed him from the suit land?	<u>In the Negative.</u>
4]	Is plaintiff entitled for recovery of possession of suit land, as claimed?	<u>In the Negative.</u>
5]	What order and decree?	<u>As per final order</u>

REASONS

8. In order to prove his suit claim, the plaintiff examined himself by filling affidavit in lieu of the examination-in-chief vide Exhibit No.121. Evidence of plaintiff is closed by order below Exh.1 as plaintiff failed to adduce further evidence. In addition to oral evidence plaintiff relied upon 7/12 extract at Exh.8.

9. On the contrary, defendants have not adduced oral as well any evidence.

10. Heard Ld. Advocate for plaintiff and defendant.

11. Before proceeding the evidence adduced by both parties, it is necessary to mention here that though the suit for recovery of possession based on an oral agreement is maintainable under the Indian Law, it must provide clear evidence of agreement viz. payment of receipts, witnesses and continuous possession. The Supreme Court of India has established that the oral agreement to sell are legally valid and binding contract u/Sec.10 of the Indian Contract Act. However, enforcing them is highly challenging as there is no written documentation. In absence of the written contract, the plaintiff has to produce on record the substantial circumstantial evidence to prove that the oral agreement made and money changed hands acceptable evidence includes bank transfer records, cash receipts and independent witnesses who were present when the agreement was made.

12. Before proceeding further, it would be worthwhile to glance over the admitted facts. It is not in dispute that, defendant Nos.1 to 5 are brothers interse. It is also not in dispute that, defendant Nos.1 to 3 were the original owners of suit property and defendant Nos.6 and 7 are the purchasers of the suit property. It is also not in dispute that no title or ownership is transferred to plaintiff.

AS TO ISSUE NOS.1 AND 2 :-

13. These issues are intermingled, therefore, they are being discussed together to avoid repetition.

14. Plaintiff has reiterated the contentions of plaint in his affidavit and deposed that, the oral agreement to sell was executed between plaintiff and defendant Nos.1 to 5 on Gudipadwa-2015 on consideration amount of Rs. Two Crores regarding the selling of the suit property. At that time, it was agreed between the parties that plaintiff will pay amount of Rs.5,00,000/- on Gudipadwa-2015. Thereafter, will pay Rs.50,00,000/- on 16/06/2015, Rs.50,00,000/- on 20/12/2015 and remaining amount of Rs.95,00,000/- on Gudipadwa-2018. It was also agreed between plaintiff and defendants that defendants will hand over the possession of suit property in presence of Pradeep Bhalchandra Shetkar and Pandurang Dinkar Deshmukh on Gudipadwa-2015. It was also agreed that the oral agreement will be reduced into writing on 16/06/2015 after the payment of Rs.50,00,000/-. It was also agreed that defendant Nos.1 to 5 will obtain the consent of their sisters on the terms and conditions agreed between them at the time of execution of written agreement to sell. Plaintiff further deposed that defendants received the amount of Rs.5,00,000/- before the panchas and delivered the possession of the suit property to plaintiff. However, on 20/05/2015 defendant Nos.1 to 5 dispossess plaintiff from the suit property and sold the suit property illegally to defendant Nos.6 and 7.

15. It is pertinent to note here that plaintiff has filed this case for recovery of possession of suit property on the ground of his previous possession based upon oral agreement to sell allegedly executed by defendant Nos.1 to 5 on Gudipadwa-2015. However, except the bare testimony of plaintiff there is nothing on record to

support his contentions. Defendants have totally denied the execution of agreement as alleged by plaintiff. In these circumstances, as mentioned in the aforesaid paras, in absence of the written contract, plaintiff has to produce on record the substantial circumstantial evidence to prove that the oral agreement made, money changed hands and acceptable evidence viz, bank transfer records, cash receipts and independent witnesses who were present when the agreement was made. However plaintiff is neither examined any witness in support of his contentions nor placed any documentary evidence to establish his previous possession .Plaintiff also has not examined any punch witness who were present at the time of alleged execution of oral agreement. There is neither receipt on record showing payment of earnest amount nor any written undertaking regarding the same.

16. Besides this, plaintiff in his cross-examination could not mention the date of the alleged oral agreement executed in between him and defendants. He has not given evidence as to when the property was exactly delivered to him by defendants and period during which he was in continuous possession of suit property. It is the case of plaintiff that he has given the amount of Rs.5,00,000/- to defendants on Gudipadwa-2015, however, no receipts regarding the payment of amount has been placed on record.

17. Further, it is the case of plaintiff, as per the oral agreement, it was agreed between them that, he will give amount of Rs.50,00,000/- on 16/06/2015. However, there is neither any evidence showing his willingness to give the said amount nor that

he communicated his willingness regarding the payment to defendants or the refusal by the defendants of receiving the money in his plaint and in his affidavit.

18. Moreover, it is the case of plaintiff that, he was dispossessed by defendants on 20/05/2015. Therefore, plaintiff was having knowledge that there is no intention of defendants of executing the alleged agreement to sell. In these circumstances, it is not digestible that plaintiff would have gone to defendants for the payment of Rs.50,00,000/- as per the terms and conditions agreed between them despite of breach of the terms by the defendants. Therefore, the evidence given by the plaintiff does not appear to be reliable. Moreover, it is strange that plaintiff was about to enter into the sale transaction having such huge amount of consideration without without any written document or any receipts of the payments of money.

