

MHLA170001022023



Received on :- 12/10/2018.

Re-registered on :- 15/03/2023.

Decided on :- 27/03/2026.

Duration :- 07 Y. 05 M. 15D

**IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION,
AT AUSA, DISTRICT LATUR.**

(Presided Over By :- P. I. Mokashi)

Regular Civil Suit No. 367/2023.

Old R.C. S. No. 549/2018

Exh.No.113

1. Vyankuram Ashokrao Chilme,
Age :35 Years, Occupation :- Agriculturist,
2. Jyoti Gunwant Aalgule,
Age :42 Years, Occupation :- Household,
Both R/o. Budhoda, Tq. Ausa, Dist. Latur.
3. Archana Govind Chame,
Age :40 Years, Occupation :- Household,
R/o. Gaur, Tq. Nilanga, Dist. Latur.
4. Suvarna Vidyasagar Mekhale,
Age :35 Years, Occupation :- Household,
R/o. Sadguru Nagar, Behind Kalikadevi Temple,
Old Ausa Road, Latur. **... Plaintiffs.**

V e r s u s

1. Harischandra Gangaram Chilme,
Age : 65 Years, Occupation :- Agriculturist,
R/o. Budhoda, Tq. Ausa, Dist. Latur.
2. Angad Gangaram Chilme (Died)
through his legal heirs,

- 2/1. Shantabai Angad Chilme,
Age :65 Years, Occupation :- Household,
 - 2/2. Mahindra Angad Chilme,
Age :45 Years, Occupation :- Agriculturist,
 - 2/3. Purushottam Angad Chilme,
Age :43 Years, Occupation :- Agriculturist,
All R/o. Budhoda, Tq. Ausa, Dist. Latur.
 - 2/4. Rajshri Vilas Chevle,
Age :47 Years, Occupation :- Household,
R/o. Sindhgaon, Tq. Renapur, Dist. Latur.
 3. Ashok Gangaram Chilme,
Age :60 Years, Occupation :- Agriculturist,
 4. Kamalbai Ashok Chilme,
Age :55 Years, Occupation :- Agriculturist,
Both R/o. Budhoda, Tq. Ausa, Dist. Latur.
 5. The Competent Authority of National Highway,
and Sub-divisional Officer, Ausa-Renapur,
Office at old Collector Office,
Shivaji Chowk, Latur.
 6. The Project Director,
National Highway No. 361,
Bharadwaj, Venkatadri Nagar,
Near Ayodhya Nagari, Taroda (Kd), Nanded.
- ...Defendants.**

Appearance:-

- Shri. J. N. Karde Advocate for plaintiffs.
Shri. S. B. Pande, Advocate for defendant Nos. 1 and 2.
Shri. A. M. Nimburge, Advocate for defendant Nos.3
and 4.
Shri. V. T. Sakolkar, Advocate for defendant No. 6.
Exparte- Defendant No. 5.

J U D G M E N T

(Delivered on 27th March, 2026)

(In view of order passed by Honourable Supreme Court of India in Special leave petition No. 25176/2019, the Honourable Supreme Court has directed this Court to decide R.C.S. No.348/2023 (Old R.C.S. No.162/2018), R.C.S. No.367/2023 (Old R.C.S. No.549/2018) together with a view to avoid any conflicting orders without prejudice to the proceedings initiated by the parties of enhancement of the compensation.

These suits were dismissed in default by this Court. These suits were restored again by the order of Honourable High Court in Writ Petition No. 11680/2024 and made time bound till 30/03/2026. The fact in issue regarding relinquishment deed bearing No.322/2016 and compensation amount in this suit is also fact in issue in R.C.S. No.348/2023. Therefore, evidence recorded in R.C.S. No.348/2023 is considered in this suit as this suit is for declaration of relinquishment deed bearing No. 322/2016 dated 29/01/2016 to be void, ab-initio and for permanent injunction restraining defendant Nos. 5 and 6 from disbursing compensation amount of acquired land to defendant No.1.)

Plaintiffs have filed this suit for declaration of relinquishment deed bearing No.322/2016 dated 29/01/2016 to be void, ab-initio and for grant of permanent injunction for disbursement of compensation amount of acquired land to defendant No.1. It is averred by plaintiffs that, plaintiff Nos. 1

to 4 are real brother and sisters. Defendant Nos. 1 and 2 are paternal uncle of plaintiffs and defendant Nos. 3 and 4 are parents of plaintiffs. Defendant No. 2 is dead and his represented by his legal heirs defendant Nos. 2/1 to 2/4. Defendant No. 5 is competent authority of the Government and defendant No. 6 is the Project Director of the National Highway No.361.

