

MHOS100005372013 	Date of institution	:	03/07/2013		
	Date of registration	:	03/07/2013		
	Date of Decision	:	23/06/2026		
	Duration	:	Y	M	D
			12	11	20

IN THE COURT OF THE CIVIL JUDGE, J.D., WASHI,
DIST. DHARASHIV

(Before : Smt. M.V. Patil-Rathode)

Reg. Civil Suit No.237/2013.
(CNR No. MHOS10-000537-2013)

Exh. No.52.

Balbhim Amruta Kawade,
Age- 82 years, Occu. Agri. & Pensioner,
R/o. Washi, Tq. Washi, Dist. Dharashiv. } **PLAINTIFF.**

V E R S U S

1) **Santosh Vishwanath Kawade,**
Age- 42 years, Occu. Agri.,
R/o. Washi, Tq. Washi, Dist. Dharashiv.

2) **Samadhan Vishwanath Kawade,**
Age- 40 years, Occu. Agri.,
Both R/o. Near Washi, Tq. Washi,
Dist. Dharashiv. } **DEFENDANTS**

Claim:- Suit for declaration of ownership, recovery of
possession and mesne profits.

Ld. Advocate for the plaintiff - Shri. R. V. Mote
Suit proceeded Ex-parte against defendant Nos. 1 & 2.

J U D G M E N T

(Delivered on 23/06/2026)

The present suit is for declaration, recovery of
encroached portion and mesne profits.

Description of the suit property :-

2) Agricultural land old Survey No. 366/D and new survey No. 361/D admeasuring 1 H. 04 R, assessed as Rs. 2 and 29 Paisa, situated at Washi, Tq. Washi, Dist. Dharashiv. Suit property is bounded as under -

Towards East - Land of defendant survey No. 361/E,

Towards West - Land survey No. 361/C,

Towards South - Land of Ankush Ramling Kawade and

Towards North - Land of plaintiff survey No. 362/D.

(for the sake of brevity hereinafter referred to as “*the suit property*”)

Plaintiffs case in nutshell as under:-

3) The plaintiff is lawful owner of the suit property. Defendants have no any concern with the suit property. Suit property is ancestral property of the plaintiff. The original owner of the suit property was one Sarubai W/o. Amruta Kawade. Plaintiff is her adopted son. She died before 47 years back. Thereafter the name of the plaintiff is mutated to the suit property and another land on the basis of mutation entry No. 310 dated 14/07/1959 and the name of plaintiff recorded in the revenue record. Defendants are real brothers interse and they are the owners of land survey No. 361/E admeasuring 1 H. 03 R.

4) The plaintiff further contended that, there are 9 shares

(Pot Hissas) of survey No. 361 as 361/A, 361/B, 361/C, 361/D, 361/E, 361/F, 361/G 361/H & 361/J. There are small trees in suit property towards the eastern side and area admeasuring 0 H. 19.14 R of the suit property is situated at eastern side of that trees which shown in red colour in the map attached with the plaint. Suit property is divided into two pieces. Plaintiff was serving in Panchayat Samitee Office and he is only male member in his family. Defendants are having man power. There is enmity in between plaintiff and defendants. Therefore, in the year 2011 defendants have made encroachment over the suit property towards the eastern side.

5) Plaintiff further contended that, in the year 2011 he had applied for measurement of the suit property to the T.I.L.R. Washi. Thereafter, in the present matter also by order at Exh. 36 Dy.S.L.R. Washi was appointed as Court Commissioner for measurement of the suit property. As per the order cadastral surveyor measured the suit land as per provisions of law and by following procedure of law and filed its report along with map. Cadastral surveyor has clearly shown in the map that defendants have made encroachment over the suit property to the extent of 0 H. 19.14 R. The plaintiff is lawful owner of the encroached 0 H. 19.14 R land which is shown in the map annexed with the plaint. Defendants have illegally encroached over the suit property. Hence, plaintiff is entitled to mesne-profits. Suit land is good quality and irrigated land. Hence, plaintiff prayed for declaration of ownership, recovery encroached portion and mesne-profits of encroached portion since filing the suit till recovery of encroached portion.

