

MHNG150002032017



Received on : 06-02-2017

Registered on: 06-02-2017

Decided on : 12-03-2026

Duration : 09-Y. 01-M. 06-D.

**IN THE COURT OF JOINT CIVIL JUDGE JUNIOR DIVISION,  
HINGNA, DISTRICT. NAGPUR.**

( Presided over by : V. I. Shaikh )

R.C.S. No. 18/2017

**Exh. No.49**

- 1] **Prabhakar Bhauraoji Jibhkate,**  
Age -43 Years, Occu. Agriculturist  
R/o. Vag (Mandhal), Post Vag,  
Tah. Kuhi, District- Nagpur

**.... Plaintiff**

- Versus -

- 1] **Shri. Bhayya Vithoba Bobde,**  
[Dead through his legal heirs]
- i] **Smt. Shashikala Bhayya Bobde,**  
Aged about adult, Occ - not known
- ii] **Shri Ravindra Bhayya Bobde,**  
Aged about adult, Occ - Private,  
Both R/o, Qtr. No. 29, MHADA Colony,  
Butibori, Tah. Hingna, Distt. Nagpur

- 2] **Shri Pundalik Chirkut Rajurkar,**  
Aged about 54 yrs, Occ - Business,  
R/o, Qtr. No. 6, MHADA Colony, Butibori,  
Tah. Hingna, Distt. Nagpur
- 3] **Sheikh Shafi Sheikh Mehboob,**  
[Dead through his legal heirs]
- i] **Pyari Shafi Sheikh,**  
Aged adult, Occ- not known,
- ii] **Toshib Shafi Sheikh,**  
Aged - adult, Occ- not known,
- iii] **Wahida Shafi Sheikh.**  
Aged adult, Occ - not known  
All R/o, Ward No. 2, Old Basti, Bori, Butibori,  
Tah. Hingna, Distt. Nagpur,

.... Defendants

**Suit Claim** :- For Declaration and Possession

**Counter Claim** :- For Declaration and perpetual injunction

**Appearance:-**

For the plaintiff : Advocate Shri. R.D. Khobragade

For Defendants : Advocate Shri. R.M. Bhongade

## JUDGMENT

(Delivered on 12<sup>th</sup> March, 2026)

1] This is a suit for the declaration of ownership and possession of the suit property, along with the defendants' counterclaim seeking a declaration of ownership by adverse possession and a perpetual injunction to restrain the plaintiff from interfering with the defendants' peaceful possession of the suit property.

### **Description of property :-**

2] The suit property is consisting of plot bearing No. 70 admeasuring about 150 sq. meters situated at Mauza - Bidganeshpur, P. H. No. 77, Tah. Hingna, Dist. Nagpur and surrounded by following boundaries :-

Towards East : Plot No. 71,  
Towards west : 9.00 meter wide Road,  
Towards north : Plot No. 69  
Towards South : 7.5 meter wide Road.

(Hereinafter referred as suit property for sake of convenience).

### **Brief Facts: -**

3] It is the case of plaintiff that, he is an agriculturist. Defendants No. 1 and 2 are the joint owners of Field Survey No. 43/B-1, measuring 3.69 hectares, situated at Mauza Bidganeshpur, P.H. No. 77, Tahsil Hingna, District Nagpur. Defendant No. 3 is the constituted attorney of Defendants No. 1 and 2. The defendants demarcated a layout on the

said field, dividing it into 120 plots, which they sold to various purchasers under the name of M/s. Sai Nagar Agency, Butibori, District Nagpur.

4] The plaintiff purchased the suit property for a total consideration of ₹40,350/- through a sale agreement dated 25/02/2004, executed by the defendants. The agreement was signed by Defendant No. 3 on behalf of Defendants No. 1 and 2. The plaintiff paid the entire consideration amount, along with registration charges, to the defendants. Subsequently, a registered sale deed (No. 684/2005, dated 09/02/2005) was executed in favor of the plaintiff before the Sub-Registrar, Hingna, in the presence of two attesting witnesses.