2. It is further contended by plaintiffs that, defendant Nos. 5 and 6 have acquired the ancestral joint family property of plaintiffs and defendant Nos. 1 to 4 without their consent for National Highway No. 361 by way of award dated 12/02/2018. Grandfather of plaintiffs namely, Gangaram Irappa is having three children namely, Angad (defendant No.2), Ashok (defendant No.3) and Harischandra (defendant No.1). Defendant No. 1 is youngest son of Gangaram. While defendant Nos. 2 and 3 are elder sons of Gangaram. They have partitioned the ancestral land on 06/06/1981 as under:-

Name	Survey Number	Share
Harishchandra Gangaram (defendant No.1)	121/C 40	2 Acre 23 Gunthe 5 Acre 32 Gunthe
Angad Gangaram (defendant No.2)	121/C 40	2 Acre 23 Gunthe 5 Acre 32 Gunthe
Ashok Gangaram (defendant No.3)	121/C 40	2 Acre 13 Gunthe 5 Acre 32 Gunthe
Gangaram Irappa (grandfather of plaintiffs)	34/B (new) 32/B (old)	5 Acre 28 Gunthe

The grandfather of plaintiffs namely Gangaram had kept 5 Acre 28 Gunthas of land situated in survey No. 34/B (Old survey No. 32/B) for himself. After death of Gangaram the agricultural land kept for himself in survey No.34/B was to be equally divided among defendant No. 3 and defendant No.1. The land next to the agricultural land of Namdeo Chilme was to be given to defendant No. 2 alongwith well and trees situated in that area.

3. Accordingly, mutation entry No. 621 was executed by the Circle Officer on 22/07/1981. According to the said mutation entry No. 621 legal heirs of deceased Gangaram Irappa Chilme are in possession of land. Gangaram died on 31/10/1990. At that time, defendant No. 1, though youngest brother among them was the Karta of the family from the lifetime of their father as he was intelligent. Taking disadvantage of the same he made mutation entry in his name and names of defendant No. 3 Ashok and defendant No. 2 Angad were wrongly recorded in the other rights column of the survey No. 34/B admeasuring 5 Acre 28 Gunthe situated at Budhoda, Tq. Ausa, Dist. Latur.

4. Defendant Nos. 1 and 3 were having equal share in the said land. Defendant No. 1 sold 2 Acre 31 Guntha (1 H 12 R) land for the consideration to defendant No. 3 on 16/05/2002 by way of registered sale deed bearing registration No. 1394. Therefore, defendant No. 3 has become sole owner and possessor of the land in survey No. 34/B.

Accordingly mutation entry No.3276 is recorded in the Revenue Department. Thereby, defendant No. 1 has transferred his rights in the land situated in survey No.34/B to defendant No. 3 by way of said sale deed. Hence, defendant No. 1 is not concerned with the land situated in survey No.34/B.

5. Defendant No.3 was taking benefit of land admeasuring 5 Acre 28 Gunthas situated in survey No.34/B at Budhoda, Tq. Ausa, Dist. Latur. Still, by misleading defendant No. 3 and knowing the fact that plaintiffs were having their rights in the land, defendant No. 1 without their consent executed the relinquishment deed bearing registration No. 322/2016 on 29/01/2016 without describing four boundaries of the land. According to the said relinquishment deed the land described in the relinquishment deed is another land. It is situated in survey No.34/B Budhoda, Tq. Ausa, Dist. Latur admeasuring 2 H 27 R. The relinquished area is admeasuring 1 H 15 R. The said relinquishment deed is executed by misleading defendant Nos. 2 and 3 without fixing four boundaries. Defendant No. 1 has cheated them in collusion with Sub-Registrar Office and registered the same relinquishment deed. Therefore, said land being disputed suit land. It is mentioned as **“suit land”** henceforth.

6. It is further contended by plaintiffs that, 1700 square meters land is acquired for the National Highway No. 361 by defendant Nos. 5 and 6. The said acquisition

proceeding was in the name of defendant No. 1 only. Plaintiffs came to know about the same and they found the mutation entry no. 4526 in the revenue record. According to it they found relinquishment deed dated 29/01/2016 and they came to know that, defendant No. 1 by way of relinquishment deed presented himself to be owner of the suit land to grab the compensation amount of the acquired land.

7. Defendant No. 6 has acquired the land. Thereafter, plaintiffs objected for disbursement of compensation amount to defendant No.1 before defendant No. 5 on 24/08/2018 and requested to send the reference to the competent Court. Plaintiffs have objected for the disbursement of compensation amount on 24/08/2018 to defendant Nos. 5 and 6, still defendant Nos. 5 and 6 in-haste are trying to disburse the amount to defendant No. 1 without referring the matter to competent Civil Court though they have not right to disburse the compensation amount by deciding who is the owner of disputed suit land. Therefore, it is prayed by plaintiffs that, their suit be decreed, the relinquishment deed regarding 1 H 15 R land situated in Gat No.34/B dated 29/01/2026 bearing registration No. 322/2016 be declared void, ab-initio and defendant Nos. 5 and 6 be restrain permanently for disbursement compensation amount of acquired land to defendant No.1.

8. Defendant Nos. 1 and 2 have filed their written statement at Exh.19. Defendant Nos. 2/1 to 2/4 have file

pursis (Exh.91) accepting the written statement(Exh.19) of defendant Nos. 1 and 2. They have objected plaint of plaintiffs on the grounds that, plaintiffs have concealed material facts from the Court. They have filed the suit in collusion with and on instigation of defendant Nos. 3 and 4. Defendant No. 3 has filed special civil suit No. 162/2018 in respect of same subject matter against same defendants. In that suit, defendant No. 3 has challenged relinquishment deed bearing No. 322/2016 dated 29/01/2016 on certain grounds. The Civil Judge Senior Division, Latur has rejected the temporary injunction application of defendant No. 3 in that suit. Therefore, defendant No. 3 due to apprehension of rejection of his application has filed this suit through his son and daughters only with malafide intention to create impediment in payment of compensation to defendant No.1. Therefore, the suit is in collusive in nature.

