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IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, PURNA,
DISTRICT PARBHANI.

(Presided over by T. H. Shaikh)

RCS NO. 50/2012

EXH. NO. 197

CNR. MHPA1400001642012

Prakash Pandurang Palodkar
Age : 28 Years, Occ : Business/Farmer
Residence of Purna, Taluka Purna,
District- Parbhani.

.... Plaintiff

- Versus -

1) Subhadrabai W/o. Balaji Kadam
Age : 60 Years, Occ : Housework

2) Prayagbai W/o Kishanrao Kadam
Age : 55 Years, Occ : Housework

Plaintiff No. 1 to 3 are residence of
Purna, Taluka Purna, District Parbhani

3) Padminbai W/o Prakash Kadam (Died)
LRs.

3/A) Satyashila W/o. Balasaheb Siraskar
Age : 52 Years, Occ : Housework
Residence of Jogeshwari, Dadar
Mumbai
At present Purna, Taluka Purna
District- Parbhani.

.... Defendants

Claim :- Suit for declaration of ownership and perpetual injunction.

Appearance -

Shri. S. S. Kale and Shri. Abdul Sayeed, learned counsel
for plaintiff

Shri. V. V. Kirde and Shri. D. G. Maindale, learned counsel
for defendants

J U D G M E N T

(Delivered on 22.10.2019)

This suit is instituted for the relief of declaration of
ownership and perpetual injunction.

In short, the plaintiffs case is as under -

2. Agricultural land Survey No. 141/1, 141/2 and 141/3 total
area 2 Hecter 5 situated at Purna, Taluka Purna, District Parbhani
bounded as under -

East - Sahebrao Kadam's land

West - Hatta to Purna road

South - River coming from village Barbadi, and

North - Land of Manchak, Achyut, Venkati Bapurao
Kirde and purchased portion of one
Anusayabai Kadubaji Kakde

(For the sake of brevity, the above mentioned property is hereinafter
referred as “suit property”).

3. The plaintiff averred that, he has purchased the suit
property from Dr. Nagnath Junjare by a registered sale deed dated
16.11.1995 for consideration of Rs. one lakh. Since then he is in actual
possession of the suit property. His vendor Nagnath Junjare had
purchased the land from Manchak Bapurao Kirde under registered sale

deeds. The said Manchak Bapurao Kirde had purchased the suit property from the husband of defendants under registered sale deeds bearing No. 2014 dated 20.07.1987. The boundaries shown in registered sale deed dated 16.11.1995 of the plaintiff are identical and similar to the boundaries shown in registered sale deed dated 20.04.1987. The land is irrigated by water from well. Plaintiff has taken various crops from suit property like fruits and he also planted the trees of mango, chikoo. The boundaries of suit land are jointly of three pot hissas i.e. Survey No. 141/1, 141/2 and 141/3 area 68 R, 68 R and 69 R total area 2 Hectar 5 Gunthas. The pot hissas are adjoining to each other. Therefore, common boundaries mentioned. The mutation and cultivation entries to the R.O.R. record from the date of purchase to till 2011-2012 are undisputed.

4. The plaintiff has further averred that, Dr. Nagnath Namdevrao Junjare purchased the suit land under registered sale deed bearing No. 2737 dated 17.10.1994 area 68 R of Survey No. 141/2 and other hissa of the suit land bearing No. 141/1 of 68 R purchased under registered sale deed No. 2738 dated 17.10.1994. Both these two hissas are adjoining to each other. The said Nagnath Junjare purchased Survey No. 141/3 area 69 R by sale deed No. 2424 at Sub-registrar Officer, Parbhani. In the suit land there is a Nala as well as two acres land has been acquired by the Government from Survey No. 141 for road.

5. The defendants have harassed the plaintiff by filing complaints before Tahsildar, TILR office, Assistant Engineer, B & C, Purna. Thereafter, defendants have instituted false suit against the

plaintiff RCS No. 142/2011 in the Court. Defendants have obtained injunction against the defendant. Thereafter, on 14.03.2012 defendant started harvesting to the crops of plaintiff of chana and wheat from the suit property. Plaintiff tried to pacify them and requested not to interfere and harvest his crops. However, defendants have threatened to the plaintiff. Therefore, plaintiff reported incident to the police. Therefore, plaintiff has instituted this suit.

