

MHLA170005702023



Received on :- 21/03/2018.  
Re-registered on :- 14/03/2023.  
Decided on :- 27/03/2026.  
Duration :- 08 Y. 00 M. 06D

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

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

**Regular Civil Suit No. 348/2023.  
Old R.C. S. No. 162/2018  
Exh.No.116**

Ashok Gangaram Chilme,  
Age :60 Years, Occupation :- Agriculturist,  
R/o. Budhoda, Tq. Ausa, Dist. Latur.

**... Plaintiff.**

**V e r s u s**

1. Harischandra Gangaram Chilme,  
Age :57 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. The Competent Authority of National Highway,  
and Sub-divisional Officer, AUSA-Renapur,  
Office at old Collector Office, Shivaji Chowk, Latur.
4. The Project Director,  
National Highway No. 361,  
Bharadwaj, Venkatadri Nagar,  
Near Ayodhya Nagari, Taroda (Kd), Nanded. ...**Defendants.**

**Appearance:-**

- Shri. A. M. Nimburge Advocate for plaintiff.  
Shri. S. B. Pande, Advocate for defendant Nos. 1 and 2.  
Shri. V. T. Sakolkar, Advocate for defendant No. 4.  
Exparte- Defendant No. 3.

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

(Delivered on 27<sup>th</sup> March, 2026)

The plaintiff has filed this suit for declaration that, he is owner of the eastern portion of suit land and he is entitled to claim compensation amount of his share in the acquired land from defendant Nos. 3 and 4. He has also prayed that, the relinquishment deed bearing registration No. 322 dated 29/03/2016 be declared illegal. It is averred by the plaintiff that, defendant Nos. 1, 2 and plaintiff are brothers. Defendant No. 3 is competent authority of the Government and defendant No. 4 is the project director of the National Highway No.361.

2. Father of plaintiff namely, Gangaram had partitioned the ancestral property among his three sons namely, Angad, Ashok and Harischandra. According to the said partition of property, deceased Gangaram kept 5 Acre 28 Gunthas of land situated in survey No. 32/B (New survey No. 34/B) for himself to fulfill his day to day requirements. Remaining 17 Acre 16 Gunthas in survey No. 40 and 7 Acre 19 Gunthas in survey no. 121/C were divided among his sons as under:-

<b>Name</b>	<b>Survey Number</b>	<b>Share</b>
Angad Gangaram	121/C	2 Acre 23 Gunthe
	40	5 Acre 32 Gunthe
Ashok Gangaram	121/C	2 Acre 13 Gunthe
	40	5 Acre 32 Gunthe
Harishchandra Gangaram	121/C	2 Acre 23 Gunthe
	40	5 Acre 32 Gunthe

It was decided in said partition that, after death of Gangaram the agricultural land kept for himself in survey No.32/B would be divided among plaintiff and defendant No.1 and the land next to the agricultural land of Namdeo Chilme was to be given to defendant No. 2 and well, trees situated in that area will be common.

3. 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 plaintiff and defendant No. 2 were recorded in the other rights column of the survey No. 32/B (New survey No.34/B)

admeasuring 5 Acre 28 Gunthe situated at Budhodha, Tq. Ausa, Dist. Latur. Its four boundaries are as under:-

Towards Eastern side	–	National Highway
Towards Western side	–	Land of Dattaprasad Vitthalrao Chilme,
Towards Southern side	–	Land of Ram Laxmanrao Rathod and Sitabai Ram Rathod,
Towards Northern side	–	Land of Lalita Narayan Pandge, Anuja Gangadhar Nilapalle and Suvarna Pralhad Chilme

The plaintiff has again described four boundaries of eastern share as under:-

Towards Eastern side	–	National Highway
Towards Western side	–	Land of Kamal Ashok Chilme,
Towards Southern side	–	Land of Ram Laxmanrao Rathod and Sitabai Ram Rathod,
Towards Northern side	–	Land of Lalita Narayan Pandge, Anuja Gangadhar Nilapalle and Suvarna Pralhad Chilme.