9. Defendant Nos. 1 and 2 further submits that, Gangaram died in the year 1990. Defendant Nos. 1 and 3 by acting upon the partition of 1981 orally divided/partitioned land survey No. 34/B among them and started separate cultivation in the year 1991. In the said partition eastern side 1 H 15 R land was given to the share of defendant No. 1 whereas western 1 H 12 R land was given to the share of defendant No. 3. Therefore, since 1991 defendant Nos. 1 and 3 have been separately cultivating their respective shares. The defendant No. 1 has been cultivating the eastern 1 H 15 R land which is next to Latur-Ausa state highway.

10. They further submits that, defendant No. 1 thereafter developed his land by spending huge amounts. He had dug two bore wells in said 1 H 15 R land and also dug a well which he has constructed in cement concrete. Defendant No. 1 has laid pipeline in the said land and has also erected a big tin shed in the south-west corner of said land. Defendant No. 1 had obtained electricity connection for electric pumps installed on bore-wells and well. Defendant No. 3 was cultivating western portion of suit land admeasuring 1 H 12 R since 1991. However, in revenue record name of defendant No. 1 alone was recorded in ownership column by mutation entry No. 1082 and despite of partition between defendant Nos. 1 and 3 his name continued to appear as such. Therefore, in the year 2002 in order to mutate name of defendant No. 3 in revenue record, defendant No. 1 had executed sale deed No. 1394 dated 16/05/2002. The said sale deed was without any consideration and defendant No. 3 had not paid any amount to defendant No. 1. The consideration shown in the said sale deed was nominal and was shown as per Government valuation.

11. It is pertinent to note that, defendant No. 2 had given consent to the said sale deed as his name too was recorded in the other rights column. Therefore, the said sale deed was executed only for correcting the revenue record and entering name of defendant No. 3. The recitals of the said sale deed clearly reveal that, the eastern portion of survey No. 34/B belongs to defendant No. 1 alone. Moreover, defendant

No. 3 was given 12.5 feet wide road from southern side for access to his western portion from Latur-Ausa road. The recital in respect of said road in the sale deed shall also reveal that the said road was given through land of defendant No. 1. Defendant No. 3 himself applied and got sanctioned mutation in respect of said road. Therefore, the western side 1 H 12 R land was given to defendant No. 3 as his share in survey No. 34/B, but instead of executing partition deed the sale deed was executed.

12. They further submits that, on the basis of said sale deed mutation in the name of defendant No. 3 was sanctioned. Defendant No. 3 then gifted said 1 H 12 R land to his wife Kamalbai in 2017. The recitals and particularly boundaries shown in the said gift deed also reveal that, the eastern side 1 H 15 R land is owned and possessed by defendant No. 1. Therefore, from all these facts it reveal that, defendant No. 3 since 1993 had no right, title or interest in respect of the eastern side 1 H 15 R land out of survey No. 34/B.

13. It is further contended by defendant Nos. 1 and 2 that, on the basis of sale deed dated 16/05/2002 name of defendant No. 3 was mutated to 1 H 12 R land, yet names of defendant Nos. 2 and 3 continued to appear in other rights column. In order to get deleted those names defendant Nos. 2 and 3 voluntarily executed the relinquishment deed and on the basis of said deed names of defendant Nos. 2 and 3 were

deleted from the other rights column. Defendant Nos. 1 and 2 denied that, the boundaries of land were not shown in the relinquishment deed. Since, the sale deed pertains to land of defendant No. 1, it was not necessary to recite boundaries of said land. It is denied that the said relinquishment deed was got executed by defrauding and cheating defendant Nos. 2 and 3 and in collusion with Sub-registrar. The said 1 H 15 R land cannot be suit property as plaintiffs have no right, title or concern with said land.

14. It is denied by defendant Nos. 1 and 2 that, plaintiffs came to know about relinquishment deed and mutation No. 4526 after acquisition proceedings. It is also denied that defendant No. 1 got recorded his name in revenue record in collusion with revenue authorities without following the procedure of MLRC. In fact before sanctioning the mutation on the basis of relinquishment deed notice was served upon defendant No. 3, but he had not objected to the mutation. Therefore, the said mutation was rightly sanctioned and plaintiffs cannot object to it. Moreover, defendant No. 3 has not challenged said mutation yet. Hence, defendant Nos. 1 and 2 prayed that, the suit be dismissed with compensatory cost of Rs. 25,000/-.

15. Defendant Nos. 3 and 4 have filed their written statement (Exh.48). They have admitted contents of plaint of plaintiffs and they prayed that, the suit be decreed as prayed by plaintiffs.

16. Defendant No. 5 has failed to appear before the Court though served with summons. Hence, the suit proceeded *ex-parte* against defendant No. 5.

17. Defendant No. 6 (Project Director, National Highways Authority of India PIU- Nanded) has filed written statement at Exh. 73 submitting that, he is made formal party to this suit. It is the dispute between parties regarding declaration of ownership of land acquired and for claiming amount of compensation disbursed. Section 3 (H)(3) and (4) of the National Highways Act, 1956 provides for procedure to determine the entitlement of receiving the amount of compensation among rival claims. Therefore, defendant No. 6 has no role to play. Hence, there is no substance regarding defendant No. 6 in the present suit. Therefore, it is prayed by defendant No. 6 that, the suit be dismissed to the extent of defendant No.6.