5] Defendant No. 3, acting as the constituted attorney of Defendants No. 1 and 2, executed the sale deed. The plaintiff paid all necessary registration fees, stamp duty, and other charges as demanded by the defendants. However, in the sale deed, the consideration was shown as only ₹16,140/- instead of the actual amount to evade income tax liability. By virtue of the sale deed, the plaintiff became the absolute owner of the suit property and was given symbolic possession, with an assurance of actual physical possession after proper measurement.

6] Despite repeated requests, the defendants failed to measure the plot, deliver physical possession, or provide a No Objection Certificate (NOC) for mutation in the Gram Panchayat and revenue records. The plaintiff, residing at Vag Mandhal, made several efforts to follow up with Defendant No. 3, who repeatedly gave false assurances but took no concrete steps. As a last resort, the plaintiff issued a legal notice

dated 01/02/2017, demanding possession and NOC within two days, but the defendants failed to comply.

7] Given the defendants' deliberate avoidance and lack of cooperation, the plaintiff has been compelled to file this suit seeking a declaration of absolute ownership, delivery of physical possession, proper measurement of the plot, and issuance of an NOC for mutation. The plaintiff prays for a decree declaring his rightful ownership, entitlement to possession, measurement of the plot, and necessary permissions for mutation in the relevant government records. Additionally, the plaintiff seeks an order directing the defendants to hand over possession and complete all formalities as per the sale deed.

8] The defendant no.1 and 2 through their POA holder defendant no.3 has filed written statement at Exh. 18 and denied the claim of the plaintiff. It is contended by the defendants that the suit is barred by limitation. The plaint conspicuously fails to plead that the suit was filed within the limitation period, rendering it liable for dismissal on this ground alone. Furthermore, the alleged cause of action, as per the plaintiff's own pleadings, first arose on 09.02.2005, yet the suit was filed much later, making it hopelessly time-barred. Additionally, the plaint suffers from a fatal defect of non-disclosure of a continuous and day-to-day cause of action, which is mandatory under law. The vague and inconsistent pleadings regarding the cause of action further weaken the plaintiff's case.

9] It is further contended by the defendants that the suit is bad for the non-joinder of a necessary party, namely M/s. Sai Nagar Agency,

which has a direct interest in the subject matter of the suit. The plaintiff's failure to implead this entity is a sufficient ground for dismissal.

10] It is further contended that the possession of the suit property was never delivered to the plaintiff. In fact, the defendants have remained in open, continuous, peaceful, and hostile possession of the property since the date of the sale deed, with the full knowledge of the plaintiff. The plaintiff never made any attempt to take possession within the statutory period of 12 years, thereby acquiescing to the defendants' possession.

11] The defendants have not only retained possession but have also developed the property, paid taxes, and maintained it without any interruption. This uninterrupted and hostile possession, coupled with the plaintiff's inaction, has resulted in the defendants perfecting their title by adverse possession.

12] The plaintiff's allegations that he repeatedly requested the defendants for measurement, possession, or a No Objection Certificate (NOC) are false and categorically denied. Similarly, the contents of the legal notice dated 01.02.2017 are disputed in their entirety. The defendants have never assured the plaintiff of delivering possession or providing any NOC, as falsely alleged.

13] Proceeding further, defendants, by way of their counterclaim prays for Declaration of Ownership by Adverse Possession. It is submitted the the defendants have been in open, continuous, and

hostile possession of the suit property since 09.02.2005, thereby acquiring ownership rights and grant a permanent injunction in favor of the defendants, restraining the plaintiff and his agents from alienating, transferring or interfering with their possession;

14] The plaintiff has filed written statement at Exh.20 to the counterclaim and states that the defendants only gave symbolic possession, and the plaintiff was always aware that the defendants remained in physical control of the suit property. The defendant's claim of open, peaceful, and hostile possession is false.

15] The plaintiff repeatedly demanded possession through requests and a legal notice in 2017 before filing the case. Since the suit was filed within the 12-year, the defendant's argument of adverse possession is invalid. The counterclaim has no merit and should be dismissed with heavy costs.

16] During pendency of the suit defendant no.1 and 3 died. Hence summons issued to the legal representative of the defendant no.1 and 3. However, they failed to appear despite service. Hence suit is proceeded exparte against them.