The above share in the eastern side of survey No. 34/B is henceforth known as **“suit land.”**

4. The plaintiff and defendant No. 1 were jointly doing the agricultural work in the suit land. Defendant No. 1 has sold his half share in the suit land on 16/05/2015 by way of sale deed bearing registration No. 1394 for his own requirement, therefore remaining portion of suit land has come to the share of plaintiff. Hence, plaintiff is in possession of suit land. Defendant No. 3 had issued notice regarding acquisition of portion of suit land on 02/06/2017. Later on again some changes were done in the public notice and said public notice of acquisition of portion of suit land was again

reissue on 18/10/2017. Though, defendant No. 1 was not concerned with the suit land, he was shown owner of suit land situated in suit land in the said public notice. Therefore, the plaintiff had given written complaint to defendant No. 3 on 13/10/2017. However, no action was initiated by defendant No.3.

5. The plaintiff has kept land of his share situated in suit land and the land sold by defendant No. 1 to him was given to his wife by way of gift deed bearing registration No. 3134 dated 13/09/2017. Defendant No. 1 is having land in Gat No. 56. The said land is situated away from the main road. It is difficult for defendant No. 1 to take his agricultural equipments, bullocks therefore, he is using remaining 2.5 R land towards eastern side to take his agricultural equipments, bullocks. The land admeasuring 2.5 R is owned and possessed by defendant No. 1.

6. Defendant No. 1 and 2 called the plaintiff to the Sub-registrar Office, AUSA telling him that they are going to register the land which came to his share by way of registered document before the Sub-registrar, AUSA. When plaintiff reached the office of Sub-registrar, AUSA the document was already prepared. They obtained signature of plaintiff on the said document without giving him any opportunity to read the contents of said document and its contents were not read over to him. The said document was registered by cheating the plaintiff. According to the contents of the said document it is not mentioned in the said document that, the plaintiff has executed any relinquishment deed with defendant No. 2 and in favour of defendant No.1. The four boundaries of land are

mentioned only with intention to cheat the plaintiff in the said document. Similarly, the land is vaguely described which is already sold by the defendant No. 1 to the plaintiff by way of sale deed in the year 2002 for consideration. Therefore, the said relinquishment deed is prepared by defendant Nos. 1 and 2 along with witnesses by misleading the plaintiff and thereby cheated the plaintiff. Therefore, the said relinquishment deed bearing No. 322 dated 29/01/2016 is illegal. Therefore, the plaintiff has filed this suit for declaration that, the said relinquishment deed is illegal and plaintiff be declared as owner of the eastern side of the suit land and declaration of his entitlement to claim compensation of acquired land from defendant Nos. 3 and 4.

7. Defendant Nos. 1 and 2 have filed their written statement at Exh.45. Defendant Nos. 2/1 to 2/4 have file pursis (Exh.79) accepting the written statement(Exh.45) of defendant Nos. 1 and 2. It is admitted by defendants that, deceased father of plaintiff, defendant Nos. 1 and 2 namely Gangaram had divided the ancestral property among plaintiff and defendant Nos. 1 and 2. After the death of Gangaram, plaintiff and defendant No. 1 got half share each in survey No. 40 admeasuring 17 Acre 16 Gunthe and survey No. 121/C admeasuring 7 Acre 19 Gunthe. According to the plaintiff the land is divided among plaintiff, defendant Nos. 1 and 2. It is also admitted by defendants that, after death of Gangaram the land in survey No.34/B would be divided among plaintiff and defendant No. 1 and the land next to the land of Namdeo Chilme would be given to defendant No.2.

8. They further submit that, partition is done during the lifetime of Gangaram and land in survey No. 34/B was given to the plaintiff and defendant No.1. It is admitted by defendant No. 2 that, he is not concerned with the suit land. The eastern side of suit land is not properly described by the plaintiff. The northern boundary is wrongly described by the plaintiff. The land of Suvarna Chilme is only situated towards northern side. Plaintiff has not properly and specifically described the suit land. The plaintiff is not concerned with the suit land.

