

MHNS100000282016



Received on : 08/01/2016

Registered on : 08/01/2016

Decided on : 11/03/2026

Duration : 10Y02M03D

IN THE COURT OF DISTRICT JUDGE-2, NIPHAD
(Presided over by K.R. Joglekar)

REGULAR CIVIL APPEAL NO. 04/2016

Exh.22

- 1) Bhausahab Dhondiram Shinde
Age-58 Years
Occupation-Agriculturist
 - 2) Shankar Dhondiram Shinde
(deceased) through L.R.s
 - 2(A) Shakuntala Shankar Shinde
Age-50 Years
Occupation-Agriculturist
R/o. Wahegaon Bharvas,
Tal. Niphad, Dist. Nashik.
 - 2(B) Dipak Shankar Shinde
Age-39 Years
Occupation-Agriculturist
R/o. Zhapwadi Road, Shanti Nagar,
Sinnar, Tal. Sinnar, Dist. Nashik.
 - 2(C) Manisha Sandip Jadhav
Age-36 Years
R/o. Saraswati Nagar,
Saradwadi Road,
Beside Gymkhana, Sinnar,
Tal. Sinnar, Dist. Nashik.
 - 3) Sarawatibai Dhondiram Shinde
Age-75 Years
Occupation-Agriculturist
R/o. Wahegaon Bharvas,
Tal. Niphad, Dist. Nashik.
 - 4) Jijabai Prabhakar Jadhav
Age-50 Years
Occupation-Household
-Appellants /
Original
Plaintiffs

R/o. Mohadi,
Tal. Dindori, Dist. Nashik.

Vs.

- 1) Barku Tukaram Shinde
Age-62 Years
Occupation-Agriculturist
 - 2) Tukaram Kisan Shinde
Age-58 Years
Occupation-Agriculturist
 - 3) Madhav Tukaram Shinde
Age-48 Years
Occupation-Agriculturist
 - 4) Namdeo Kisan Shinde
Age-45 Years
Occupation-Agriculturist
 - 5) Parvatabai Kisan Shinde
Age-78 Years
Occupation-Agriculturist
 - 6) Ashok Tukaram Shinde
Age-18 Years
Occupation-Agriculturist
All R/o. Wahegaon Bharvas,
Tal. Niphad, Dist. Nashik.
 - 7) Uttam Parvat Bhadange
Age-53 Years
Occupation-Agriculturist
R/o. Dahegaon,
Tal. Niphad, Dist. Nashik.
- ...Respondents /
Original
Defendants.

Advocates Appeared:-

- Shri. B.B. Bagde - Ld. Advocate for Appellants / Plaintiffs
Shri. R. V. Kolhe - Ld. Advocate for Respondents / Defendants

**Appeal under Order 41 Rule (1) read with
Section 96 of Code of Civil Procedure**

JUDGMENT

(Delivered on 11th March, 2026)

This Regular Civil Appeal is filed by original plaintiffs as per the provisions of Order 41 Rule (1) read with Section 96 of Code of Civil Procedure, challenging the judgment and decree dated 26.10.2015 passed by Ld. Jt. Civil Judge, Junior Division, Niphad in Regular Civil Suit No.49/2006 thereby dismissing the suit of the plaintiff.

2. Appellants herein are the plaintiffs before Ld. Trial Court who filed the said suit for enforcing contract and for perpetual injunction and for partition. It is the case of the appellants/plaintiffs that properties bearing Gat No.60 admeasuring 1H 7R, Gat No.61 admeasuring 4H 98R, Gat No.62 admeasuring 1H 68R and Gat No.22 admeasuring 49R are the suit properties. According to the plaintiffs, the said suit properties are ancestral and joint family properties of plaintiffs and defendants. The original owners through whom plaintiffs and defendants are representing has $\frac{1}{2}$ share in the suit properties. According to the plaintiffs, their predecessor had executed one document in favour of predecessors of defendants and then the plaintiffs filed Regular Civil Suit No.490/1980 for cancellation of the said transaction on the ground that it was not for legal necessity of the family.

3. The plaintiffs further pleaded that the suit properties were originally owned by one Gajiram. The common ancestor of Gajiram died leaving behind him Kisan and Trimbak and plaintiffs are heirs of Dhondiram who was the son of Trimbak and defendants are the legal heirs of Kisan. According to the plaintiffs, during pendency

of Regular Civil Suit No.490/1980 (Old Suit No.707/1974), the parties to the suit come to the amicable settlement and executed compromise deed on 07.03.2002 but subsequently, defendants denied the said compromise to grab excess land from the plaintiffs. According to the plaintiffs, the said suit was for possession of 2H 3R land situated towards eastern side of Gat No.61 and the said suit was partly decreed in favour of the plaintiffs and execution proceeding were pending of the same.