17] Considering the rival pleadings of both the parties and documents produced in support of it, my learned predecessor has framed issues at Exh. 22 which I have reproduced below and record my findings thereon for reasons to follow:

Sl.	Issues	Findings
1]	Whether the plaintiff proves that he has purchased the suit property by virtue of sale deed dated 09.02.2005 from the defendants ?	Yes
2]	Whether the plaintiff further proves that despite purchasing the suit property, the defendants did not hand over the possession of the same ?	Yes
3]	Whether the plaintiff is entitled for the decree of possession ?	Yes
4]	Whether the defendants prove that they have become owners of the suit property by way of adverse possession ?	No
5]	Whether the defendants prove that the plaintiff is disturbing their peaceful possession of the suit property ?	No
6]	Whether the plaintiff proves that he is entitled to the reliefs of declaration and permanent injunction ?	Yes
7]	Whether the suit is within the period of limitation ?	Yes
8]	What order and decree ?	As per final order

### REASONS

18] I have heard the learned counsel for the plaintiff, Shri R.D. Khobragade. The defendants and their advocate have been consistently absent from the proceedings. Hence, arguments on behalf of the defendants are closed after affording them sufficient opportunity.

19] To prove the case, plaintiff Prabhakar Jibhkate, has examined himself as PW.1 at Exh.25 and Mr. Sahadev Vajari as PW.2 at Exh.32. The plaintiff has also produced on record original sale deed no. 684/2005 at Exh.26, agreement to sale dated 25.02.2004 at Exh.27, Legal notice at Exh. 28, postal receipts and delivery acknowledgments at Exh.29 (A, B, C) and 30 (A, B, C). On the other hand, the defendants neither examined any witnesses nor filed any documents on record to substantiate their plea.

**ADMITTED FACTS :-**

20] Before examining the merits of the evidence presented by both parties, it is necessary to first outline the undisputed facts emerging from their pleadings, which are as follows :-

- i) It is undisputed that that defendants No. 1 & 2 were the original joint owners of Field Survey No. 43/B-1 (3.69 hectares) at Mauza Bidganeshpur, Tah. Hingna, Dist. Nagpur.
- ii) It is admitted that defendant No. 3 acted as the constituted attorney of Defendants No. 1 & 2 in executing transactions.
- iii) The execution of sale agreement (25/02/2004) and registered sale deed (No. 684/2005, dated 09/02/2005) are not disputed.
- iv) The defendants do not deny receipt of payment but dispute the amount.
- v) It is admitted that the defendants retained physical possession post-sale.

**ISSUE NO. 1 :-**

21] Plaintiff Mr. Prabhakar Jibhkate [PW.1] has deposed that defendant Nos. 1 and 2 are the joint owners of Field Survey No. 43/B-1, measuring 3.69 hectares, located at Mauza Bidganeshpur, P.H. No. 77, Tah. Hingna, Dist. Nagpur. Defendant No. 3 acts as their constituted attorney. The defendants demarcated a layout on the said field, dividing it into 120 plots, which they sold through M/s. Sai Nagar Agency, Butibori, Dist. Nagpur.

22] He further deposed that he purchased Plot No. 70, measuring 150 sq. meters, for ₹40,350 under a sale agreement dated 25/02/2004, executed by Defendant No. 3 on behalf of Defendant Nos. 1 and 2. He paid the full consideration and registration charges, following which the defendants executed a registered sale deed (No. 684/2005, dated 09/02/2005) before the Sub-Registrar, Hingna. However, the sale deed reflected a consideration of only ₹16,140 to evade income tax. Though symbolic possession was transferred, the defendants failed to deliver actual physical possession or provide a No Objection Certificate (NOC) for mutation in Gram Panchayat and revenue records. Despite repeated requests, Defendant No. 3 only gave assurances without taking action.

23] He further deposed that as a last resort, he issued a legal notice on 01/02/2017, demanding possession and NOC within two days. The defendants neither complied nor responded, compelling him to file the present suit. He asserts that the defendants' possession is not adverse, as he consistently demanded possession through lawful means.