18. In view of averments made by the plaintiff and denied by defendants following issues arose for discussion and my findings thereon are as under:-

Sr. No.	Issues	Findings.
1.	Do plaintiffs prove that, suit land is their ancestral land of Joint Hindu Family ?	Yes.
2.	Do plaintiffs prove that, suit land is acquired by defendant Nos. 5 and 6 without the consent of plaintiffs ?	No.

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|----|---|------------------------|
| 3. | Do plaintiffs prove that, defendant No. 1 obtained relinquishment deed from defendant No. 2 and 3 of the suit land without consent of plaintiffs ? | No. |
| 4. | Do plaintiffs prove that, they are entitled for declaration as prayed ? | No. |
| 5. | Do plaintiffs prove that, they are entitled for compensation of acquired land by defendant No. 5 and 6 ? | No. |
| 6. | Do plaintiffs prove that, they are entitled for permanent injunction against defendant Nos. 5 and 6 for disbursing compensation amount to defendant No. 1 ? | No. |
| 7. | What order and decree? | The suit is dismissed. |

REASONS

19. Plaintiffs have filed certified copy of extract of mutation entry No. 621 at Exh.108, extract of mutation entry No. 1082 at Exh.109, extract of mutation entry No. 3276 at Exh.110, extract of mutation entry No. 4526 at Exh.111, certified copy of relinquishment deed No. 322/2016 at Sr. No. 1 with list Exh. 4.

Plaintiffs have filed affidavit of examination in chief of plaintiff No. 1 Vyankuram Chilme (PW-1) at Exh. 105.

20. The evidence adduced by plaintiff and defendants in R.C.S. No. 348/2023 is considered in this suit as the fact in issue regarding the relinquishment deed bearing registration No. 322/2016 dated 29/01/2016 and compensation amount are fact in issue in that suit also as per order passed below Exh.1.

21. Heard learned counsels for both the parties to the suit. The learned counsel for plaintiffs argued that, the evidence adduced before this Court clearly establishes the lawful title and continuous possession of defendant No.3 over the suit property. Defendants have setup their defence relying upon irregular revenue entries defective documentation and relinquishment deed obtained under circumstances vitiated by misrepresentation. Documentary and oral evidence on the record support the case of plaintiffs.

He further argued that, it is clearly understood and accepted within the family after the demise of father Gangaram that the land standing in his name out of survey No.34/B would devolve jointly upon defendant No. 1 and defendant No.3. However, after the death of grandfather of plaintiffs, defendant No. 1 mutated his name in ownership column of the revenue record and names of defendant Nos. 2 and 3 are shown in the other rights column. Such mutation entry was effected unilaterally and does not reflect the true legal position regarding succession to the property.

He further argued that, it is the settled law that, mutation entries in revenue record are made only for fiscal purposes and do not confer or extinguish title. Defendant No. 1 executed registered sale deed No. 1394/2002 in favour of defendant No.3 on 16/05/2002 in respect of his share in the property bearing survey No.34/B. The sale deed was duly executed, supported by valid consideration thereby entire title, right and interest of defendant No. 1 in the suit property is lawfully transferred to defendant No.3 Therefore, defendant

No.3 became the absolute owner of the property standing in the name of deceased Gangaram out of survey No.34/B. Thereafter, defendant No.3 is in continuous possession over the suit property since the year 2002. On the other hand, defendant Nos. 1 and 2 have failed to lead any credible evidence to established that, defendant No.1 in possession of the suit property and he is cultivating the suit property after the year 2002.

He further argued that, the relinquishment deed dated 29/01/2016 bearing No. 322/2016 is relied by defendant Nos. 1 and 2 which is unreliable and does not affect the title of defendant No.3. The evidence on record clearly shows that, defendant No.3 was misled into signing the said relinquishment deed. Defendant No.1 has obtained the signature of defendant No.3 by misrepresenting and taking undue advantage of his trust. During the acquisition of land by the Government Authorities, defendant Nos. 5 and 6 have erroneously recorded the name of defendant No. 1 as owner of the suit property despite the fact that, defendant No. 1 has transferred his share by the virtue of sale deed dated 16/05/2002. Defendant No.3 raised objections on 13/10/2017 bringing to the notice of Government Authorities that defendant No. 1 has alienated the suit property. However, the Government Authorities failed to correct the revenue record. It is well settled principle that, compensation payable in acquisition proceedings must follow the ownership of the land. Therefore, defendant No.1 has no right to receive compensation in respect of acquired portion of the property.

Defendant No.3 is lawful owner and possessor of the acquired property and he is entitled to the said compensation.

He further argued that, the defence taken by defendants suffers from several legal and factual infirmities. Defendants have not produced any evidence on record or challenged the registered sale deed executed by defendant no. 1 in favour of defendant No.3. The relinquishment deed dated 29/01/2016 is defective. Defendant Nos. 1 and 2 have heavily relied upon mutation entries in the revenue record which are merely fiscal entries and cannot determine or alter the title of immovable property. Defendant Nos. 1 and 2 failed to established their actual possession over the suit property from the year 2002. Thus, the sale deed executed by defendant No. 1 proves the valid title of defendant No.3 over the suit land. Revenue entries do not confer ownership and cannot defeat rights arising from a register instrument of transfer. Furthermore, any document obtained by fraud misrepresentation or suppression of material facts is void and unenforceable in the eyes of law. Therefore, it is proved that, defendant No.3 is owner and possessor of acquired suit land and he is entitled for compensation of acquired land. Hence, defendant No.3 be declared as lawful owner of suit property and plaintiffs are entitled for their share in compensation of acquired portion of suit land.

