

MHLA170020352023



Received on :- 29/06/2019.  
Registered on :- 29/06/2019.  
Decided on :- 27/03/2026.  
Duration :- 06 Y. 08 M. 28D

**IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION,  
AT AUSA, DIST. LATUR.**  
(Presided Over By :- P. I. Mokashi)

**Land Acquisition Reference No. 134/2019.  
Exh. No.49.**

State of Maharashtra, Through  
The Competent Authority of National  
Highway, and Sub-divisional Officer,  
Ausa-Renapur, Office at old Collector  
Office, Shivaji Chowk, Latur. .... **Petitioner.**

**Versus**

1. Vyankuram Ashokrao Chilme,  
Age :35 Years, Occupation :- Agriculturist,  
R/o. Budhoda, Tq. Ausa, Dist. Latur.
2. Harischandra Gangaram Chilme,  
Age : 65 Years, Occupation :- Agriculturist,
3. Ashok Gangaram Chilme,  
Age :60 Years, Occupation :- Agriculturist,
4. Kamalbai Ashok Chilme,  
Age :55 Years, Occupation :- Agriculturist,  
All R/o. Budhoda, Tq. Ausa, Dist. Latur.
5. The Project Director,  
National Highway No. 361,  
Bharadwaj, Venkatadri Nagar,  
Near Ayodhya Nagari,  
Taroda (Kd), Nanded. .... **Respondents**

**Appearance :-**

Shri. V. V. Deshpande, A.G.P. for petitioner.

Shri. J. N. Karde, Advocate for respondent No.1.

Shri. S. B. Pande, Advocate for respondent No.2.

Shri. A. M. Nimburge, Advocate for respondent Nos.3 and 4.

Ex-parte – respondent No.5.

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

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

This is the reference under section 3(H) 4 of the National Highways Act, 1956 for deciding the entitlement of the compensation of amount.

2. Objection petitioner Vyankuram Chilme has filed the objection petition (Exh.2) before the Competent Authority, Sub-divisional Officer, Ausa-Renapur, submitting that, he is entitled for the compensation amount of the acquired land situated in survey No.34/B at Budhoda, Tq. Ausa. Hence, the Competent Authority, Sub-divisional Officer, Ausa-Renapur has referred the said reference for deciding the dispute regarding entitlement of the person for compensation amount of acquired land. Hence, objection petitioner Vyankuram Chilme is also made respondent No.1 in this reference along with the other respondents. The fact in issue regarding ownership of the land towards the eastern side of Surevey No.34/B situated at Budhoda and entitlement of compensation amount is also the fact in issue in the suit bearing R.C.S. No.348/2023 and R.C.S. No.367/2023. The petitioner being Sub-divisional officer Ausa - Renapur, The objection petitioner Vyankuram Chilme is made respondent No.1, Harishandra Chilme is made respondent No.2,

Ashik Chilme is made respondent No.3, Kamlbai Chilme is made respondent No.4 and and Project Director of National Highways Authority is made respondent No.5.

3. It is contended by respondent No.1 Vyankuram Chilme in his objection petition that, the land ad-measuring 1700 square meters situated in survey No.34/B at Budhoda, Tq. Ausa is acquired for National Highway No. 361 (Tuljapur to Ausa). According to notification passed under Section 3-A(1) of the National Highways Act on 12/05/2016 and it was published in the daily news paper Lokmat (marathi) and Times of India (English) on 31/05/2016.

4. Respondent No. 5 has acquired obtain possession of acquired land and its publication is issued on 11/05/2017 and 27/09/2017 as per provisions under Section 3-D of the National Highways Act. Thereafter, the final acquisition order was passed under Section 3-G (1) of the National Highways Act and the compensation amount towards acquisition land directed to given to Harischandra (respondent No. 2). Accordingly, notice was received to withdraw the compensation amount to Harischandra (respondent No. 2). Respondent No. 1 had brought to the notice of respondent No. 5 at the time of publication under Section 3-D of the National Highways Act that, the said land acquired is of Joint Hindu Family and has raised objections on following grounds:-

a. That, land ad-measuring 6 Acre 2 Gunthe in Gat No.34/B situated at Budhoda, Tq. Ausa is the ancestral land of respondent Nos. 2 and 3, respondent No. 1 and his grandfather Gangaram Irappa Chilme.

