

MHOS010020402022



Received on : 25.07.2022

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Decided on : 15.06.2022

Duration : 03 Y 10 M 20 D

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
AT : OSMANABAD.**

(Presided over by A.D. Deo)

Regular Civil Appeal No. 60/2022

Exh. 11

Suresh s/o Atmaram Samudre,
Age 53 years, Occu. Agri.,
R/o. Dhoki, Tal. & Dist. Osmanabad.

.. **Appellant**
(Orig. plaintiff)

Versus

1 Gawalanbai w/o Bajrang Kadam,
Age 62 years, Occu. Household,
R/o. Dhoki, Tal. & Dist. Osmanabad.

... **Respondents**
(Orig. defendants)

2 Sunil s/o Bajrang Kadam,
Age 41 years, Occu. Agri.,
R/o. as above.

3 Atul s/o Bajrang Kadam,
Age 36 years, Occu. Agri.,
R/o. as above.

4 Tanaji s/o Anant Kadam,
Age 34 years, Occu. Agri.,
R/o. as above.

Appeal U/s 96 of the Code of Civil Procedure, 1908.

.....

Appearances:

Shri. A.N.Deshmukh, advocate for appellant.

Shri. S.J.Garad, advocate for respondents.

.....

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

(Delivered on 15th June, 2026)

Being aggrieved by the judgment and decree dated 17.12.2019 in Regular Civil Suit No.590/2015 passed by 3rd Jt. Civil Judge, S.D., Osmanabad, thereby dismissing the said suit filed for declaration of ownership and permanent injunction, the appellant/original plaintiff has preferred this appeal.

2. The parties to the appeal are ranked as per their nomenclature in the suit.

3. **Brief facts:**

Succinctly, the pleadings of the parties are as under:

3a. It is the pleading of the plaintiff Suresh s/o Atmaram Samudre that, he and his brothers by name Bhagvat, Ramesh and Sunil are the owners of the land Gat No.380 with one Jamun tree situated at village Dhoki, Tal. Dist. Osmanabad. Plaintiff has filed the present suit on behalf of his said brothers. It is pleaded that the defendant No.1 is the mother of defendant Nos.2 & 3 and defendant No.4 is the nephew of defendant No.1 and they are resident of village Dhoki. It is further pleaded that, the government of Maharashtra has acquired 45R portion out of land Gat No.380 which is the Eastern portion of that land for Terna Medium Project and on behalf of the plaintiff his brother Sunil has accepted the amount of compensation. After the acquisition, the plaintiff and his brothers are in possession of 01H.09R land from the Western side of land Gat No.380. The boundary description of the said portion is as follows :

To the East : 45R land acquired by the government.
To the West : Gat No.388 possessed by defendant No.1 and Arun.
To the North : Land of Udhav Samudre.
To the South : Land owned by the plaintiff in another Gat number
and village boundary of Tugaon.

The above described land is hereinafter referred to as the 'suit property'.

3.b. It is further pleaded by the plaintiff that, while he was working in his land and sowing Rabbi crop on 02-10-2015 the defendants objected and obstructed the peaceful possession of the plaintiff and his brothers over the suit property. It is pleaded by the plaintiff that, defendants have no concern with his land hence he is constrained to file the suit for declaration and permanent injunction.

3.c. Upon suit summons, the defendants have appeared and filed written statement vide Exh.10. At the outset, it is the contention of the defendants that the suit is not tenable. Brothers of the plaintiff viz. Bhagwat, Ramesh and Sunil have not authorized the plaintiff to file the suit on their behalf hence, as per the 7/12 extract the plaintiff is owner of only to the extent of 27-R portion of said land Gat No.380. Considering this aspect the suit is not maintainable. It is further submitted by the defendants that, the plaintiff has not submitted that the land of defendant Nos.1 to 3 is also acquired by the government. It is submitted by the defendants that, though the plaintiff has pleaded that the 45-R portion of land Gat No.380 is acquired by the government, but the plaintiff has not stated as to whose land is acquired and how much land is acquired by the government. It is further submitted that, the pleadings with regard to the compensation of the acquired portion