The learned counsel for plaintiffs has also filed his written argument at Exh. 114 in R.C.S. No. 348/2023.

22. The learned counsel for defendant Nos.1, 2/1 to 2/4 argued that, the partition is effected after the death of father of defendant Nos. 1, 2 and 3 namely Gangaram. There is no pleading by plaintiffs regarding the partition of suit land. The main crux of the suit is that to whom the eastern portion of suit land belongs to? There is no pleading by plaintiffs or evidence adduced by them regarding the partition and allotment of separate shares. The suit is defective on the count of no pleading regarding the partition. Plaintiffs failed to prove how western portion of suit land was of defendant No.1. Plaintiffs have not prayed for cancellation of relinquishment deed in para No.6A of the plaint. Witnesses of relinquishment deed are not examined to establish the fraud alleged by plaintiffs. Road from disputed land mentioned in the sale deed proves that the land belongs to defendant No.1. The suit is defective as plaintiffs have not made Union of India as the party to the suit. Hence, the suit is barred by non-joinder of necessary parties.

The learned counsel further argued that, Section 8 of the Transfer of Property Act lays down that, Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee, all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Therefore, the learned counsel for defendant Nos.1, 2/1 to 2/4 prayed to dismiss the suit.

AS TO ISSUE NOS.1 TO 6 :-

23. It is admitted fact that, the suit land is the ancestral joint Hindu family land which was kept by grandfather of plaintiffs namely, Gangaram during his lifetime and after his death the said land was divided equally between defendant No.1 and defendant No.3. Now, the burden lies upon plaintiffs to prove that, suit land is acquired by defendant Nos. 5 and 6 without their consent, defendant No. 1 obtained relinquishment deed from defendant Nos. 2 and 3 of the suit land without their consent, they are entitled for declaration that, the relinquishment deed is void, ab-initio, they are entitled for compensation of acquired land from defendant Nos. 5 and 6 and they are entitled for permanent injunction against defendant Nos. 5 and 6 for disbursement amount to defendant No.1.

24. To substantiate their contention plaintiffs have examined plaintiff No. 1 Vyankuram Chilme (PW-1) and filed his affidavit of examination in chief (Exh. 105). He has reiterated contents of plaint. Therefore, it is not necessary to repeat the same while appreciating the evidence. However, defendants failed to conduct cross-examine the said witness. Hence, "No cross" order is passed against them.

25. Moreover, evidence adduced in R.C.S. No. 348/2023 is considered in this suit. Hence, it is taken for discussion in this suit to the extent of proving relinquishment deed bearing No. 322/2016, regarding entitlement of

compensation amount and injunction. The plaintiff Ashok Chilme (PW1) in R.C.S. No. 348/2023 has filed his affidavit of examination in chief (Exh. 66) and reiterated the contents of the plaint. Therefore, it is not necessary to repeat the same while appreciating the evidence.

26. He admits in his cross-examination that, according to the sale deed (Exh.87) Harischandra (defendant No. 1) has transferred the portion of land in his name. Accordingly, his name entered in the 7/12 extract. He also admits that, Harischandra (defendant No. 1) has executed sale deed in his name so that his name would appear in the 7/12 extract according to the partition. However, he has not read the contents of the sale deed. Therefore, he does not know what is written in the sale deed.

27. On perusal of sale deed (Exh.87) it is crystal clear from description of property in the sale deed (Exh.87) that, Harischandra (defendant No.1) has sold the western portion of the land ad-measuring 1 H, 12 R situated in survey No.34/B Budhoda, Tq. Ausa. It is crystal-clear from the four boundaries described in the sale deed (Exh.87) that, there is land of Harischandra (defendant No.1) towards the eastern side, there is land of Dattaprasad Vitthalrao Chilme towards western side, there is land of Ram Laxmanrao Rathod and Sitabai Ram Rathod towards southern side and there is land of Lalita Narayan Pandge and Anuradha Gangadhar Nillapalle towards northern side. The plaintiff Ashok Chilme (PW-1)

(defendant No.3 in this suit) has relied on the sale deed (Exh.87) in his affidavit of examination in chief (Exh.66). Therefore, the contents of the sale deed (Exh.87) is admitted by the plaintiff. It is admitted by the plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) in his cross-examination that, after death of their father, the land situated in survey No. 34/B was divided equally between himself and Harischandra (defendant No. 1).

28. Ashok Chilme (PW-1) (defendant No.3 in this suit) further deposed in his cross-examination that, the land near Latur-Ausa road is sold by Harischandra (defendant No. 1) to him by way of sale deed (Exh.87). The same land is transferred in the name of his wife by way of gift deed (Exh.89). However, after going through the contents of the gift deed (Exh.89) it is crystal-clear that four boundaries described in it shows that there is remaining land in survey No.34/B towards eastern side and remaining boundaries towards western side, southern side and northern side are the same as described in the sale deed (Exh.87). Therefore, the gift deed (Exh.89) which is proved by the plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) in his examination in chief (Exh.66) also proves that, he is not in possession of the eastern portion of the land situated in survey No.34/B at Budhoda, Tq. Ausa near the Latur-Ausa Highway.