- b. Gangaram Irappa Chilme during his lifetime equally divided his land between respondent Nos. 2 and 3. Rangaram Chilme died on 31/10/1989 before taking mutation entry. Therefore, respondent No. 2 executed mutation entry No.1082 in his name as Karta of Joint Hindu Family.
- c. Respondent No. 2 has sold the western portion of his share admeasuring 2 Acre 31 Gunthas situated in survey No.34/B situated Budhoda, Tq. Ausa in favour of respondent No. 1.
- d. The mutation entry No.3276 was recorded by respondent No. 3 and name of respondent No. 3 has come to be registered as owner in the 7/12 extract.
- e. Respondent No. 3 has purchased the land according to the sale deed 1394 dated 16/05/2002 from the joint Hindu Family property.
- f. Respondent No. 2 has sold whole land of his share situated in survey No.34/B accordingly the mutation entry No.1082 is carried out.
- g. While issuing notices the respondent No. 5 has considered entries in 7/12 extract. Therefore, inadvertently notice is issued to respondent No. 2 for the acquisition of land.
- h. It is likely that, respondent No. 2 has prepared false documents from respondent No.3 to grab the compensation amount.

Therefore, respondent No. 1 has filed the objection petition as respondent No. 5 has no right or authority to decide the ownership of disputed suit land. Only Civil Court has jurisdiction to decide the ownership and entitlement of compensation amount of acquired

land according to the ratio laid down in *Mahila Bajrangi Vs. Badribai 2003 (2) SC 464* and *Hatti Vs. Sundarsing AIR 1971 SC 2320*. Therefore, the dispute is required to be referred to Civil Court as per provisions under Section 3-H (4) of the National Highways Act, 1956.

5. Harischandra (Respondent No. 2) has filed his say at Exh.7 submitting that, deceased father of Harischandra (Respondent No.2) and Ashok (Respondent No.3) namely Gangaram had divided the ancestral property among Harischandra (Respondent No. 2) and Ashok (Respondent No.3). After the death of Gangaram, they got equal share each in survey No. 40 admeasuring 17 Acre 16 Gunthe and survey No. 121/C admeasuring 7 Acre 19 Gunthe. According to the Ashok (Respondent No.3) the land is divided among himself, Harischandra (Respondent No.2) and Angad. It is also admitted by Harischandra (Respondent No.2) that, after death of Gangaram the land in survey No.34/B was to be divided among himself and Ashok (Respondent No.3) and the land next to the land of Namdeo Chilme would be given to Angad.

6. He further submit that, partition is done during the lifetime of Gangaram and land in survey No. 34/B was given to the himself and Ashok (Respondent No.3). After the death of their father Gangaram, Ashok (Respondent No.3) and Harischandra (Respondent No.2) were doing agricultural work in equal 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 himself and western portion of land was in possession of Ashok (Respondent No.3). After death of their father Gangaram, names of Ashok (Respondent No.3) and Angad were recorded in the other rights column of 7/12 extract and name of Harischandra (Respondent No.2) 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.

7. On 16/05/2002, Harischandra (Respondent No.2) had given the half portion of suit land to the Ashok (Respondent No.3) by way of registered sale deed bearing 1394/2002. Accordingly, name of Ashok (Respondent No.3) 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, Angad has consented for the said sale deed in the name of Ashok (Respondent No.3). It is clearly mentioned in the sale deed that, the western portion of suit land ad-measuring 1 H 12 R of the share of the Harischandra (Respondent No.2) is given to Ashok (Respondent No.3).