19. It is the case of plaintiff that, as per terms of alleged agreement, it was agreed between the parties that the suit land would be sold jointly by defendant Nos.1 to 5 to plaintiff and they will obtain the consent of their their sisters at the time of execution of written agreement to sell. Therefore, there was no partition of suit property between the defendants during the alleged execution of the agreement. It also reflects that, the sisters of the defendant Nos.1 to 5 were also the joint owners of the suit property and same was not exclusively owned by defendant Nos.1 to 5. Therefore, defendant Nos.1 to 5 had no authority to execute the alleged agreement to sell without the consent of their sisters. In these circumstances, even for the sake of argument, if we

believe that the alleged agreement to sell was executed by defendant Nos.1 to 5 in favour of plaintiff, the said contract is not valid one.

20. Further, plaintiff in his cross-examination also conceded that, defendant Nos.1 to 5 have sold the suit property to defendant Nos.6 and 7 for amount of Rs.35,20,000/-. Therefore, plaintiff was having knowledge about the purchase of the suit property by defendant Nos.6 and 7. However, he neither filed any suit for cancellation of aforesaid registered sale-deed nor has sought any relief against the same in the present suit.

21. It is also important to note here that, there is nothing on record to show that, plaintiff has filed the case for specific performance of contract with alternative prayer of return of earnest amount or plaintiff has filed suit for recovery of money claiming the amount paid by him to the defendants. If at all there was an oral agreement to sell between plaintiff and defendants and accordingly plaintiff in furtherance of the said agreement, has paid the amount of Rs.5,00,000/-, then he would have filed the abovesaid case against the defendants.

22. On going through the evidence placed on record, it reflects that, except bare words of plaintiff, there is neither any documentary evidence nor oral evidence in support of the contention of plaintiff to show that the possession of the suit property was delivered from the defendants to plaintiff. There is neither any records showing the delivery of possession of suit property to plaintiff at any time nor there is any receipts of

payment of money or the bank statement showing the withdrawal of huge amount of Rs.5,00,000/- by plaintiff. There is nothing on record regarding the source of income of plaintiff to show that he was willing to pay remaining amount of money which was alleged to be agreed between them or there is nothing on record to show that remaining amount of money was available with him.

23. It is the case of plaintiff that, as per the terms of alleged oral agreement, it was agreed that, amount of Rs.95,00,000/- will paid on Gudipadwa-2018 by executing the sale-deed and possession will be delivered on Gudipadwa-2015 in presence of witnesses Pradeep Sherkar and Pandurang Deshmukh. However, plaintiff failed to examine Pradeep Sherkar and Pandurang Deshmukh to establish that the possession was delivered by the defendants on Gudipadwa-2015.

24. More particularly, there is neither written statement nor any affidavit of any witness dealing with the agreement to sell. There is no any written communication with reference to the oral agreement that can provide evidence of the terms discussed. There is neither any documentary interaction nor any discussion relating to the oral agreement including the dates, time and specific terms. In absence of any corroborative evidence, the bare words of plaintiff are not reliable. Therefore, it is hardly difficult to believe that plaintiff had entered into the transaction with defendant Nos.1 to 5. In these circumstances, it is seen that, plaintiff failed to discharge the burden of proving the execution of the oral agreement to sell for consideration of Rs. Two Crores. Plaintiff also failed to establish that the possession of the suit land was handed

over to him by defendant Nos.1 to 5 by accepting an amount of Rs.5,00,000/- from him. Plaintiff also failed to prove that defendant Nos.1 to 5 were authorized to execute the alleged agreement to sell in his favour on Gudipadwa-2015. Therefore, in view of above discussion, I answer issue Nos.1 and 2 “In the Negative”.

AS TO ISSUE NO.3 :-

25. It is the case of plaintiff that he was dispossessed on 20/05/2015 by the defendants. However, in view of my negative findings as to issue No.2, plaintiff failed to establish that defendant Nos.1 to 5 orally agreed to sale the suit property to plaintiff and the possession was delivered to him by the defendant Nos.1 to 5 on Gudipadwa-2015, as per the agreed terms of contract. Therefore, in absence of any proof of delivery of possession by defendant Nos.1 to 5, no question of dispossession would arise. Hence, I answer issue No.3 “In the Negative”.

AS TO ISSUE NO.4 :-

26. In view of my negative findings as to issue Nos.1 and 2, plaintiff is not entitled for the relief of recovery of possession of suit property. It is important to note here that, under the Indian Contract Act and Specific Relief Act, plaintiff cannot legally file a suit for recovery of possession solely based on the oral agreement to sell of the immovable property. To seek the permanent possession or enforce a purchase, an registered contract is generally required to transfer the title. Though the Indian Courts have recognized that the oral agreement to sell can technically exist, enforcing them especially concerning immovable property is

incredibly difficult. Under Section 54 of the Transfer of Property Act the sale of immovable property more than Rs.100/- must be made through a registered instrument. An oral agreement coupled with delivery of possession cannot validate the sale of land. In view of above discussion, plaintiff is not entitled for the relief of recovery of possession of suit property. Hence, I answer issue No.4 “In the Negative”.

AS TO ISSUE NO.5 :-

27. In view of my above findings, suit is liable to be dismissed. In result, I pass the following order-

ORDER

- 1) Suit is dismissed with costs.
- 2) Decree be drawn up accordingly.

Nilanga
Dt. 15/07/2026

(**Smt. V. D. Bhosale**)
Jt. Civil Judge Sr. Dn., Nilanga,
Dist. Latur.