29. The plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) in his cross-examination could not assign

any reason as to why it is mentioned in the sale deed that there is remaining land of Harischandra (defendant No. 1) towards eastern side. He further could not assign any reason why it is mentioned in the sale deed (Exh.87) that, there is 12 feet east-west road. There was agreement to sale deed between Harischandra (defendant No. 1) and himself. He had paid amount of Rs.1,01,000/- to Harischandra (defendant No. 1) after 8 days of the agreement to sell. He has paid said amount to Harischandra (defendant No. 1) from the amount received by him by way of sale transaction of survey No. 56. He has kept the amount of Rs.2,00,000/- received from the said transaction with his brother-in-law namely, Tukaram Kolhe.

30. The plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) admits in his cross-examination that, after death of his father, relinquishment deed (Exh.88) was executed to remove his name and name of Angad (defendant No. 2) from the other rights column. It is also admitted by him that, there are two tin sheds and one large well towards eastern side of survey No.34/B. There is electric motor and electricity connection on the said well. The electricity connection is in the name of Harischandra (defendant No. 1). He also admits that, he has filed application to the Talathi to remove his name from the record according to the relinquishment deed (Exh.88). The plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) could not answer the question as to why he has not mentioned his land in the gift

deed (Exh.89). The plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) could not answer the question that, “the land towards eastern side is of Harischandra (defendant No. 1) therefore, it is not written that eastern side land belongs to him”. He could not answer the question that, “why it is mentioned in para No. 6 of the examination in chief (Exh.66) that, Harischandra (defendant No. 1) has 2.5 Gunthas remaining land in survey No.34/B.”

31. It is specifically proved in the cross-examination of the plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) that, after death of their father survey No.34/B was divided between himself and Harischandra (defendant No. 1). Both of them got 2.75 Acre land each to their share. Harischandra (defendant No. 1) got his share in eastern side of the land and he got share towards westerns side of the land in survey No.34/B which corroborates with four boundaries described in the sale deed (Exh.87). Thus, it proves that eastern portion of the land in survey No.34/B is owned and possessed by Harischandra (defendant No. 1).

32. Ashok Chilme (PW-1) (defendant No.3 in this suit) further admits in his cross-examination that, Harischandra (defendant No.1) has laid pipeline from the well situated in survey No.34/B to survey No.56 and 121 and irrigated the land situated in survey No.56. He has admitted that, he has filed the false suit to extract money from Harischandra (defendant No.1) and has filed false affidavit of

examination in chief. Thus, said admission of the plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) regarding false affidavit of examination in chief has shaken his credibility regarding evidence adduced by him in his examination in chief (Exh.66).

33. Evidence adduced by Tukaram Kolhe (PW-2) in R.C.S. No.348/2023 is not concerned with the relinquishment deed No.322/2016. Therefore, his evidence is not considered in this suit.

34. Defendant Nos. 1, 2/1 to 2/4 have examined defendant No. 1 Harischandra Chilme (DW-1) in R.C.S. No. 348/2023. He deposed in his examination in chief (Exh.107) that, Angad (defendant No. 2) was his real brother. After his death his legal heirs are taken on record. It is admitted by him that, during the lifetime of father of plaintiff, defendant Nos. 1 and 2 their father Gangaram had divided ancestral property in survey No. 40 and 121/C among plaintiff, defendant Nos. 1 and 2 and he has kept the land admeasuring 5 H 28 Guntha situated in survey No. 34/B for himself. Their father has given application to Talathi for mutation entry according to the partition and accordingly mutation No. 621 was allowed. He deposed that, after death of their father the land admeasuring 5 H 28 R situated in survey No.34/B was to be divided equally between plaintiff and Harischandra (defendant No.1) and land situated in the village next to the land of Namdeo Chilme was to be given to Angad (defendant No.2).

Plaintiff had described area of survey No.34/B properly in the plaint. However, he has not described the eastern side boundary of the survey No.34/B in the plaint. The plaintiff has described false boundaries of the said land. The plaintiff is not concerned in any way with the suit land. He has denied remaining contents of the plaint in his examination in chief and reiterated contents of the written statement (Exh.45) in his examination in chief (Exh.107). Therefore, it is not necessary to repeat the same.

35. On perusal of mutation entry No.1082 (Exh.93) it is clear that, the name of Harischandra (defendant No.1) is appearing as the Karta of the family. It is admitted by Harischandra Chilme (DW-1) in his cross-examination that, his name is added as Karta of joint family in survey No.34/B according to the application filed by him. The 7/12 extract (Exh.92) reveals that, name of defendant No.1 Harishchandra Chilme (DW-1) is appearing as the Karta of joint family. Which is also admitted by Harishchandra Chilme (DW-1) in his cross-examination and it is further admitted that name of defendant No. 2 is appearing in the other rights column. According to 7/12 extract (Exh.95) his name was appearing in the 7/12 extract till the execution of sale deed (Exh.87) in favour of the plaintiff.

36. It is further brought on record in cross-examination of Harischandra Chilme (DW-1) that, the mutation entry No. 621 (Exh.108) does not mention that he

has been given land near the road and plaintiff has been given land situated behind his land. However, there is no document prepared regarding the same. According to the mutation entry No. 1082 (Exh.93) his name came to be recorded in the ownership column of 7/12 extract and name of Angad (defendant No. 2) was recorded in the other rights column. The said mutation entry No. 1082 (Exh.93) is not according to the contents of para No. 2 in his affidavit of examination in chief (Exh.107). It is recorded due to the mistake of Talathi. However, he did not file appeal against the said mutation entry No. 1082 (Exh.93). The document regarding partition in survey No. 34/B is not prepared.