being accepted by the brother of the plaintiff by name Sunil is incorrect. It is submitted by the defendants that, the husband of defendant No.1 and father of defendant Nos.2 and 3 by name Bajrang Goverdhan Langade expired on 20-07-1990. Thereafter, the brother of defendant No.1 by name Arun Rambhau Langade conspired with Sunil Samudre i.e. the brother of plaintiff, executed a stamp paper on 09-01-1997 and though Bajrang Goveardhan Kadam was dead, by mentioning, in the paper that they are withdrawing the complaint and permitted Sunil i.e. the brother of plaintiff to accept the compensation. It is further submitted by the defendants that, Sunil Samudre and Arun Langde forged the signature of Bajrang Kadam and took the compensation which was in the favour of Bajrang Kadam. It is submitted that, though the plaintiff was fully aware of these facts he did not mention the same in the plaint and thus, plaintiff did not come before the Court with clean hands. It is pleaded by the defendants that they are adducing evidence to that effect and in those documents instead of Bajrang Govardhan Kadam the name is mentioned as 'Bajrang Govardhan Samudre'. Taking the undue advantage of this incorrect mention of the name of Bajrang Kadam the plaintiff is trying to keep the defendants away from the fruits of the suit property. It is further pleaded by the defendants that, schedule and the map annexed by the plaintiff with the plaint is incorrect and the boundary description of suit property and map provided by the plaintiff and the actual map do not correspond with each other.

3.d. According to the defendants, 45-R portion acquired by the government as stated by the plaintiff is the portion of land Gat No.388 belonging to the defendants. It is further submitted that, despite this when the water level of the dam is reduced, the plaintiff, since the said

acquisition till the date, is using 18-R land of said 45-R and is cultivating the same. According to the defendants, in the said acquired land of Gat No.380 there is a well and the defendants are using water from said well for the irrigation of the crops in land Gat No.388. As such the contents of the plaint para No.3 are denied by the defendants. It is submitted that, the contents of the plaint para No.4 are absolutely false. It is submitted that, the plaintiff was never the owner of complete area of land Gat No.380. In the year 2015, there was famine and hence nothing was sown in the season as such the question of defendant's obstructing the plaintiff in the year 2015 does not arise. It is submitted that as the plaintiff is not the owner of entire portion of land Gat No.380 plaintiff is not entitled for the relief of declaration and permanent injunction. Hence, it is prayed that the suit be dismissed with costs.

3.e. Learned trial court has framed issues vide Exh. 12.

3.f. On behalf of the plaintiff, plaintiff- Suresh Atmaram Samudre is PW-1 and Shivaji Chandarrao Deshmukh is PW-2. On behalf of the defendants no witness is examined. Upon appreciating the evidence before it, the learned trial Court dismissed the suit which is assailed before this court.

4. Heard, the learned advocate Shri. A. N. Deshmukh for the appellant. None present for the respondents despite ample opportunities being given, hence the matter is taken for the Judgment.

Points for determination:

5. Upon the rival contentions and perusal of the record, following points arise for my determination:

Points	Findings
1. Does the plaintiff prove that, the suit property is of his ownership and under his possession?	No.
2. Does the plaintiff prove that, the defendants obstructed his peaceful possession over the suit property?	No.
3. Is the plaintiff is entitled for the reliefs as sought?	No.
4. Whether the impugned judgment and decree dated 17-12-2019 in Regular Civil Suit No.590/2015 passed by 3 rd Jt. Civil Judge, S.D., Osmanabad is just, legal and proper?	Yes.
5. What order and decree?	As per final order.

:: REASONS ::

As to point Nos.1 to 3:

6. As these points are intrinsically interconnected and arise out of the same factual matrix and evidence on record, they are being dealt with conjointly in order to avoid repetition and for the sake of brevity and clarity.

7. The plaintiff has instituted the present suit seeking a declaration of ownership in respect of the suit property and consequential relief of perpetual injunction restraining the defendants from interfering with his alleged peaceful possession thereof. The relief of declaration is governed by Section 34 of the Specific Relief Act, 1963, which empowers the Court to declare the entitlement of a person to any legal character or to any right as to property. The object of such declaration is to remove any cloud cast upon the title or legal status of the plaintiff.

- a. Legal Right or Character: The plaintiff must establish an existing legal right, title, office or legal character in respect of the property in question.
- b. Denial by Defendant: The defendant must have denied, or shown an interest in denying, such legal right or character.
- c. No Alternative Remedy: The plaintiff must generally be unable to seek a more complete and efficacious remedy or the declaration must be necessary for obtaining such further relief.
- d. Consequential Relief: As contemplated by the proviso to Section 34 of the Specific Relief Act, where the plaintiff is capable of seeking further relief, such relief must also be claimed.