9. It is further submitted by defendant Nos. 1 and 2 that, after the death of their father Gangaram, plaintiff and defendant No. 1 were doing agricultural work in half-half portion of the lands situated in survey No.34/B since 1991. The eastern portion of land situated in survey No. 34/B was in possession of defendant No. 1 and western portion of land was in possession of plaintiff. After death of their father Gangaram, names of plaintiff and defendant No. 2 were recorded in the other rights column of 7/12 extract and name of defendant No. 1 was recorded in the ownership column according to the heirship. These entries were made only for the purpose of mutation entry of legal heirs of deceased father Gangaram.

10. On 16/05/2002, defendant No. 1 had given the half portion of suit land to the plaintiff by way of registered sale deed bearing 1394/2002. Accordingly, name of plaintiff was recorded in the ownership column of 7/12 extract. The said sale deed is only for namesake and no consideration amount was given or taken.

Therefore, defendant No. 2 has consented for the said sale deed in the name of plaintiff. It is clearly mentioned in the sale deed that, the western portion of suit land admeasuring 1 H 12 R of the share of the plaintiff is given to the plaintiff by defendant No.1.

The land described in para No. 3 of the sale deed is of defendant No. 1 as the sale deed of 1 H 12 R land was done in favour of plaintiff in the year 2002. Wherein it is mentioned in the said sale deed that, the remaining land of defendant No. 1 is situated towards eastern side which shows that, defendant No. 1 is owner and possessor of eastern side land situated in survey No.34/B. The sale deed of year 2002 was only for the purpose of give the half share in the suit land to the plaintiff which was only for namesake. Therefore, defendant No. 1 is the owner and possessor of eastern side portion of the suit land. Therefore, plaintiff is no authority to claim ownership and possession over the eastern side portion of suit land. The eastern portion of suit land is in the name of plaintiff since the year 2002 and name of defendant No. 1 is appearing in the ownership column of 7/12 extract of suit land.

11. The plaintiff has not objected the notice of defendant No. 3 from 1990 to 2002 and 2002 to 2018 for removing the name of defendant No.1 from the revenue record of suit land. Therefore, defendant No. 1 is owner and possessor of 1 H 15 R land in survey No.34/B. The plaintiff has not come before the Court with clean hands. According to the relinquishment deed the plaintiff has relinquished his right over the 1 H 15 R land situated in survey No.34/B. Accordingly, his name is removed from the other rights

column of 7/12 extract. The plaintiff has himself has relinquished his share in the suit land by way of relinquishment deed. Hence, he cannot deny the same. Defendant No. 1 is having cattle shed in the suit land. He is also having one independent well in the suit land and he has obtained electric connection on the said well which is in his name. Defendant No. 1 also have one boar well in his name which entry made in 7/12 extract. According to the mutation entry name of defendant No. 1 is recorded as owner and possessor of the suit land. The plaintiff has not objected the boar well in the suit land. The compensation of acquired land is given to the defendant No. 1 as per the order of defendant Nos. 3 and 4. Only with intention that, defendant No. 1 shall not get compensation amount of acquired land, the plaintiff has filed this suit. Hence, defendant Nos. 1 and 2 prayed to dismiss the suit.

12. Defendant No. 3 has failed to appear before the Court though served with summons. Hence, the suit proceeded *ex-parte* against defendant No. 3.

13. Defendant No. 4 (Project Director, National Highways Authority of India PIU- Nanded) has filed written statement at Exh. 49 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. 4 has no role to play. Hence, there is no substance

regarding defendant No. 4 in the present suit. Therefore, it is prayed by defendant No. 4 that, the suit be dismissed to the extent of defendant No.4.

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

<b>Sr. No.</b>	<b>Issues</b>	<b>Findings.</b>
1.	Whether the plaintiff proves that, land bearing survey No. 34/B ad-measuring 5 Acre 28 R (suit property as described in plaint para No.3) is joint, undivided, ancestral property as alleged ?	No.
2.	Whether defendant Nos. 1 and 2 prove that, by way of relinquishment deed dated 29/01/2016 the plaintiff and defendant No. 2 relinquished their rights in favour of defendant No. 1 as contended ?	Yes.
3.	Whether the plaintiff proves that defendant No. 1 sold his half share in the suit property in his (plaintiff) favour on 16/05/2002 for legal necessity, as alleged ?	No.
4.	Whether the plaintiff proves that, defendant No. 1 practiced fraud, cheating and got the relinquishment deed dated 29/01/2016 executed, as alleged ?	No.
5.	Whether the plaintiff is entitled to get declaration as alleged ?	No.
6.	Whether the plaintiff is entitled to get declared that, the relinquishment deed dated 29/01/2016 is void ?	No.