6) Upon due service of summons defendants appeared in the suit. However, despite sufficient opportunities they have not filed their written statement to the suit. Hence, suit proceeded without their written statement by order below Exh. 1 dated 07/10/2013.

7) Heard Ld. Adv. Shri. R. V. Mote for the plaintiff at the considerable length. According to him plaintiff has proved his case. Hence, he prayed to decree the suit.

8) Considering the relevant facts, material before the Court and fact in issue following points arise for determination. I have recorded my findings thereon for the reasons stated below -

No.	Points	Reasons
1.	Does plaintiff prove that, he is owner of the suit property ?	Yes.
2.	Does the plaintiff prove that defendants have encroached on the suit property?	Yes.
3.	Whether the plaintiff is entitled to declaration as sought ?	Yes.
4.	Whether the plaintiff entitled to recovery of encroached portion ?	Yes.
5.	Whether the plaintiff is entitled to get mesne-profits ?	No.
6.	What order and decree ?	Suit is partly decreed.

REASONS

9) In order to prove his case, plaintiff tendered ocular evidence of following witnesses -

- i) Himself i.e. Balbhim Amruta Kawade at Exh. 42 (PW1)
- ii) Cadastral surveyor Ravi Satwaji Kale at Exh. 47 (PW2).

10) Thereafter he closed his oral evidence by filing purshis at Exh. 51.

11) Plaintiff submitted following documentary evidence -

- i) Report of cadastral surveyor at Exh.48.
- ii) Panchnama made by cadastral surveyor at Exh.49.
- iii) Measurement map at Exh.50.
- iv) 7/12 extract of survey No. 361/D at Exh.5.
- vi) 7/12 extract of survey No. 361/E at Exh.6.
- vii) Copy of mutation entry No. 310 at Exh.7.
- viii) Notice issued by cadastral surveyor at Exh.22.

On the other hand defendants did not lead any oral or documentary evidence on record.

As to issue No. 1 to 5 :-

12) These issues are juxtaposed and are enormous compared to the controversy barring a few of relevance. In

order to avoid iteration, repetition on reproduction of facts and issues again and again, taken up together for convenience.

Analysis of substantive evidence :-

13) PW1, Bhimrao Amruta Kawade at Exh. 42 deposed that, he is adopted son of the late Sarubai W/o. Amruta Kawade. She is the original owner of the suit property. After her demise the name of the plaintiff is mutated to the suit property and another land on the basis of mutation entry No. 310 dated 14/07/1959. Defendants are owners of the land survey No. 361/E admeasuring 1 H. 03 R. There are 9 shares (Pot Hissas) of survey No. 361 as 361/A, 361/B, 361/C, 361/D, 361/E, 361/F, 361/G 361/H & 361/J. There are small trees in suit property towards the eastern side and area admeasuring 0 H. 19.14 R of the suit property is situated at eastern side of that trees which shown in red colour in the map attached with the plaint. He was serving in Panchayat Samitee Office and he is only male member in his family. Defendants are having man power. Due to enmity, in the year 2011 defendants have made encroachment over the suit property towards the eastern side.

14) He further deposed that, in the present matter by order at Exh. 36 Dy.S.L.R. Washi was appointed as Court Commissioner for measurement of the suit property. As per the order cadastral surveyor filed its report along with map. In the said map clearly shows that defendants have made encroachment over the suit property to the extent of 0 H. 19.14 R.

15) Despite sufficient opportunities defendants have not cross-examine the abovesaid witness. Hence, his testimony remain unshaken.