6. Defendants resisted the suit claim by filing their written statement vide Exh. 128. Defendants flatly denied the plaintiff's suit claim. They further contended that, plaintiff has not given the separate four boundaries of Survey No. 141/1 area 68 R, Survey No. 141/2 area 68 R and Suvey No. 141/3 area 69 R. Further they have admitted that, the registered sale deed bearing No. 2014 dated 20.04.1987 effected in between Manchak Bapurao Kirde and Balaji, Kishan and Prakash. But, the four boundaries mentioned in the above referred sale deed and sale deed dated 16.11.1995 are wrong and different. In the additional say, defendants submitted that, they have filed the Regular Civil Suit No. 142/2011 in this Court and it is still pending for adjudication. In the said suit, Court has granted the interim injunction in favour of them in respect of Gat/Survey No. 141/4 area 5 Acre 6 Guntha out of it 7 Acre 6 Guntha and its four boundaries are towards East : old Zero - Purna road and beside land of defendant, West : new Purna-Hatta road, South : self land and river and North : walking road. Prior to 8 to 9 years, they have planted the trees of chikoo, mango, amla, coconut.

7. Defendants have further contended that, plaintiff has no concern with the suit land. Plaintiff is trying to misguide by showing

the wrong four boundaries. Plaintiff is trying to grab the suit property by way of encroachment. Therefore, lastly they have contended that suit is liable to be dismissed.

8. In view of rival pleadings of both the parties, my learned predecessor framed issues at Exh. 62. I have recorded my findings against the issues for the reasons stated hereinafter.

Sr. No.	Issues	Findings
1.	Does the plaintiff prove that, he is owner and possessor of suit property ?	.. In the affirmative.
2.	Does the plaintiff prove that he is entitled for permanent injunction ?	.. In the affirmative.
3.	What order and decree ?	.. Suit is decreed with costs.

REASONS

9. In order to substantiate their claim, the plaintiff have examined himself as (PW - 1) at Exh. 48, Sanjay Kakde (PW - 2) at Exh. 63, Dr. Nagnath Junjare (PW - 3) at Exh. 64 and Devidas Kakde (PW - 4) at Exh. 76. On the other hand, the defendant No. 1 Subhadrabai Kadam has examined herself (DW - 1) at Exh. 100, Angad Kadam (DW - 2) at Exh. 133 and Dnyaneshwar Walwante (DW - 3) at Exh. 147. The plaintiff and defendants have relied upon several documents in evidence which will be referred during course of discussion, wherever necessary.

10. Heard the arguments advanced by both the learned counsels for plaintiff and defendants respectively, at length.

As to issue No. 1 :-

11. At the outset, I would like to mention here that, plaintiff has filed an application under Order 18 Rule 17 read with Section 151 of the Civil Procedure Code for recalling plaintiff Prakash, seller and witnesses of the sale deed. After giving patient hearing to both the parties, I have allowed the said application. Thereafter, in view of the said order plaintiff examined himself and Dr. Nagnath Junjare and one Sanjay Kakde.

12. Plaintiff Prakash (PW 1) deposed at Exh. 48. His evidence on affidavit is nothing but the replica of the plaint. He deposed that, he has purchased the suit property from Dr. Nagnath Junjare by registered sale deed by dated 16.11.1995. In view of the said sale deed is owner and possessor of the suit property. They are joint pot hissas of suit property Survy No. 141/1, 141/2 and 141/3 admeasuring 68 R, 68 R, 69 R respectively. Dr. Nagnath Junjare has purchased the said property 141/2, 68 R by sale deed dated 17.10.1994, 141/1, 68 R by sale deed dated 17.10.1994. The four boundaries of the suit property is mentioned in the sale deed dated 20.04.1987 are one and the same as mentioned in the sale deed dated 16.11.1995 executed in favour of the plaintiff. Therefore, the plaintiff is the owner and possessor the suit property.

13. He further deposed that, Government has acquired 2 acre land from Survey No. 141 for public road. Defendants have filed many

litigations before Tahsildar, Office of the Land Record, Deputy Collector and Assistant Engineer, Purna. In all litigations defendants have defeated and therefore, they have instituted Civil Suit bearing RCS No. 142/2011 against the present plaintiff. They have shown false and imaginary four boundaries field Survey No. 141/4. Defendants have sold the suit property to Manchak Kirde by sale deed dated 20.04.1987 and therefore at present no land remained in possession of defendants. Defendants have got injunction against plaintiff in Civil Suit RCS No. 142/2011 on 12.03.2012 and they have forcibly taken the crop of harbhara and wheat from the suit property. Plaintiff tried to pacify the defendant but they have threatened him. Thereafter, plaintiff reported the incident to police.