37. He also deposed in his cross-examination that, according to the sale deed (Exh.87) he has sold 2 Acre 51 Gunthas land situated towards western side from 1 H 12 R land to the plaintiff. On the day of agreement to sell possession of said land is given to the plaintiff and amount of Rs.1,01,000/- was received from the plaintiff which is wrongly mentioned. He has admitted that, he told to prepare relinquishment deed (Exh.88). Contents of relinquishment deed (Exh.88) are correct. Contents of relinquishment deed (Exh.88) was told by him. After the relinquishment deed (Exh.88), he has filed application for effecting mutation entry. However, for that purpose notices were not issued to plaintiff and deceased Angad (defendant No.2) and the mutation entry was effected without issuing notices.

38. Another witness examined by defendant Nos.1 and 2 is Umakant Rathod (DW-2) in R.C.S. No. 348/2023. He is the neighboring agriculturist of survey No. 34/B. He deposed in his examination in chief (Exh.109) that, his land is situated in Gat No.35/1 at Budhoda which is next to the suit land. He further deposed that, after death of Gangaram in the year 1999 the land in Gat No.34/B came in the possession of plaintiff and defendant No.1. Defendant No. 1 is doing agricultural work in Gat No.34/B in the land situated towards eastern side near the road and the other half land towards western side is in possession of plaintiff since 1990-1991. Since then, they are doing agricultural work separately. The plaintiff has given 12 feet wide east-west road to defendant No. 1 from the southern side. The said road passes besides his land. Defendant No. 1 has possession over the half portion of eastern side land situated near Latur-Ausa road in Gat No.34/B and defendant No. 1 has dug well in the year 2014-2015 and obtained electric connection for electric motor on the said well and also has taken two boar wells along with submersible pumps. He has also laid down pipeline in the said eastern portion of land, erected tin shed/cattle shed and also cultivated sugarcane crop. The plaintiff is not concerned with the said land.

39. He admits in his cross-examination that, his agricultural land in Gat No.35/1 is situated near the Ausa highway. He can go to his agricultural land from the highway. He is not concerned with 12 feet wide road to approach his

agricultural land from the highway. He does not know how the land situated in survey No.34/B came in possession of Harischandra (defendant No.1). He does not know when the well was dug by defendant No.1.

40. Defendant Nos.1 and 2 have examined Pralhad Chilme (DW-3) in R.C.S. No. 348/2023. Contents of affidavit of examination in chief (Exh.110) of Pralhad Chilme (DW-3) in para Nos. 2 and 3 are the same as mentioned in his affidavit of examination in chief (Exh.109) of Umakant Rathod (DW-2). Both of them had been to the office of advocate at the same time. Pralhad Chilme (DW-3) deposed in his examination in chief that, his agricultural land situated in Gat No.34/A/2 which is situated near Gat No. 34/B. He is the relative of plaintiff and defendant No.1. Remaining examination in chief of said witness is the same as that of Umakant Rathod (DW-2).

41. The plaintiff cross-examined said witness and tried to bring on record that, he and his son are having criminal background. He does not know when the father of plaintiff and Harischandra (defendant No.1) had done oral partition between plaintiff and Harischandra (defendant No.1). There is no documentary evidence regarding 12 feet wide east-west road from southern side. He knows about the well dug by Harischandra (defendant No.1) in the year 2015 as he is obtaining water for his agricultural land from the said well and has got the crop of sugarcane on the said water of the

well. However, he has not taken the entry of sugarcane crop in the 7/12 extract nor he has made entry of the sugarcane crop in the record of sugar factory. He does not know when two bore wells were taken by Angad (defendant No.2).

42. However, admissions given by defendant No.1 Harischandra Chilme (DW-1) in his cross-examination regarding appeal is not filed by him against mutation entry No.1082 (Exh.93), no written document of partition was prepared regarding the land situated in survey No34/B does not falsify the sale deed (Exh.87) as the sale deed (Exh.87) and four boundaries mentioned in the sale deed (Exh.87) are admitted by the plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) in his cross-examination which proves that eastern portion of the land situated in survey No.34/B is owned and possessed by Harischandra (defendant No.1).

43. The plaintiff tried to bring on record in the cross-examination of defendant No.1 Harishchandra Chilme (DW-1) that, contents of relinquishment deed (Exh.88) was told by him. After the relinquishment deed (Exh.88) he has filed application for effecting mutation entry. However, for that purpose notices were not issued to plaintiff and deceased Angad (defendant No.2) and mutation entry was effected without issuing notices. Here it is necessary to consider the fact that, the relinquishment deed (Exh.88) was done between Harischandra (defendant No.1), Angad (defendant No.2) and Ashok Chilme (plaintiff). Therefore, there being only these

three persons parties to the relinquishment deed (Exh.88) there would be no purpose sufficed to issue notices to parties, as parties were knowing the fact that the mutation would be carried out.

44. In addition to the said evidence defendant Nos.1 and 2 by way of examining Umakant Rathod (DW-2) and Pralhad Chilme (DW-3) have proved that, Harischandra (defendant No.1) is having well and cattle shed in the eastern portion of the suit land. The plaintiff tried to bring on record the character of Pralhad Chilme (DW-3) by putting questions to him in cross-examination regarding criminal cases filed against him and his son. However, this not being criminal case and previous antecedents are not generally considered in the civil case mere pendency of criminal case is not sufficient to doubt the credibility of witness. Hence, evidence adduced by Umakant Rathod (DW-2) and Pralhad Chilme (DW-3) regarding existence of well in the eastern side portion of the suit land belonging to Harischandra (defendant No.1) cannot be disbelieved.