24] He affirmed the contents of the agreement was marked as Exhibit-27, sale deed marked as Exhibit-26, legal notice dated 01.02.2017, sent to the defendants Exhibit-28, while the postal receipts and delivery acknowledgments were marked as Exhibits-29 (A, B, C) and 30 (A, B, C).

25] During cross examination the plaintiff has admitted that he could not explain the nature of the document (Exh.27). He acknowledged paying Rs. 40,350/- to the defendants for the disputed property but conceded that no receipt or record of this transaction had been produced in evidence. He agreed that the sale deed (Exhibit-26) mentioned a consideration of Rs. 16,140/-, which he had paid, but clarified that the remaining amount (Rs. 40,350/-) as claimed in the plaint had not been formally documented.

26] The plaintiff further admitted that, despite repeatedly demanding measurement, possession, and a No Objection Certificate (NOC) from the defendants, he had not submitted any written requests on record, nor did he possess such documents. He conceded that the disputed property had remained in the defendants' possession since the sale. He confirmed executing the agreement (Exhibit-27) with Sai Nagar Agency, Butibori, but could not explain why the agency had not been impleaded as a defendant in the case. When asked whether the defendants continued to pay taxes for the property, he pleaded ignorance. He acknowledged that the defendants, being in possession, were the de facto owners but denied filing a false affidavit.

27] Sahadev Vanjari [PW-2] states that he is personally acquainted with the plaintiff and Defendants, noting that Defendant No. 1 is now deceased. He confirms that the plaintiff purchased the suit Plot No. 70, measuring 150 square meters, from Defendants 1 to 3. He affirms that he was present on 25.02.2004, when the plaintiff and Defendant No. 3, acting on behalf of Defendants 1 and 2, executed the sale agreement (Exhibit 27). He personally witnessed both parties signing the document and added his own signature as a witness, confirming that the contents of Exhibit 27 are true and accurate.

28] Regarding the financial transactions, the deponent states that the total sale consideration amounted to Rs. 40,350. He observed the plaintiff making an initial payment of Rs. 30,000 to Defendant No. 3 on the date of the agreement, followed by the remaining Rs. 10,350, along with registration charges, which were paid by 09.02.2005. Subsequently, on 09.02.2005, Defendant No. 3 registered the sale deed before the Sub-Registrar's Office in Hingna, transferring ownership to the plaintiff. The deponent confirms that the sale deed (Exhibit 27) contains the genuine signatures, photographs, and thumb impressions of both the plaintiff and Defendant No. 3, as well as his own signature as Witness No. 1 and that of Shri Dinesh Ingole as Witness No. 2.

29] The deponent further testifies that while the sale deed was properly executed, the defendants failed to deliver physical possession of the plot to the plaintiff despite repeated demands. He accompanied the plaintiff on multiple occasions to request possession, but the defendants refused under various pretexts. Additionally, the deponent reveals that he himself purchased Plot No. 92 (measuring 1,920 square

feet) in the same layout from the defendants and paid the full consideration, yet they similarly failed to execute the sale deed in his favor. As a result, he filed Civil Suit No. 37/2017, which remains pending before this court.

30] Finally, the deponent states that the plaintiff repeatedly demanded possession, proper measurement of the plot, and a No Objection Certificate (NOC) for mutation of the property, but the defendants have refused to comply with any of these requests to date. The witness confirms his signature appears as Witness No. 1 on sale deed of the suit property at Exh.26 and verifies that the contents are true and correct, including the authentic signatures of both parties.

31] Defendants failed cross examine the PW-2. Consequently, evidence of Sahadev Vanjari [PW-2] remains unchallenged.

32] A perusal of the evidence establishes that the sale deed at Exh.26 (No. 684/2005, dated 09/02/2005) is a registered deed executed in favor of the plaintiff. The plaintiff has duly proved its execution through attesting witness Sahadev Vanjari [PW-2] as required under Section 68, Evidence Act. His testimony remains unchallenged due to the lack of cross examination. Moreover, the defendants do not dispute the execution of the sale deed, which shifts the burden onto them to prove any defect in title. The defendants have failed to rebut said presumption. The sale deed is conclusive proof of title under Section 54 of the Transfer of Property Act, 1882, and Section 17 of the Registration Act, 1908. Though the plaintiff admits receiving only symbolic possession, the law distinguishes between ownership and

possession. Hence, the defendants' retention of possession does not invalidate the plaintiff's ownership rights in the suit property.