14. During course of cross-examination Prakash (PW-1) admitted that, he has no concern with field Survey No. 141/4. He admitted the institution of the suit RCS 141/2011 and grant of temporary injunction against him.

15. Additional evidence on affidavit of plaintiff Prakash is at Exh. 186. He has filed sale deed dated 16.11.1995 of the suit property which is executed in his favour by Dr. Nagnath Junjare vide Exh. 187. He admitted during cross-examination that, Sanjay Kakde (witness on sale deed) is husband of his sister. He further stated that, he do not know as to whether father of Sanjay Kakde was working as Civil Engineer at Irrigation Department, Purna. He further admitted that, son of Kaduba Kakde by name Anandrao is husband of his aunt. He further admitted that, Sanjay Kakde and Anandrao are real brothers.

16. He further stated that, he is unable to say as to what was his age when he was in 7th standard. He is not able to recollect when he has completed his SCC exam. He got married in 2011-2012 in the age of 33 to 34 years. He opened the shop of construction material at Purna at the age of 27 to 28 years. His date of birth is 01.05.1977. He further admitted that, his year of birth is on his Aadhar Card and Election Identity Card is shown as 1983. He further denied that, he was minor at the time of execution and registration of sale deed at Exh. 187. He further admitted that, the sale deed at Exh. 187 was sent Pune due to payment of insufficient stamp duty. He further admitted that, he has received notice from office of Sub-Registrar for payment of defect stamp duty and penalty. He denied that, he has not paid the defect stamp duty and penalty at Exh. 187.

17. He further stated that, he has purchased the suit property for consideration of Rs. one lakh from the income of his agricultural land at his birth place i.e. Palod, Taluka Sillod, District Aurangabad. He further stated that, his age is mentioned in the plaint as per certificate issue from school. He admitted that, as per the age mentioned in the plaint, evidence on affidavit, Aadhar Card and certificate issued from school his age was 11 to 12 year in the year 1995. He denied the further suggestion put forth by the defendants.

18. Sanjay Kakde (PW 2) deposed at Exh. 63 and at Exh. 195. He deposed that, plaintiff Prakash has purchased 5 Acres and 5 Gunthas land from field Survey No. 141/1, 141/2 and 141/3 situated at Purna from one Dr. Nagnath Junjare. Dr. Nagnath Junjare executed the sale deed in his presence and he has signed the sale deed as a witness.

During cross-examination he stated that, plaintiff is brother of his wife. Anandrao Kakde is his elder brother. He further denied that, when his father was working in Irrigation Department, Purna, he has purchased suit property in the name of Dr. Nagnath Junjare. He denied that, he has himself purchased the suit property by showing false four boundaries in the name of Prakash without payment of any consideration. He denied that, four boundaries of land Survey No. 141/4 are mentioned in Examination-in-chief. He admitted that, his father was working as Civil Engineer in the office of Irrigation Office at Purna. He denied the further suggestion given on behalf of defendant.

19. Dr. Nagnath Junjare deposed at Exh. 64 and 188. He deposed that, he has sold the suit property Survey No. 141/1, 68 R, 141/2, 68 R, 141/3, 69 R total 5 Acres, 5 Gunthas to plaintiff Prakash. He has executed sale deed dated 16.11.1995 in respect of the suit property in favour of the plaintiff. The sale deed is at Exh. 187. The said property was purchased by him from one Manchak Bapurao Kirde in view of sale deed at Exh. 189, 190, 191 and 192. Plaintiff is owner and possessor of the suit property.

20. He is residing at Purna city since 1982. He has admitted that, initially residing with Kakde family. He admitted that, in the year 1993-94 there was flood to the Barmal river and four persons were died. He further admitted the bridge was collapsed and new bridge was constructed. At the time of construction bridge towards Western side, road of Western side was in existence. Suit property is divided in three pieces. It was not divided due to passing of river. He denied that, he has purchased the suit property for Kakde family. He further denied

that, the land Survey No. 141/4 in between old Purna to Hatta road and new Purna to Hatta road belongs to defendants.

21. He further admitted that, he has purchased all three pieces of land on different dates. He further stated that, there are different four boundaries of each piece of land. He admitted the four boundaries mentioned in sale deed at Exh. 193 and 194 as true and correct. Thereafter, he also admitted that, in the sale deed at Exh. 189 and 190, towards East Barmal nala is mentioned. He further admitted that, as per the sale deed Exh. 189, 190, 193 and 194 he has purchased the agricultural land except area of Barmal nala. He further denied that, Barmal nala situated in Survey No. 141 belongs to defendants and accordingly there is entry in the record of Taluka Land Record Office, accordingly. He admitted that, he has executed in favour of plaintiff by mentioning four boundaries of Barmal nala. It is mentioned in the sale deed that, Barmal nala flow from the land within four boundaries. He has sold the land to plaintiff along with Barmal nala. He admitted that, he was not the owner of Barmal nala. He denied that, he executed the sale deed in favour of plaintiff along with the land of defendant. He further denied that, he has executed the sale deed without any consideration.