45. Hence from, the point of view of evidence adduced on record by both the parties to the suit, it is very important that, all these documents such as sale deed (Exh.87), relinquishment deed (Exh.88) and gift deed (Exh.89) are registered documents. The contention of the plaintiff that, Harischandra (defendant No.1) has sold the eastern portion of the suit land i.e the eastern portion of the

land situated in survey No.34/B situated at Budhoda, Tq. Ausa in his plaint and examination in chief (Exh.66) is not supported by all these documents i.e sale deed (Exh.87), relinquishment deed (Exh.88) and gift deed (Exh.89), which are admitted by the plaintiff. It is brought on record in the cross-examination of the plaintiff Ashok Chilme (PW-1) (defendant No.3 in this suit) that he has filed this suit for getting compensation amount from Harischandra (defendant No.1).

46. The learned counsel for defendants relied on the case of *Janak Dulari Devi and another Vs. Kapildeo Rani and another, 2011 (6) SCC 555*, Supreme Court of India. It is held by the Honourable Supreme Court of India that,

A. Evidence Act Section 92, Transfer of property Act 1882, Section 54 - Sale of Property – Sale deed recited that, sale consideration was received by vendor and possession of property was delivered – Vendor can show that, in fact no consideration was received by him and no possession was delivered to possessor- Evidence is admissible to contradict recitals in the sale deed acknowledging receipt of consideration.

In the present suit Ashok Chilme (PW-1) has admitted the sale deed (Exh.87) and the consideration amount. Therefore the sale of western portion of the land situated in survey No.34/B out of the share of defendant No.1 to the plaintiff is proved. Hence, the above discussed case is applicable to the present suit.

47. He further relied on the case of ***Shri. Bhimeshwara Swami Varu Temple Vs. Pedapudi Krishna Murthi and others, AIR 1973 Supreme Court 1299***. It is held by the Honourable Supreme Court of India that,

Evidence Act (1 of 1872) Section 114, Section 32 presumption of ownership and possession of land – Rebuttal – Proof- The presumption arising from several entries in the revenue records of large number of years in respect of ownership and possession of land with certain person does not stand rebutted by mere stray entries in favour of others. When the evidence is of uncertain character and is inadequate.

In the present suit the suit land is in the name of Harischandra (defendant No.1) since long time. The suit land is in the name of Harischandra (defendant No.1) as Karta of the Joint family as per mutation entry (Exh.93). Therefore the presumption goes in favour of Harischandra (defendant No.1) as owner and possessor of the suit land.

48. Merely, Ashok Chilme (PW-1) (defendant No. 3 in this suit) has described the four boundaries of the suit land in the plaint and his affidavit of examination in chief (Exh.66) which are not proved by him with the help of sufficient and cogent documentary evidence. On the contrary Ashok Chilme (PW-1) (defendant No. 3 in this suit) has admitted the sale deed (Exh.87) and four boundaries mentioned in the gift deed (Exh.89) which is the document executed by him in favour of his wife, wherein the eastern boundary of the suit

land is shown as remaining land in survey No.34/B. It is admitted fact that, the suit land is ancestral land of Joint Hindu Family. However, plaintiffs failed to prove that, suit land is acquired by defendant Nos. 5 and 6 without their consent, Harischandra (defendant No. 1) obtained relinquishment deed from Angad (defendant No. 2) and Ashok Chilme (PW-1) (defendant No. 3 in this suit) of the suit land without their consent, they are entitled for declaration that, the relinquishment deed is void, ab-initio, they are entitled for compensation of acquired land from defendant Nos. 5 and 6 and they are entitled for permanent injunction against defendant Nos. 5 and 6 for disbursement amount to Harischandra (defendant No.1). Therefore, I answer issue No.1 in the affirmative and issue Nos. 2 to 6 in the negative.

AS TO ISSUE NO.7 :-

49. In view of above discussed facts and circumstances not proved and proved in issue Nos.1 to 6, plaintiffs failed to prove that, suit land is acquired by defendant Nos. 5 and 6 without their consent, Harischandra (defendant No. 1) obtained relinquishment deed from Angad (defendant No.2) and Ashok Chilme (PW-1) (defendant No. 3 in this suit) of the suit land without their consent, they are entitled for declaration that, the relinquishment deed is void, ab-initio, they are entitled for share in compensation of acquired land from defendant Nos. 5 and 6 and they are entitled for permanent injunction against defendant Nos. 5 and 6 for disbursement amount to Harischandra (defendant No.1).

50. It is proved that, the disputed suit land is owned and possessed by Harischandra (defendant No.1). Therefore, plaintiffs have no right in the said suit land and they cannot claim their share in compensation amount for the acquired land from the suit land by defendant Nos. 5 and 6. Hence, the suit of plaintiffs is liable to dismissed. Therefore, in answer to issue No.7, I pass following order:-

ORDER

1. The suit is dismissed.
2. Parties to bear their own cost.
3. Decree be drawn up accordingly.

(Judgement dictated and declared in the open Court.)

Date :- 27/03/2026.
Place :- Ausa.

(P. I. Mokashi)
Civil Judge Senior Division,
Ausa.