

Presented on 28.11.2019  
Registered on 28.11.2019  
Decided on 07.05.2026  
Duration Years Months Days  
06 05 09

**IN THE COURT OF JT. CIVIL JUDGE, SENIOR DIVISION,**  
**IGATPURI, TAL-IGATPURI, DIST-NASHIK.**  
(Presided over by Mohini D. Nanaware)

Regular Civil Suit No. : 128/2019

Exhibit No. :- 64

MHNS230020712019



Khatija B Yusuf Shaikh, (deceased) }  
(through her legal heirs) }  
Jakir Wali Mohhamad Shaikh, }  
Age:- 52 Yrs., Occu.:- Business, }  
R/o. Igatpuri Mahatma Gandhi Nagar }  
Kasai Mohalla, Igatpuri, Dist- Nashik. } ..Plaintiff.

**Versus**

Vishram Ganga Anjara, (deceased) }  
(through his legal heirs) }  
Anil Vishram Anjara, }  
Age:- 45 Yrs., Occu.: Business, }  
R/o: Near grammin hospital, }  
Shree Swami Samarth Nagar, Igatpuri }  
Tal. Igatpuri, Dist- Nashik. } ..Defendant.

**Suit for Perpetual and Mandatory Injunction.**

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**Appearance:-**

Adv. Smt. S. S. Meman for Plaintiff.

Adv. Shri. J. N. Shinde for Defendant.

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**J U D G M E N T**  
**(Delivered on 07<sup>th</sup> May, 2026)**

City Survey No 355, situated Municipal Ward no. 2 at Igatpuri, Tal-Igatpuri, Dist- Nashik is the subject matter of the suit. (here-in-after referred as “suit property” for the sake of brevity).

Brief facts of plaintiff's case are as follows:-

2. That, he is the owner of the suit property and alleges that rent has been due from the defendant since 01/09/1983. According to the plaintiff, during pendency of earlier litigation between the parties, the defendant, without any lawful authority or municipal permission, started illegal construction and made encroachment over the suit property from 23/11/2019. The plaintiff alleges that despite complaints to the Municipality, the defendant continued the unauthorized construction, causing interference with the plaintiff's rights and threatening irreparable loss. Therefore, the plaintiff seeks permanent and mandatory injunction to restrain the defendant from further construction and to remove the alleged encroachment.

3. Defendants has filed his written statement at Exh. 14. He has contended that he is a lawful tenant in Room No. 4 of the suit

property and has been in long-standing possession along with his family. He submits that the earlier suit for eviction and possession filed by the plaintiff's predecessor was dismissed, and subsequent proceedings are still pending before the Bombay High Court. The defendant further states that the alleged construction is only a toilet built with permission from the Igatpuri Municipal Council under the Swachh Bharat scheme for his aged mother, and denies any illegal encroachment. According to the defendant, the plaintiff has suppressed material facts, filed misleading photographs, and failed to produce any measurement or proof of encroachment; therefore, the suit deserve dismissal with costs.

4. My Ld. Predecessor has framed issues at Exh. 18. From rival contentions of both the parties and in view of Order XIV, Rule 5 of the Code of Civil Procedure, 1908, I have amended said issues as follows. My findings thereon along with reasons are as follows:-

<b>Sr. No.</b>	<b>Issues</b>	<b>Findings</b>
1.	Does plaintiff prove that the defendant has carried out permanent construction in the suit property without the permission of landlord ?	<b>No.</b>
2.	Is plaintiff entitled for removal of illegal construction ?	<b>No.</b>
3.	Is plaintiff entitled for perpetual injunction as prayed ?	<b>No.</b>

4. What order and decree ?

**As per final  
order.**

**:: REASONS ::**

5. The plaintiff has examined himself at Exh. 22. Plaintiff has filed property extract at Exh. 32. Defendant has examined himself at Exh. 38. He has produced property extract at Exh. 50, copy of tax register at Exh. 51, rent receipts dtd. 01/03/1983 to 31/12/1984 and 01/01/2023 to 31/12/2024 at Exh. 52 and 53, certified copy of judgment in RCS 55/1983 at Exh. 54, copy of death certificate of Wali Mohhamad Yusuf Qureshi at Exh. 55, certified copy of decree in RCA no. 82/2004 at Exh. 56, copy of Government resolution at Exh. 57, copy of letter from Igatpuri Municipal Corporation at Exh. 58 and 59.

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

6. The suit property admittedly belongs to the plaintiff, and the defendant has not disputed the plaintiff's ownership. However, the defence of the defendant is that he is a tenant in Room No. 4 situated in the suit property, and that the plaintiff has failed to provide a proper and specific description of the suit property as well as the alleged encroachment.

7. During the course of cross-examination, PW No. 1 Jakir admitted that he had not stated the detailed measurements of the suit property nor specified the exact location where the alleged permanent

construction was carried out by the defendant. He further admitted that no map or sketch showing the alleged encroachment was annexed to the plaint.

**8.** In a suit seeking removal of encroachment or mandatory injunction, the plaintiff is required to specifically plead and prove the nature, extent, and exact location of the alleged encroachment. A proper description and sketch/map of the encroached portion are necessary so as to enable the Court to pass an executable decree. In the present case, the plaintiff has failed to furnish precise particulars of the alleged encroachment and has also failed to adduce cogent and satisfactory evidence in support thereof.

**9.** It is an admitted position that the relationship between the parties is that of landlord and tenant. A tenant is under a legal obligation not to make any permanent alteration or construction in the tenanted premises without the consent of the landlord. Unauthorized permanent construction by a tenant may constitute a valid ground for eviction under Section 16(1)(b) of the Maharashtra Rent Control Act, 1999.

**10.** In the present suit, the plaintiff, being the landlord, has sought the reliefs of mandatory injunction for removal of the alleged encroachment and perpetual injunction. However, as discussed hereinabove, the plaintiff has failed to plead and prove the exact nature, dimensions, and location of the alleged unauthorized construction. In the absence of clear particulars and a proper

description of the alleged encroachment, no effective or executable decree for removal of encroachment can be granted. Therefore, I am of the considered opinion that the plaintiff has failed to establish that the defendant carried out any permanent construction in the suit premises without the permission of the landlord. Hence, Issue No. 1 is answered in the negative.

**AS TO ISSUE NOS. 2 TO 4:-**

11. As finding on issue No. 1 is negative, the plaintiff is not entitled to relief of mandatory and perpetual injunction. In view of peculiar facts and circumstances the parties shall bear their own costs. Thus, I answer issue nos. 2 & 3 in negative, and in answer to issue nos. 4, I pass following order:

**ORDER**

1. The suit is dismissed.
2. Parties shall bear their own cost.
3. Decree be drawn up accordingly within 15 days as per rules.

(Dictated and pronounced in open Court)

Igatpuri.  
Date 07.05.2026

( Mohini D. Nanaware )  
Jt. Civil Judge Sr. Divn., Igatpuri.  
Tal-Igatpuri, Dist-Nashik.

**Certificate**

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original order.

Name of the Stenographer	N. S. Sabale,
Name of Court	Smt. M.D. Nanaware, Joint Civil Judge (Senior Division) Igatpuri, Tal- Igatpuri, Dist. Nashik.
Date of Decision	07.05.2026
Judgment signed by the P.O. on	07.05.2026
Judgment uploaded on	07.05.2026