4. According to the plaintiffs, thereafter, as per the said compromise deed dated 07.03.2002, all the parties agreed to settle all the disputes pending between them in various courts. According to the plaintiffs, originally land Gat No.60, 61 and 62 was numbered as Survey No.25 having area of 19 acres and as per Compromise Deed dated 07.03.2002, property bearing Gat No.60 and 62 were allotted to their share, Gat No.61 was allotted to defendants and they agreed to measure respective Gat numbers and if any excess land is found, it would be distributed equally between them. Accordingly, they prayed for declaration that as per Compromise Deed dated 07.03.2002, properties bearing Gat No.60 and 62 were allotted to them and also for perpetual injunction and other relief.

5. Defendants nos.1, 2, 4, 5 and 7 contested the suit by filing written statement at Exh.20 on the file of Ld. Trial Court. They admitted their relationship with the plaintiffs. According to them, survey no.25 was originally owned and possessed by Gajiram Shinde who died leaving behind him Kisan and Trimbak and Dhondiram was the son of Trimbak. Plaintiffs are the heirs of deceased Dhondiram and defendant nos.1 and 6 are heirs of Kisan Gajiram Shinde.

6. According to the said defendants, suit properties are already partitioned between predecessors of plaintiffs and defendants and they have received $\frac{1}{2}$ share each. According to them, out of survey no.25/1, i.e. Gat No.61, their predecessors have received 9acre 20R land and predecessors of plaintiffs received 9 acre 20R land in Survey No.25/2 and 25/3 i.e. Gat No.60 and 62. Dhondiram alienated 3 acre land out of Gat No.62 in favour of Parvat Mahadu Bhadange in the year 1956 as per mutation entry no.377 and then, Dhondiram transferred remaining 2 acre land from the said Gat number to the said Parvat in the year 1958 as per mutation entry no.406.

7. According to the defendants, Dhondiram now only possessed land from Gat No.60. Dhondiram executed Exchange Deed in favour of predecessors of defendants on 17.08.1960 for consideration of Rs.700/- and on the basis of the said Exchange Deed, then predecessors of defendants purchased 2 acre 3R land from Gat No.60 which was thereafter included in Gat No.61 and therefore, Gat No.61 was increased to 4H 98R. According to them, this transaction was challenged by plaintiffs and plaintiffs were held entitled for 27.66 R land from Gat No.61 and then plaintiffs initiated execution proceeding bearing no.18/1994 for possession of the said land. According to the defendants, in the present suit, plaintiffs have not included all the family properties and all the co-sharers are made party in the suit so also heirs of Parvat and therefore, suit is not maintainable. They denied execution of any Compromise Deed and prayed to dismiss the suit.

8. From the rival pleadings of the parties, Ld. Trial Court framed the issues on 21.04.2007 at Exh.21 on the file of Ld. Trial Court. Thereafter, Ld. Trial Court gave opportunity to both the parties to lead oral as well as documentary evidence and then upon hearing the arguments of Ld. Advocates of both the parties, was pleased to dismiss the suit as per judgment and decree dated 26.10.2015.

9. Being aggrieved and dissatisfied with the said findings and judgment and decree of dismissal of suit, original plaintiffs have preferred this Regular Civil Appeal on the grounds enumerated in detail in appeal memo Exh.1.

10. Heard Ld. Advocate for the Appellants / plaintiffs and Ld. Advocate for Respondents / defendants.

11. Perused impugned judgment and decree. Perused the exhibited documents and other record and proceeding. From the available material, following points arise for my determination to which I record my findings accordingly for the reasons discussed below.

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiffs/appellants prove that they received Gat No.60 and 62 as their share in view of agreement executed on 07.03.2002?	...In the Negative.
2)	Whether plaintiffs/appellants proves that the defendants have carried obstruction and interruption to the plaintiffs?	...In the Negative.