33] Though the plaintiff admitted a discrepancy in the consideration amount mentioned in the sale deed (₹16,140/-) versus the actual claimed payment (₹40,350/-), this does not invalidate the transfer of title under Section 54 of the Transfer of Property Act since a registered sale deed remains conclusive proof of transfer under Section 17 of the Registration Act. The defendants' failure to cross-examine PW-2 or produce any contradictory evidence further strengthens the plaintiff's case, notwithstanding their stand regarding non-delivery of possession and alleged tax evasion in the declared consideration amount. Thus, the plaintiff has discharged his burden of proof under Section 101 of the Evidence Act by establishing valid execution of the sale deed through both documentary and testimonial evidence that stands unrebutted on record

34] In the light of above discussion, it is clear that the plaintiff is the lawful owner of the suit property by virtue of the registered sale deed. The plaintiff's ownership is legally established. Therefore, I answer issue no.1 in affirmative.

#### **ISSUE NO. 2 :-**

35] So far as the issue of possession is concerned, it is undisputed that despite executing the sale deed (Exh.26) with respect to the suit property, the defendants retained physical possession post-sale. Hence, I answer Issue No. 2 in the affirmative.

**ISSUE NO. 4 :-**

36] It is claimed by the defendants that they have become owner of the suit property through adverse possession. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the uninterrupted period of 12 years, with the intention to exclude the true owner. However, in this case, the defendants' possession originated from a lawful sale transaction and they produced no evidence demonstrating they ever asserted hostile ownership against the plaintiff's title. The plaintiff's repeated demands for possession, including the 2017 legal notice, clearly interrupted any potential adverse possession claim and showed the defendants' retention of possession was never acquiesced to by the true owner.

37] Moreover, the defendants' complete failure to examine witnesses or produce documentary evidence of their alleged adverse possession (such as tax receipts, construction records or utility bills) fatally undermined their counterclaim. Their possession remained permissive in nature as it stemmed from their original status as vendors under the 2005 sale deed. Since the plaintiff initiated legal action within 12 years of being denied possession, and the defendants could not prove the mandatory elements of animus possidendi and continuous hostile

possession, their claim of having acquired title by adverse possession must necessarily fail under Article 65 of the Limitation Act, 1963. Hence, I answer issue no.4 in negative.

#### **ISSUE NO. 5 :-**

38] It is contended by the defendants that the plaintiff is disturbing their peaceful possession of the suit property and hence he be restrained by from disturbing their peaceful possession over the suit property. In this regard, though the defendants assert continued possession since the 2005 sale deed (Exh.26), their own pleadings reveal critical weaknesses in this contention. The registered sale deed (Exh.26) conclusively establishes the plaintiff as the lawful owner, and the defendants' possession after the sale was merely permissive in nature as former vendors, not indicative of any independent right.

39] Furthermore, the defendants did not produce any evidence such as police complaints, witness testimony, or documentary proof to demonstrate actual disturbance by the plaintiff. Their counterclaim appears as an afterthought without factual foundation, particularly given their failure to cross-examine the plaintiff's witnesses or present any substantive material to support their allegations. The plaintiff's lawful demands for possession through proper legal channels cannot be construed as disturbance, but rather as legitimate assertion of his ownership rights. Since the defendants could not prove either lawful entitlement to continued possession or any specific acts of disturbance by the plaintiff, their claim for injunction remains unsubstantiated. Therefore, I am of the view that the defendants have failed to

substantiate their claim that the plaintiff is disturbing their peaceful possession of the suit property. Hence, I answer issue no.5 in the negative.