According to the sale deed the eastern portion of the suit land is in the name of Harischandra (Respondent No.2). Therefore, the disputed suit land is in the name of Harischandra (Respondent No.2) since the year 2002. Vyankuram (Respondent No.1) has not filed any application for cancellation of the name of Harischandra

(Respondent No.2) from the 7/12 extract of disputed suit land from the year 1990-2002 and from the year 2002-2018. Therefore, the disputed suit land admeasuring 1 H 15 R belongs to Harischandra (Respondent No.2). Therefore, Ashok (Respondent No.3) is not concerned with the disputed suit land. Ashok (Respondent No.3) has transferred the property by way of gift deed bearing No. 3134/2017 to his wife on 13/09/2017 which reveals that, Harischandra (Respondent No.2) is neighboring land owner towards eastern side. Harischandra (Respondent No.2) 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. He also have one boar well in his name which entry made in 7/12 extract. According to the mutation entry name of Harischandra (Respondent No.2) is recorded as owner and possessor of the suit land.

The National Highway Authority have acquired portion from the suit land and as Harischandra (Respondent No.2) is going to get the compensation amount of the acquired land, Vyankuram (Respondent No. 1) has filed the objection petition only to grab the compensation amount. Hence, Harischandra (Respondent No.2) has prayed to reject the objection petition of Vyankuram (Respondent No. 1) and grant compensation amount to him.

8. In view of above facts averred by the petitioner and respondents issues are framed at Exh.48. I have reproduced said issues along with my findings thereon for the reasons as follows :-

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1	Who is entitled for compensation of acquired land by respondent No.5 in survey No.34/B situated at Budhoda, Tq. Ausa ?	Harischandra (Respondent No.2)
2	What order ?	The petition is allowed in favour of Harischandra (Respondent No.2)

9. Respondent No. 1 has filed certified copy of mutation entry No. 621 at Exh. 41, certified copy of mutation entry No. 1082 at Exh. 42, certified copy of mutation entry No. 3276 at Exh. 43 and certified copy of order passed by Sub-divisional Officer, AUSA-Renapur at Exh. 44.

Vyankuram (Respondent No.1) has filed his affidavit of examination in chief at Exh. 38.

### REASONS

10. Heard learned counsels for respondent Nos. 1 and 2. The learned counsel for Vyankuram (Respondent No.1) argued that, the evidence adduced before this Court clearly establishes the lawful title and continuous possession of Ashok (Respondent No.3) over the suit property. Harischandra (Respondent No.2) has 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 Vyankuram (Respondent No.1).

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 Harischandra (Respondent No.2) and Ashok (Respondent No.3). However, after the death of grandfather of Vyankuram (Respondent No.1), Harischandra (Respondent No.2) mutated his name in ownership column of the revenue record and names of Ashok (Respondent No.3) and Angad 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. Harischandra (Respondent No.2) executed registered sale deed No. 1394/2002 in favour of Ashok (Respondent 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 Harischandra (Respondent No.2) in the suit property is lawfully transferred to Ashok (Respondent No.3) Therefore, Ashok (Respondent No.3) became the absolute owner of the property standing in the name of deceased Gangaram out of survey No.34/B. Thereafter, Ashok (Respondent No.3) is in continuous possession over the suit property since the year 2002. On the other hand, Harischandra (Respondent No.2) has failed to lead any credible evidence to established that, he is 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 Harischandra (Respondent No.2) and Angad which is unreliable and does not affect the title of Ashok (Respondent No.3). The evidence on record clearly shows that, Ashok (Respondent No.3) was misled into signing the said relinquishment deed. Harischandra (Respondent No.2) has obtained the signature of Ashok (Respondent No.3) by misrepresenting and taking undue advantage of his trust. It is well settled principle that, compensation payable in acquisition proceedings must follow the ownership of the land. Therefore, Harischandra (Respondent No.2) has no right to receive compensation in respect of acquired portion of the property. Ashok (Respondent 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 Harischandra (Respondent No.2) suffers from several legal and factual infirmities. He has not produced any evidence on record or challenged the registered sale deed executed by him in favour of Ashok (Respondent No.3). The relinquishment deed dated 29/01/2016 is defective. Harischandra (Respondent No.2) has heavily relied upon mutation entries in the revenue record which are merely fiscal entries and cannot determine or alter the title of immovable property. Harischandra (Respondent No.2) failed to established his actual possession over the suit property from the year 2002. Thus, the sale deed executed by Harischandra (Respondent No.2) proves the valid title of Ashok (Respondent 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, Ashok (Respondent No.3) is owner and possessor of acquired suit land and he is entitled for compensation of acquired land. Hence, Ashok (Respondent No.3) be declared as lawful owner of suit property and Vyankuram (Respondent No.1) is entitled for his share in compensation of acquired portion of suit land.