7. What relief and decree?

The suit is dismissed.

### **REASONS**

15. The plaintiff has filed certified copy of sale deed bearing registration No. 1394/2022 at Exh. 87, certified copy of relinquishment deed No. 322/2016 at Exh. 88, certified copy of gift deed at Exh.89, certified copy of revision register at Exh. 90, certified copy of 7/12 extract of survey No. 34/B from the year 1966 to 1978 at Exh.91, certified copy of 7/12 extract of survey No. 34/B from the year 1981 to 1998 at Exh.92, extract of mutation entry No. 1082 at Exh.93, certified copy of Index-II of sale deed Sr. No. 1394 at Exh. 94, certified copy of 7/12 extract of survey No. 34/B from the year 1998 to 2012 at Exh.95, paper publications at Exh. 96 and 97, office copy of notice issued by plaintiff to defendant No. 3 at Exh. 98.

The plaintiff Ashok Chilme (PW-1) has filed his affidavit of examination in chief at Exh. 66. The plaintiff has further filed affidavit of examination in chief of Tukaram Kolhe (PW-2) at Exh.100. The plaintiff has filed evidence close pursis at Exh.104.

16. Defendant No.1 Harishchandra Chilme (DW-1) has filed his affidavit of examination in chief at Exh. 107. Defendants have further filed affidavit of examination in chief of Umakant Rathod (DW-2) and Pralhad Chilme (DW-3) at Exh.109 and 110 respectively. Defendant Nos. 1 and 2/1 to 2/4 have filed evidence close pursis at Exh.112.

17. Heard learned counsels for both the parties to the suit. The learned counsel for plaintiff argued that, the evidence adduced before this Court clearly establishes the lawful title and continuous possession of the plaintiff 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 the plaintiff.

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 the plaintiff and defendant No.1. However, after the death of father of plaintiff, and defendant Nos. 1, 2, defendant No. 1 mutated his name in ownership column of the revenue record and names of plaintiff and defendant No. 2 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 plaintiff 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 the plaintiff. Therefore, plaintiff became the absolute owner of the property standing in the name of deceased Gangaram out of survey No.34/B. Thereafter, the plaintiff

is in continuous possession over the suit property since the year 2002. On the other hand, defendants have failed to lead any credible evidence to established that, they are in possession of the suit property and they are 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 defendants which is unreliable and does not affect the title of the plaintiff. The evidence on record clearly shows that, the plaintiff was misled into signing the said relinquishment deed. Defendants have obtained the signature of the plaintiff by misrepresenting and taking undue advantage of his trust. During the acquisition of land by the Government Authorities, they 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. The plaintiff 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 has no right to receive compensation in respect of acquired portion of the property. The plaintiff 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 the plaintiff. The

relinquishment deed dated 29/01/2016 is defective. Defendants 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. Defendants failed to establish 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 the plaintiff 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, plaintiff is owner and possessor of acquired suit land and he is entitled for compensation of acquired land. Hence, the plaintiff be declared as lawful owner of suit property and plaintiff is entitled for compensation of acquired portion of suit land.

The learned counsel for the plaintiff has also filed his written argument at Exh. 114.

18. The learned counsel for defendant Nos.1, 2/1 to 2/4 argued that, the partition is effected after the death of father of plaintiff and defendant Nos. 1, 2, namely Gangaram. There is no pleading by the plaintiff 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 the plaintiff or evidence adduced by the plaintiff regarding the partition and allotment of separate shares. The suit is defective on the count of no pleading regarding the partition. The plaintiff failed to prove how western portion of suit land was of defendant No.1. The plaintiff has 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 the plaintiff. Road from disputed land mentioned in the sale deed proves that the land belongs to defendant No.1. The suit is defective as the plaintiff has 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.