8. Further, in so far as the relief of perpetual injunction is concerned, Section 38 of the Specific Relief Act, 1963 contemplates grant of perpetual injunction to prevent breach of an obligation existing in favour of the plaintiff. Therefore, before obtaining such relief, the plaintiff is required to establish his lawful possession over the suit property and actual or threatened interference by the defendants.

9. The entire foundation of the case of the plaintiff rests upon his contention that after acquisition of 45-R portion from Gat No.380 for the Terna Medium Project, the remaining western portion admeasuring 1 Hectare 09 R constituted the suit property and that the same is owned and possessed by him and his brothers. According to him, the defendants have no manner of right, title or interest therein and yet attempted to obstruct his possession on 02-10-2015.

10. In support of his claim, the plaintiff has mainly relied upon the 7/12 extract of Gat No.380 produced at Exhibit-5. A careful scrutiny of Exhibit-5 assumes considerable significance. The said revenue record does not show the plaintiff as exclusive owner of Gat No.380. On the contrary, it clearly records the names of the plaintiff

Suresh and his brothers Bhagwat, Ramesh and Sunil as holders of separate shares in the property. The revenue entries disclose that each of them possesses a distinct share in the land. It is an admitted position that neither Bhagwat, nor Sunil, nor Ramesh has been joined as a plaintiff in the suit. Though the plaintiff has pleaded that he has instituted the suit on behalf of his brothers also, no power of attorney, authority letter, consent letter or any other document authorising him to represent the interests of his brothers has been produced on record. In the absence of any such authority, the plaintiff cannot be permitted to litigate on behalf of other co-sharers and seek a declaration concerning their respective rights.

11. The significance of this aspect becomes more pronounced when the plaintiff seeks a declaration in respect of the entire suit property. A decree of declaration necessarily affects the proprietary rights of all persons having interest in the property. When the revenue record itself reflects distinct shares of other co-sharers, their absence from the proceedings assumes importance. The plaintiff could, at best, have asserted his own independent share and possession. However, he has sought a declaration concerning the entirety of the suit property without impleading or obtaining authority from the remaining co-sharers. It is well settled that in suits involving co-owned property, the necessity of joining all co-owners depends upon the nature of relief sought and the extent to which their rights are likely to be affected. Where the adjudication sought would directly affect the rights and interests of other co-sharers, their presence becomes indispensable. In the present matter, the plaintiff seeks adjudication regarding ownership and possession of property in which admittedly other persons have recorded shares. Therefore, the absence of such co-sharers assumes

considerable importance and adversely affects the maintainability of the suit in its present form.

12. The evidence of PW-1 Suresh further reveals material admissions which weaken the foundation of the case of the plaintiff. During cross-examination, he has admitted that there is no person by the name of Bajrang Samudre in the village. He has further admitted that the compensation in respect of the acquired land was accepted by his brother Sunil. These admissions lend some degree of probability to the defence contention that compensation standing in the name of deceased Bajrang Govardhan Kadam, husband of defendant No.1 and father of defendant Nos.2 and 3, was allegedly withdrawn by Sunil with the assistance of Arun Langade by taking advantage of discrepancies in the name recorded in acquisition proceedings.

13. Though the defendants have not led independent oral evidence, it is trite that the weakness of the defence cannot by itself become the strength of the case of plaintiff. The plaintiff is required to stand on the strength of his own evidence and independently establish his entitlement to the declaratory and injunctive reliefs claimed. The burden of proving title and possession squarely rests upon the plaintiff. The testimony of PW-1 further discloses that there had been a partition amongst the brothers and that mutation entry No.3643 was effected pursuant thereto. He has admitted in his cross-examination that he obtained a separate share to the extent of 27-R from Gat No.380. This admission completely undermines the broad assertion made in the plaint that the suit property continued to be jointly owned and possessed by the plaintiff and his brothers as one composite block.

14. The documentary evidence produced by the plaintiff itself

establishes that the property stood divided amongst the brothers. If the plaintiff had already obtained a distinct share pursuant to partition, the question of claiming ownership over the entire remaining extent without proper pleadings regarding partition, allotment and exact boundaries becomes doubtful. Significantly, despite the revenue record showing the name of Ramesh as one of the co-sharers, the plaintiff has neither disclosed his status adequately in the plaint nor explained his exclusion from the proceedings.