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| 3) | Whether the plaintiffs/appellants prove that they are entitled to recover the possession of the portion from Gat No.61 from defendants / respondents.? | ...In the Negative. |
| 4) | Whether the plaintiffs/appellants are entitled for partition and possession of Gat No.61 in view of agreement dated 07.03.2002? | ...In the Negative. |
| 5) | Whether plaintiffs/appellants are entitled for relief of declaration and perpetual injunction? | ...In the Negative. |
| 6) | Whether impugned judgment and decree dated 26.10.2015 passed by Ld. Jt. Civil Judge, Junior Division, Niphad in Regular Civil Suit No.49/2006, thereby dismissing the suit of the plaintiffs is legal, proper and correct? | ...In the Affirmative. |
| 7) | Whether any interference is required in the impugned judgment and decree under challenge? If yes, up to what extent? | ...In the Negative. |
| 8) | What Order and Decree? | ...As per final order. |

REASONS

As to point Nos.1 to 5:-

12. As all these points are interlinked and inter connected with each other, they are taken together for discussion.

13. On going through the entire material, it is clear that entire case of the plaintiffs i.e. appellants herein is based on so called

Compromise Deed dated 07.03.2002. Admittedly, the said so called Compromise Deed dated 07.03.2002 is not on record.

14. No doubt, concern parties have examined themselves on oath and their cross-examination is also taken but it is to be seen whether any oral evidence can be permissible or not in view of Section 91 of Indian Evidence Act. For that purpose, **Section 91 of Indian Evidence Act** needs to be quoted. Section 91 of Indian Evidence Act provides that *“Evidence of terms of contracts, grants and other dispositions of property reduced to form of document – When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained”*

15. Therefore, in this matter in hand, when entire case of the plaintiffs / appellants is based on alleged Compromise Deed dated 07.03.2002, therefore, when the terms of said Compromise Deed are reduced in writing no oral evidence in proof of the same can be given except the document itself or secondary evidence of its contents. Further, it is admitted position that the said so called Compromise Deed is not on record. Further, when the defendants/respondents have denied in the written statement that no such Compromise Deed dated 17.03.2002 is in existence, it is the duty of the plaintiffs/appellants to prove the said document by producing it on

record. Therefore, existence of that document itself is not proved. So also its contents. Admittedly, though the plaintiffs moved application vide Exh.34 before Ld. Trial Court for leading secondary evidence, it was rejected on 12.12.2009 and that order of rejection is not challenged by the plaintiffs before appropriate Appellate Court and therefore, the said order has attended finality. Therefore, no oral evidence is permissible to the plaintiffs in respect of alleged Compromise Deed dated 07.03.2002.

16. Even otherwise also, even if, the oral evidence laid by plaintiff is perused, in the cross-examination, she admitted that she is not having knowledge as to exact area covered under Compromise Deed in Survey No.25. She then admitted that her husband had already transferred 5 acres of land comprised in Gat No.62 in favour of defendant no.7 and 2 acre 3 Guntha land from Gat No.60 was included in Gat No.61. In this context also, there is no merit in the case of the plaintiffs.

17. Therefore, it is not proved by the plaintiffs /appellants that Gat No.60 and 62 were received by them in view of alleged agreement dated 07.03.2002 and therefore, no question of any obstruction or interruption to them by the defendants /respondents and therefore, they are not entitled to recover any portion of land from Gat No.61 and partition. Therefore, no question of declaration and injunction. No blanket declaration can be granted blindly without any proof of alleged Compromise Deed dated 07.03.2002. In the result, I record my findings in the negative so as to point nos.1 to 5 are concerned.

As to Point Nos. 6 & 7 :-

18. In view of the findings of point nos.1 to 5 above, the impugned judgment and decree dated 26.10.2015 passed by Ld. Jt. Civil Judge, Junior Division, Niphad in Regular Civil Suit No.49/2006 is legal, proper and correct and it do not requires any interference. In the result, I record my findings in the affirmative so as to point no.6 is concerned and in the negative so as to point no.7 is concerned and proceed to pass the following order.

ORDER

- 1) Regular Civil Appeal No.04/2016 is dismissed with cost throughout.
- 2) Consequently, the Judgment and Decree dated 26.10.2015 passed by Ld. Jt. Civil Judge, Junior Division, Niphad in Regular Civil Suit No.49/2006, thereby dismissing the suit of the plaintiff is confirmed.
- 3) Decree be drawn accordingly.
- 4) Record and Proceeding be sent back to the Ld. Trial Court after appeal period is over.
- 5) Inform the Ld. Trial Court accordingly by sending copy of this judgment.
- 6) Proceeding closed.

[Pronounced in the open court.]

Place :- Niphad.

Date :- 11.03.2026

District Judge-2
Niphad.