11. The learned counsel for Harischandra (Respondent No.2) argued that, the partition is effected after the death of father of Harischandra (Respondent No.2), Ashok (Respondent No.3) and Angad namely Gangaram. There is no pleading by Vyankuram (Respondent No.1) 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. Vyankuram (Respondent No.1) failed to prove how western portion of suit land was of Ashok (Respondent No.3). Vyankuram (Respondent No.1) has not prayed for cancellation of relinquishment deed. Witnesses of relinquishment deed are not examined to establish the fraud alleged by Ashok (Respondent No.3). Road from disputed land mentioned in the sale deed proves that the land belongs to Harischandra (Respondent No.2). Therefore, the learned counsel for Harischandra (Respondent No.2) prayed that, compensation amount be granted to Harischandra (Respondent No.2).

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

12. It is admitted fact that, the suit land is the ancestral joint Hindu family land which was kept by grandfather of Vyankuram (Respondent No.1) namely, Gangaram during his lifetime and after his death the said land was divided equally between Harischandra (Respondent No.2) and Ashok (Respondent No.3). Now, the burden lies upon Vyankuram (Respondent No.1) to prove that, he is entitled for compensation of acquired land from defendant No.5.

13. To substantiate his contention Vyankuram (Respondent No.1) has filed his affidavit of examination in chief (Exh.38). He has contended in his examination in chief (Exh.38) that, Grandfather of Vyankuram (Respondent No.1) namely, Gangaram Irappa Chilme is having three children namely, Angad, Ashok (Respondent No.3) and Harischandra (Respondent No.2). Harischandra (Respondent No.2) is youngest son of Gangaram. While Angad and Ashok (Respondent No.3) are elder sons of Gangaram. They have partitioned the ancestral land on 06/06/1981 as under:-

<b>Name</b>	<b>Survey Number</b>	<b>Share</b>
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

His grandfather 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 Ashok (Respondent No.3) and Harishchandra (Respondent No..2). It is approved by the mutation entry No.621 by the concerned Circle Officer on 22/07/1981. Since then family members are in possession of their shares without any objection.

He further deposed that his grandfather Gangaram died on 31/10/1990. At that time, Harishchandra (Respondent No.1), by showing himself to be Karta of the joint family recorded his name in the revenue record and wrongly recorded names of Ashok (Respondent No.3) and Angad in other rights column. Its mutation entry was taken by the revenue officer by way of mutation entry No.1082.

Harishchandra (Respondent No.2) and Ashok (Respondent No.3) were having equal share in the said land. Harishchandra (Respondent No.2) sold 2 Acre 31 Guntha (1 H 12 R) land for the consideration to his father Ashok (Respondent No.3) on 16/05/2002 by way of registered sale deed bearing registration No. 1394. Therefore, his father Ashok (Respondent 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, Harishchandra (Respondent No.2) has transferred his rights in the land situated in survey No.34/B to his father Ashok (Respondent No.3) by way of said sale deed. Hence, Harishchandra (Respondent No.2) is not concerned with the land

situated in survey No.34/B. Therefore, said land belongs to their family. Hence, his sisters along with himself are having rights in the the said acquired land.

The Land Acquisition Officer has only considered the 7/12 extract for issuance of notice during the process of the acquisition of land and accordingly issued notice to Harischnadra (Respondent No.2). Harischnadra (Respondent No.2) with intention to grab the compensation amount of the acquired land has obtained relinquishment deed from his father Ashok (respondent No.3) on the basis of false documents without their consent which has affected their rights over the said land. Therefore, the said relinquishment deed is illegal and void. His father Ashok (Respondent No.3) and himself have objected the disbursal of compensation amount to Harishchandra (Respondent No.2) before the Land Acquisition Officer and Sub-Divisional Officer AUSA-Renapur. The said objection petition was rejected by the Land Acquisition Officer and Sub-Divisional Officer AUSA-Renapur going beyond his jurisdiction. The Honourable High Court Bombay, Bench at Aurangabad has directed in the Writ Petition No.4245/2019 to deposit the amount of compensation of acquired land in the competent Civil Court till the decision of the.