**AS TO ISSUE NOS.1, 3 TO 6 :-**

19. The burden lies upon the plaintiff to prove that, land bearing survey No. 34/B ad-measuring 5 Acre 28 R (suit property as described in plaint para No.3) is joint, undivided, ancestral property, defendant No. 1 sold his half share of eastern side in the suit property in his favour on 16/05/2002 for legal necessity, defendant No. 1 practiced fraud, cheating and got the relinquishment deed dated 29/01/2016 executed, he is entitled for declaration that the relinquishment deed is illegal and he is entitled for compensation of land acquired. To substantiate his contention the plaintiff has examined himself. The plaintiff Ashok Chilme (PW1) 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.

20. He admits in his cross-examination that, according to the sale deed (Exh.87) 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, 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.

21. On perusal of sale deed (Exh.87) it is crystal clear from description of property in the sale deed (Exh.87) that, 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 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) 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) in his cross-examination that, after death of their father, the land situated in survey No. 34/B was divided equally between himself and defendant No.1.

22. The plaintiff further deposed in his cross-examination that, the land near Latur-Ausa road is sold by 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 other 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) in his examination in chief (Exh.66) also proves that, the plaintiff 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.

23. The plaintiff Ashok Chilme (PW-1) 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 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 defendant No. 1 and himself. He had paid amount of Rs. 1,01,000/- to defendant No. 1 after 8 days of the agreement to sell. He has paid said amount to 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.

24. The plaintiff Ashok Chilme (PW-1) admits in his cross-examination that, after death of his father relinquishment deed

(Exh.88) was done to remove his name and name of 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 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) 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) could not answer the question that, “the land towards eastern side is of 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, defendant No. 1 has 2.5 Gunthas remaining land in survey No.34/B.”

25. It is specifically proved in the cross-examination of the plaintiff Ashok Chilme (PW-1) that, after death of their father survey No.34/B was divided between himself and defendant No.1. Both of them got 2.75 Acre land each to their share. 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 defendant No.1.

26. Ashok Chilme (PW-1) further admits in his cross-examination that, 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 defendant No. 1 and has filed false affidavit of examination in chief. Thus, said admission of the plaintiff Ashok Chilme (PW-1) regarding false affidavit of examination in chief has shaken his credibility regarding evidence adduced by him in his examination in chief (Exh.66).

27. The plaintiff has also examined Tukaram Kolhe (PW-2) to prove that, he has kept amount of Rs.2,00,000/- with the said witness. Tukaram Kolhe (PW-2) deposed in his affidavit of examination in chief (Exh.100) that, he is the brother-in-law of plaintiff. He deposed in support of plaintiff Ashok Chilme (PW-1) that, the plaintiff has kept amount of Rs. 2 lakhs with him out of which the plaintiff has paid amount of Rs.1 lakh to defendant No.1 and purchased the land from him by way of registered sale deed (Exh.87). He is also one of the witness to the said sale deed (Exh.87) and other witness is Gahininath Vitthalrao Chilme. They have signed on the said sale deed (Exh.87).

28. Tukaram Kolhe (PW-2) has admitted in his cross-examination that, he does not know which land is sold by the plaintiff. He does not know when the plaintiff is sold the land in which year and for what consideration amount. The plaintiff has sold the land for the purpose of marriage. He admits that, the transaction between plaintiff and defendant No. 1 was not done in

his presence. The plaintiff has handed over amount of Rs. 1,01,000/- to defendant No. 1 before Sub-registrar. He has read the contents of sale deed. The plaintiff had admitted contents of sale deed. He had seen the land near the road.

29. Defendant Nos. 1, 2/1 to 2/4 have examined defendant No. 1 Harischandra Chilme (DW-1). He deposed in his examination in chief (Exh.107) that, 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 ad-measuring 5 H 28 R situated in survey No.34/B was to be divided equally between plaintiff and defendant No.1 and land situated in the village next to the land of Namdeo Chilme was to be given to 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.

30. On perusal of mutation entry No.1082 (Exh.93) it is clear that, the name of 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.