15. The suppression of material facts assumes importance in a suit seeking equitable relief. The plaintiff was under a duty to make full and candid disclosure of all relevant facts before the Court. However, the pleadings and evidence reveal that material facts regarding the existence of four brothers, the partition amongst them and the separate shares allotted to them have not been fairly presented before the Court.

16. The relief of injunction is essentially an equitable and discretionary relief. Equally, though declaration is a statutory relief, the conduct of the plaintiff remains a relevant consideration while exercising judicial discretion. The settled principle is that a litigant seeking equitable relief must approach the Court with utmost candour and good faith.

17. In “**Parakunnan Veetill Joseph’s Son Mathew vs. Nedumbara Kuruvila’s Son**”, reported in **1987 Supp SCC 340**”, the Hon’ble Supreme Court held that the motive behind the litigation should also enter into the judicial verdict and that the Court should ensure that its process is not used as an instrument of oppression or to secure an unfair advantage.

18. Further, in “**Lourdu Mari David v. Louis Chinnaya**

Arogiaswamy, reported in **(1996) 5 SCC 589**”, the Hon’ble Supreme Court held that a party seeking equitable jurisdiction must come to the Court with clean hands and that a person making false allegations or suppressing material facts is not entitled to equitable relief.

19. Applying the aforesaid principles to the facts of the present case, it becomes evident that the plaintiff has failed to make complete disclosure regarding the status of co-sharers and the partition admittedly effected amongst them. The evidence also does not satisfactorily establish his exclusive ownership or exclusive possession over the entire suit property as claimed in the plaint. Consequently, the plaintiff cannot claim the equitable relief of injunction nor can he obtain a declaration regarding the entire suit property.

20. The plaintiff has also failed to establish by cogent and convincing evidence that the defendants unlawfully interfered with his possession on 02-10-2015. Except for his bare assertions, no independent evidence has been produced to substantiate the alleged act of obstruction. Mere allegations without satisfactory proof are insufficient to grant a perpetual injunction. Thus, upon an overall assessment of the oral and documentary evidence, this Court finds that the plaintiff has failed to establish his ownership and lawful possession over the suit property in the manner pleaded. He has further failed to prove the alleged obstruction by the defendants and consequently is not entitled to the reliefs of declaration and perpetual injunction.

21. For all the aforesaid reasons, **Point Nos.1, 2 and 3 are answered in the Negative.**

As to Point No.4:

22. Being the first appellate Court, this Court has

independently re-appreciated the entire evidence available on record, both oral and documentary. Upon such re-appreciation, it emerges that the learned Trial Court has properly considered the pleadings of the parties, correctly appreciated the documentary evidence, duly taken into account the admissions elicited in cross-examination and applied the settled legal principles governing declaratory and injunctive reliefs.

23. The findings recorded by the learned Trial Court are based upon proper appreciation of evidence and do not suffer from perversity, illegality or misapplication of law. The conclusions reached by the learned Trial Court are fully supported by the material available on record. In the circumstances, the impugned judgment and decree dated 17-12-2019 passed in Regular Civil Suit No.590/2015 cannot be faulted and deserves to be affirmed. Accordingly, **Point No.4 is answered in the Affirmative.**

As to point No.5:

24. In view of the reasons and findings on point Nos.1 to 5, the appeal deserves to be dismissed. Hence, the following order is passed:

:: ORDER ::

1. The appeal stands dismissed.
2. Judgment and decree dated 17-12-2019 in Regular Civil Suit No.590/2015 passed by 3rd Jt. Civil Judge, S.D., Osmanabad is hereby confirmed.
3. Parties to bear their own costs.
5. Decree be drawn accordingly.

6. Record and proceeding of Regular Civil Suit No. 590/2015 be returned as per rules.
7. Record and proceeding of Regular Civil Appeal No. 60/2022 be consigned to record room.
8. Regular Civil Appeal No. 60/2022 stands disposed off accordingly.

(Dictated and pronounced in open Court)

Date: 15.06.2026

(A.D. Deo)
Principal District Judge,
Osmanabad.

C E R T I F I C A T E

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

Name of Stenographer	--	A.S. Aghor, Stenographer (Grade-I)
Court	--	District Court, Osmanabad
Date	--	15.06.2026
Order signed by the Presiding Officer on	--	15.06.2026
Order uploaded on	--	15.06.2026