After completion of legal formalities the land is acquired by the National Highways Authority and compensation amount of the acquired land is given to Harishchandra (Respondent No.2) as per the final Judgment of the land acquisition. The objection petition (Exh.2) to the said disbursement of compensation amount is filed before the Land Acquisition Officer and Sub-Divisional Officer AUSA-

Renapur on 24/08/2018. He has filed the ownership of the acquired land. Therefore it is prayed that he and his married sisters being members of joint family of Ashok (respondent No.3) be declared entitled for their share in the compensation amount of the acquired land.

14. Petitioner failed to conduct cross-examination though this matter is connected with time bound suit RCS No. 348/2023 and 367/2023 hence, "No-cross" order is passed against the petitioner.

15. The fact in issue in this reference is also the fact in issue in RCS No.367/2023 and RCS No.348/2023. Therefore, evidence adduced in RCS No.367/2023 and RCS No.348/2023 is considered in this reference.

16. It is admitted fact that, the disputed land is the ancestral joint Hindu family land which was kept by grandfather of Vyankuram (Respondent No.1) during his lifetime and after his death the said land was divided equally between Harishchandra (Respondent No.2) and Ashok (Respondent No.3) Now, the burden lies upon Vyankuram (Respondent No.1) and his sisters to prove that, suit land is acquired by respondent No. 5 without their consent, Harishchandra (Respondent No.2) obtained relinquishment deed from Ashok (Respondent No.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 respondent No. 5.

17. To substantiate contention plaintiffs in RCS No.367/2023 have examined plaintiff No. 1 Vyankuram Chilme (PW-1) (Respondent No.1 in this LAR) 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.

18. Moreover, evidence adduced in R.C.S. No. 348/2023 is considered in RCS No.367/2023. Hence, it is taken for discussion in this reference to the extent entitlement of compensation amount. The plaintiff Ashok Chilme in R.C.S. No. 348/2023(PW1) (Respondent No.3 in this LAR) 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.

19. 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, Harischandra defendant No.1 (Respondent No.1 in this LAR) 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.

20. 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 (Respondent No.1 in this LAR) 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) (Respondent No.3 in this LAR) 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 in RCS No.348/2023 (Respondent No.3 in this LAR). It is admitted by the plaintiff Ashok Chilme (PW-1) in RCS No.348/2023 (Respondent No.3 in this LAR) 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.

21. The plaintiff in RCS No.348/2023(Respondent No.3 in this LAR) further deposed in his cross-examination that, the land near Latur-Ausa road is sold by Harischandra defendant No. 1 (Respondent No.2 in this LAR) 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) (Respondent No.3 in this LAR) in his examination in chief (Exh.66) also proves that, the plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR) 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.

22. The plaintiff Ashok Chilme (PW-1) in RCS No.348/2023 (Respondent No.3 in this LAR) 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 (Respondent No.2 in this LAR) 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 Harishchandra defendant No. 1 (Respondent No.2 in this LAR) and himself. He had paid amount of Rs. 1,01,000/- to Harishandra defendant No. 1 (Respondent No.2 in this LAR) after 8 days of the agreement to sell. He has paid said amount to Harischandra defendant No. 1 (Respondent No.2 in this LAR) 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.

23. The plaintiff Ashok Chilme (PW-1) in RCS No.348/2023 (Respondent No.3 in this LAR) admits in his cross-examination that, after death of his father relinquishment deed (Exh.88) was done to remove his name and name of Angad 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 Harishchandra defendant No.1 (Respondent No.2 in this LAR). 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) in RCS No.348/2023 (Respondent No.3 in this LAR) 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) in RCS No.348/2023 (Respondent No.3 in this LAR) could not answer the question that, “the land towards eastern side is of Harishchandra defendant No.1 (Respondent No.2 in this LAR) 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, Harishchandra defendant No. 1 (Respondent No.2 in this LAR) has 2.5 Gunthas remaining land in survey No.34/B.”