31. 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 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.

32. 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 defendant No.2 and the mutation entry was effected without issuing notices.

33. Another witness examined by defendant Nos.1 and 2 is Umakant Rathod (DW-2). 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.

34. 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 defendant No.1. He does not know when the well was dug by defendant No.1.

35. Defendant Nos.1 and 2 have examined Pralhad Chilme (DW-3). 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).

36. 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 defendant No. 1 had done oral partition between plaintiff and 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 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 defendant No.2.

37. 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) in his cross-examination which proves that eastern portion of the land situated in survey No.34/B is owned and possessed by defendant No.1.

38. 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 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 defendant No.1, defendant No.2 and 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.

39. 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, 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 defendant No.1 cannot be disbelieved.

40. 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 document. The contention of the plaintiff that, 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) that he has filed this suit for getting compensation amount from defendant No.1.

41. 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 the plaintiff 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.

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

43. Merely, the plaintiff 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 the plaintiff with the help of sufficient and cogent documentary evidence. On the contrary the plaintiff has admitted the sale deed (Exh.87) and four boundaries mentioned in the gift deed (Exh.89) which is the document executed by the plaintiff in favour of his wife, wherein the eastern boundary of the suit land is shown as remaining land in survey No.34/B. The witness Tukaram Kolhe (PW-2) has also admitted that, the plaintiff had admitted contents of sale deed. This does not

prove that, the plaintiff is owner and possessor of the eastern portion of the suit land and defendant No.1 has sold the eastern portion of the suit land to him. Therefore, the compensation granted to defendant No.1 by defendant Nos.3 and 4 is legal and proper. Defendant No.1 being owner and possessor of the eastern portion of the suit land, he is entitled for the compensation. Hence, the plaintiff failed to prove that, land bearing survey No. 34/B ad-measuring 5 Acre 28 R (suit land as described in plaint para No.3) is joint, undivided, ancestral property, defendant No. 1 sold his half share in the suit property in his (plaintiff) favour on 16/05/2002 for legal necessity, defendant No. 1 practiced fraud, cheating and got the relinquishment deed dated 29/01/2016 executed, therefore the plaintiff is not entitled for declaration that the relinquishment deed (Exh.88) is illegal and he is entitled for the compensation of the acquired land. Therefore, I answer issue Nos.1, 3 to 6 in the negative.

**AS TO ISSUE NO.2 :-**

44. The burden lies upon defendant Nos.1 and 2 to prove that, by way of relinquishment deed dated 29/01/2016 the plaintiff and defendant No. 2 relinquished their rights in favour of defendant No. 1. Defendant No.1 has deposed in his examination in chief (Exh.107) that, the plaintiff has on his own has executed relinquishment deed (Exh.88) in his favour. 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 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 defendant No.1, defendant No.2 and plaintiff. Therefore, there being these three 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. The relinquishment deed (Exh.88) is the registered document before the sub-registrar, at that the plaintiff was present and has signed the relinquishment deed (Exh.88) in presence of witnesses.

45. However, the plaintiff failed to examine any witness to prove that, the relinquishment deed (Exh.88) is illegal and void. Defendant No.1 has proved by way of relinquishment deed (Exh.88) dated 29/01/2016 the plaintiff and defendant No. 2 relinquished their rights in favour of defendant No.1. Hence, I answer issue No.2 in the affirmative.

**AS TO ISSUE NO.7 :-**

46. In view of above discussed facts and circumstances not proved and proved in issue Nos.1 to 6, the plaintiff failed to prove that, land bearing survey No. 34/B ad-measuring 5 Acre 28 R (suit land as described in plaint para No.3) is joint, undivided, ancestral property, defendant No. 1 sold his half share in the suit property in his (plaintiff) favour on 16/05/2002 for legal necessity, defendant No. 1 practiced fraud, cheating and got the relinquishment deed dated 29/01/2016 executed, therefore the plaintiff is not entitled

for declaration that the relinquishment deed (Exh.88) is illegal and he is not entitled for the compensation of the acquired land as he failed to prove his ownership over the eastern portion of the suit land. Hence, the suit of the plaintiff 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.