16) PW2, Ravi Satwaji Kale – Cadastral Surveyor at Exh. 47 deposed that, as per order of the Court the present matter was handed over to him by his office for measurement. So accordingly he issued notice to the plaintiff, defendants and adjacent land holders and the date 21/02/2024 was fixed for measurement. Accordingly he remained present on the said day in survey No. 361 at Washi. He measured survey No. 361 and sub-share (*Pot-Hissa*) with rover. At the time of measurement he had original map and original note of office with him. After measurement he also take note and prepared map. At the time of measurement he measured all the sub shares (*Pot-Hissas*) i.e. survey No. 361/A, 361/B, 361/C, 361/D, & 361/E. He prepared panchnama. On measurement he found 0 H. 90.91 R land in possession survey No. 361/D. As per the record of his office and 7/12 extract there was total 1 H. 0.4 R land in survey No. 361/D. So he found 19.14 R less land than the record in survey No. 361/D. He found the said land admeasuring 19.14 R land of survey No. 361/D in possession of survey No. 361/E on the eastern side. The owners of survey No. 361/E are defendants. After completion of measurement and panchnama he sent report to the Court. He stated that, the panchnama at Exh. 49, report at Exh. 48 and map ('C' copy) at Exh. 50 which are filed in the Court are as per the record of his office. He further stated that, no one

had objected his report.

17) On ample opportunities defendants did not take any step to challenge the evidence adduced by plaintiff. Considering the uncontested evidence and record before the Court it appears that, plaintiff has proved that he is owner of the suit property. To show his ownership the 7/12 extract which was in the name of original owner Sarubai and further the present plaintiff are filed on record. It is to be noted that, even though the 7/12 extract is not the proof of ownership, it has a presumptive value. No one has challenged the ownership of plaintiff.

18) As per evidence of the DY.S.L.R. it appears that, he has issued formal notice to all adjoining land owners. He has measured the land in their presence. Here it may be useful to refer Sec. 83 of the Indian Evidence Act, 1872 which reads - *The Court shall presume that maps or plans purporting to be made by the authority of 4[the Central Government or any State Government] were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.*

19) The bare reading of the aforesaid provision would reveal that the maps or plans made for the purpose of any cause must be proved to be accurate. So accordingly in the present suit plaintiff has proved it by evidence of PW2.

20) The PW2 being the expert has measured the land and proved its report Exh. 48, map Exh. 50 and panchnama at Exh.49. So the PW2 has proved the accuracy by actual measurement of entire survey No. 361. He has proved the same on oath before the Court. His evidence remained unchallenged. He has also shown the area under encroachment.

21) Considering evidence and pleading as discussed above, the plaintiff has proved that he is owner of the land bearing survey No. 361/D which is shown red colour in map admeasuring 0 H. 19.14 R which has been encroached by defendants. Therefore, it clearly shows that defendants have denied his title. So the plaintiff is entitled to declaration that he is owner. Being the owner he is entitle to recover the encroached portion. Further he has prayed for the mesne-profits. However, he has not given any details about it. Therefore, in my opinion at this stage he is not entitle to get the mesne-profits. Hence, I answer point No. 1 to 4 in the affirmative and point No. 5 in the negative and I pass following order as to point No. 6 -

ORDER

- 1) The suit is hereby partly decreed.
- 2) Plaintiff is hereby declared as owner of the suit property.
- 3) The defendants are hereby directed hand over the encroached portion in suit land survey No. 361/D admeasuring 0 H. 19.14 R which is

shown in the map Exh. 50 within 6 months.

- 4) Map Exh. 50, Report Exh. 48 & panchnama Exh. 49 be part and parcel of decree.
- 5) Parties to bear their own costs.
- 6) Decree be drawn up accordingly.

Date : 23/06/2026.

(Smt. M. V. Patil-Rathode)
Civil Judge, Junior Division,
Washi.

CERTIFICATE

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	---	Shri. A.M. Wagh, Stenographer, (Grade-III)
Name of the Court	---	C.J.J.D. & J.M.F.C. Court, Washi, Tal. Washi, Dist. Osmanabad
Date of judgment	---	23/06/2026
Judgment signed by the presiding officer on	---	23/06/2026
Judgment uploaded on	---	23/06/2026