24. It is specifically proved in the cross-examination of the plaintiff Ashok Chilme (PW-1) in RCS No.348/2023 (Respondent No.3 in this LAR) that, after death of their father survey No.34/B was divided between himself and Harishchandra defendant No.1

(Respondent No.2 in this LAR). Both of them got 2.75 Acre land each to their share. Harishchandra defendant No. 1 (Respondent No.2 in this LAR) got his share in eastern side of the land and he got share towards western 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 (Respondent No.2 in this LAR).

25. Ashok Chilme (PW-1) in RCS No.348/2023 (Respondent No.3 in this LAR) further admits in his cross-examination that, Harishchandra defendant No. 1 in RCS No.348/2023 (Respondent No.2 in this LAR) 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 Harishchandra defendant No. 1 (Respondent No.2 in this LAR) and has filed false affidavit of examination in chief. Thus, said admission of the plaintiff Ashok Chilme (PW-1) in RCS No.348/2023 (Respondent No.3 in this LAR) regarding false affidavit of examination in chief has shaken his credibility regarding evidence adduced by him in his examination in chief (Exh.66).

26. Harischandra Chilme (DW-1) in RCS No.348/2023 (Respondent No.2 in this LAR) 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 their father Gangaram, their father had

divided ancestral property in survey No. 40 and 121/C among, Harishchandra defendant Nos. 1 in RCS No.348/2023 (Respondent No.2 in this LAR), Ashok ((Respondent No.3 in this LAR) and Angad. Their father had kept the land ad-measuring 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 Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.3 in this LAR) and land situated in the village next to the land of Namdeo Chilme was to be given to Angad.

Plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR) 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 in RCS No.348/2023 (Respondent No.3 in this LAR) has described false boundaries of the said land. The plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR) 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.

27. On perusal of mutation entry No.1082 (Exh.93) it is clear that, the name of Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR) is appearing as the

Karta of the family. It is admitted by Harischandra Chilme (DW-1) in RCS No.348/2023 (Respondent No.2 in this LAR) 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) in RCS No.348/2023 (Respondent No.2 in this LAR) is appearing as the Karta of joint family. Which is also admitted by Harishchandra Chilme (DW-1) in RCS No.348/2023 (Respondent No.3 in this LAR) in his cross-examination and it is further admitted that name of Angad 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 in RCS No.348/2023 (Respondent No.3 in this LAR).

28. It is further brought on record in cross-examination of Harischandra Chilme (DW-1) in RCS No.348/2023 (Respondent No.2 in this LAR) that, the mutation entry No. 621 (Exh.108) does not mention that he has been given land near the road and plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR) 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 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.

29. 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 RCS No.348/2023 (Respondent No.3 in this LAR). On the day of agreement to sell possession of said land is given to the plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR) and amount of Rs.1,01,000/- was received from the plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR) 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.

30. Another witness examined by Harishchandra 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 in RCS

No.348/2023 (Respondent No.3 in this LAR) and Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR). Harishchanda defendant No. 1 in RCS No.348/2023 (Respondent No.2 in this LAR) 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 in RCS No.348/2023 (Respondent No.3 in this LAR) has given 12 feet wide east-west road to defendant No. 1 in RCS No.348/2023 from the southern side. The said road passes besides his land. Harishchandra defendant No. 1 in RCS No.348/2023 (Respondent No.2 in this LAR) is in possession over the half portion of eastern side land situated near Latur-Ausa road in Gat No.34/B and he 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 in RCS No.348/2023 (Respondent No.3 in this LAR) is not concerned with the land.

31. 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 Harishchandra defendant No.1 in

RCS No.348/2023 (Respondent No.2 in this LAR). He does not know when the well was dug by Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR).

32. 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) in RCS No.348/2023. 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 in RCS No.348/2023 (Respondent No.3 in this LAR) and Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR). Remaining examination in chief of said witness is the same as that of Umakant Rathod (DW-2).

33. The plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR) 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 in RCS No.348/2023 (Respondent No.3 in this LAR) and Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR) had done oral partition between plaintiff (Respondent No.3 in this LAR) and Harishchandra defendant No.1 (Respondent No.3 in this LAR). There is no documentary evidence regarding 12 feet wide east-west road from southern side. He knows about the well dug by

Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.3 in this LAR) 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.