### **ISSUE NO. 7 :-**

40] It is contended by the defendants that the suit is bared by limitation as it was not filed within the prescribed 12 year period under Article 65 of the Limitation Act, 1963. In this regard, it appears that the cause of action arose on 09.02.2005 (date of the registered sale deed), when the defendants failed to deliver possession to the plaintiff. While the defendants contend that the suit is time-barred, the plaintiff's repeated demands for possession (including the 2017 legal notice, Exh. 28) and the filing of the suit soon thereafter confirm that the limitation period was interrupted.

41] Moreover, since the defendants' possession was permissive (as vendors retaining possession post-sale) and not adverse, the 12-year limitation for recovery of possession started only when the plaintiff's right was expressly denied. The suit, filed in 2017, falls well within limitation from the last demand (2017 notice) and certainly within 12 years of the 2005 sale deed. The defendants' plea of limitation is thus untenable. Hence I answer issue no.7 in the affirmative.

### **ISSUE NO.3**

42] In light of the findings on Issue No. 1, the plaintiff is entitled to a decree of possession, having conclusively established ownership by virtue of the registered sale deed dated 09.02.2005 (Exh. 26). though the defendants continued in possession after the sale, their retention of

the property was merely permissive in nature as former vendors and never transformed into a legally recognized adverse possession, since they failed to demonstrate the essential requirements of hostile, open and continuous possession for the statutory 12-year period. The plaintiff's repeated demands for possession, culminating in the 2017 legal notice (Exh.28), clearly evidenced his consistent assertion of rights and negated any presumption of acquiescence.

43] Having proved valid title and the defendants' unjustified withholding of possession within the limitation period, the plaintiff has made out a clear case for relief under Section 5 of the Specific Relief Act. The defendants' unsubstantiated counterclaim of adverse possession, unsupported by evidence of hostile animus or exclusive control, cannot defeat the plaintiff's legal title. Consequently, the the plaintiff is entitled to decree of possession. Hence I answer issue no.3 in the affirmative.

#### **ISSUE NO. 6 :-**

44] The plaintiff has successfully established his entitlement to both the relief of declaration of ownership and permanent injunction. The registered sale deed dated 09.02.2005 (Exh.26) conclusively proves his title to the suit property, while the unchallenged testimony of PW-2 corroborates the valid execution of the sale agreement and payment of consideration. The defendants' continued possession after the sale, being permissive in nature as former vendors, does not negate the plaintiff's rightful ownership. Regarding the injunction, the plaintiff has demonstrated a clear legal right to protect his ownership interest,

especially since the defendants have no independent claim over the property and their possession stands unjustified after the valid transfer of title. The irreparable injury would ensue if the defendants are not restrained from interfering with the plaintiff's rights. Since the plaintiff has proved his lawful title and the need to protect it from unlawful interference, I am of the view that plaintiff is entitled to grant both the declaration of ownership and permanent injunction restraining the defendants from disturbing the plaintiff's possession and enjoyment of the suit property. Hence I answer issue no.6 in the affirmative.

**ISSUE NO. 8 :-**

45] In view of my findings on Issues Nos. 1 to 7, the plaintiff is entitled to the reliefs as prayed for. Accordingly, for the reasons stated above, I proceed to pass the following order in answer to Issue No. 8.

**ORDER**

- 1] Suit is decreed with costs.
- 2] The plaintiff is declared the absolute and lawful owner of the suit property by virtue of the registered Sale Deed No. 684/2005 dated 09.02.2005 (Exh.26).
- 3] The defendants' counterclaim for adverse possession is dismissed.
- 4] The defendants are directed to deliver physical possession of the suit property to the plaintiff within 8 weeks from today, failing which the plaintiff shall be entitled to seek execution through due process of law.

- 5] The defendants, their agents, and representatives are permanently restrained from interfering with the plaintiff's ownership, possession, or enjoyment of the suit property in any manner.
- 6] The defendants shall issue a No Objection Certificate (NOC) within 4 weeks to facilitate mutation of the plaintiff's name in the revenue and Gram Panchayat records.
- 7] The defendants shall pay costs of this suit to the plaintiff and shall bear their own.
- 8] Decree be drawn up accordingly.

Hingna  
Date : 12.03.2026

**[ V. I. Shaikh ]**  
Jt. Civil Judge J.D., Hingna  
Dist- Nagpur