34. However, admissions given by Harischandra Chilme (DW-1) in RCS No.348/2023 (Respondent No.2 in this LAR) 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 RCS No.348/2023 (Respondent No.3 in this LAR) in his cross-examination which proves that eastern portion of the land situated in survey No.34/B is owned and possessed by Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR) .

35. The plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR) tried to bring on record in the cross-examination of Harishchandra Chilme (DW-1) in RCS No.348/2023 (Respondent No.2 in this LAR) 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

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 Harishandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR), Angad and plaintiff in RCS No.348/2023 (Respondent No.3 in this LAR). 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.

36. It is proved in the evidence adduced by Umakant Rathod (DW-2) and Pralhad Chilme (DW-3) in RCS No.348/2023 that, Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR) is having well and cattle shed in the eastern portion of the suit land. The plaintiff (Respondent No.3 in this LAR) 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) in RCS No.348/2023 regarding existence of well in the eastern side portion of the suit land belonging to defendant No.1 cannot be disbelieved.

37. Hence, from the point of view of evidence adduced on record by both the parties in RCS No.348/2023, 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 in RCS No.348/2023 (Respondent No.3 in this LAR) that, Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR) 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 in RCS No.348/2023 (Respondent No.3 in this LAR). It is brought on record in the cross-examination of the plaintiff Ashok Chilme (PW-1) in RCS No.348/2023 (Respondent No.3 in this LAR) that he has filed this suit for getting compensation amount from defendant No.1.

38. The learned counsel for respondent No.2 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 (Respondent No.3 in this LAR) 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 Harishchandra defendant No.1 (Respondent No.2 in this LAR) to the plaintiff (Respondent No.3 in this LAR) is proved. Hence, the above discussed case is applicable to the present suit.

39. 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 Harishchandra defendant No.1 (Respondent No.2 in this LAR) since long time. The suit land is in the name of Harishchandra defendant No.1 (Respondent No.2 in this LAR) as Karta of the Joint

family as per mutation entry (Exh.93). Therefore, the presumption goes in favour of Harishchandra defendant No.1 (Respondent No.2 in this LAR) as owner and possessor of the suit land.

40. Merely, the plaintiff (Respondent No.3 in this LAR) 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 (Respondent No.3 in this LAR) with the help of sufficient and cogent documentary evidence. On the contrary the plaintiff (Respondent No.3 in this LAR) 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 (Respondent No.3 in this LAR) in favour of his wife, wherein the eastern boundary of the disputed land is shown as remaining land in survey No.34/B. It is admitted fact that, the disputed land is ancestral land of Joint Hindu Family. However, plaintiffs in RCS No.367/2023 failed to prove that, disputed land is acquired by defendant No. 5 without their consent, Harishchandra defendant No.1 (Respondent No.2 in this LAR) obtained relinquishment deed 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 No. 5. Therefore, I answer issue No.1 in the negative.

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

41. In view of above discussed facts and circumstances proved and not proved in issue No.1, plaintiffs in RCS

Nos.348/2023 and 367/2023 failed to prove that, suit land is acquired by defendant No. 5 in RCS No367 without their consent, Harishchandra defendant No. 1 in RCS No.348/2023 (Respondent No.2 in this LAR) obtained relinquishment deed from Angad and plaintiff in RCS NO.348/2023 (Respondent No.3 in this LAR) of the disputed 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 No. 5. Hence, defendant No.5 (Respondent No.5) has rightly disbursed the compensation amount to Harishchandra defendant No.1 in RCS No.348/2023 (Respondent No.2 in this LAR) as per Judgment and Order (Exh.44) passed by him. Thus, Harishchandra in RCS No.348/2023 (Respondent No.2 in this LAR) is liable to get compensation amount. Therefore, in answer to issue No.2, I pass following order:-

**ORDER**

1. Harishandra Ganagaram Chilme (Respondent No.2) in this LAR) is entitled to get compensation amount.
2. The petitioner shall disburse the compensation amount to Harishchandra (Respondent No.2) within one month from this Judgment.

(Judgment dictated and pronounced in the open Court.

Place:-Ausa.  
Date :- 27.03.2026.

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