22. Devidas Kakde (PW 4) deposed that, he is looking after the land of the plaintiff since last 20 years. Plaintiff has purchased the suit property from Dr. Nagnath Junjare. Plaintiff is the owner and possessor the suit property. Defendants are obstructing to the possession over the suit property. He stated during cross-examination that, he does not know about the ownership and actual land survey No. 141/4.

Defendants have made quarrel regarding actual area of land. He denied that, there is land of defendant between new and old road.

23. Defendant No. 1 Subhadrabai filed her evidence on affidavit at Exh. 100. She reiterated the contents of her written statement in examination-in-chief. It has come in the examination-in-chief of Subhadrabai (DW No. 1) that, defendants are owner of the land Gat No. 141/4 admeasuring 5 Acres 6 Gunthas out of 7 Acres 6 Gunthas. Defendants have inherited the suit property from their mother-in-law Laxmibai in view of mutation entry No. 2879. Plaintiff has no concern with the suit property. Plaintiff is making obstruction to the peaceful possession of the defendants. Out of 7 Acres and 6 Gunthas land, 2 Acre land is acquired for Purna to Zero fata road. Defendants have possession over 5 Acre and 6 Gunthas land. On 03.12.2011, plaintiff destroy the boundary line between his land and suit property. He is trying to encroach over the suit property. He also grazed the crop over the suit property by loosing his cattle.

24. During course of cross-examination Subhadrabai (DW 1) admitted that, defendants have instituted the Civil suit against plaintiff and the same is pending for adjudication. Original owner of field of Survey No. 141 was Marotrao Jaiwantrao Kadam. His sons by name Balasaheb Kishanrao Prakash also died. Thereafter, the agricultural land came in the share of Laxmibai, Balaji, Prakash and Kishan and there was partition between them. They have got 7 Acres 6 Gunthas land each by way of partition. She admitted that, there are three pieces of land survey No. 141/1, 141/2, 141/3 in Survey No. 141. She denied that, plaintiff has purchased 5 Acres and 5 Gunthas land from the said

pot hissas. She further denied that, there is road, canal and Purna to Zero fata road from field Survey No. 141. She categorically denied that, in all 7 to 8 acres land acquired for road and Barmal nala from field Survey No. 141.

25. It is the case of the defendant that, they are owner of 5 Acres 6 Gunthas land out of 7 Acres 6 Gunthas from survey No. 141/4. They have filed 7/12 extract at Exh. 156 in the name of Subhadrabai, Prayagbai and Padminbai for 2 Hecter 87 R land and mutation entry at Exh. 157. On careful examination of the evidence of Subhadrabai (DW 1) it appears that, She deposed that, defendants are owner and possessor of the entire 7 Acres 6 Gunthas land from field Survey No. 141/4. She has denied that, there is road and Barmal nala in field Survey No. 141. Therefore, it clearly appears that, the oral evidence of Subhadrabai (DW-1) is not consonance with pleading of defendant.

26. Angad (DW 2) is son of defendant No. 1 Subhadrabai. He has reiterated the contents of Written Statement in his examination-in-chief. He stated that, defendant No. 1 is his mother and his father died on 16.08.2004. He stated that, he is owner and possessor of field Survey No. 141/4 admesuring 7 Acres 6 Gunthas land. The said property is mutated in the name of defendants. He further stated that, plaintiff Prayagbai and Padminbai are his aunts. Plaintiff No. 3-A Satyashila is his sister. He stated during cross-examination that, he did not know as to whether *Manchak Kirde* has purchased 5 Acres and 5 Gunthas land from Balaji, Prakash and Prayagbai. He shown his obliviousness about the selling of land by *Manchak Kirde* to one *Dr. Junjare*. He is also oblivious about the selling of land by *Dr. Junjare* to

plaintiff *Prakash*. He admitted that, 2 Acres land is acquired from Survey No. 141 for Purna to Zero fata road. He further admitted that, there is Barmal river in survey No. 141 and there is bridge over the said river.

27. On careful examination of the evidence of Angad (DW 2) it appears that, he also claimed ownership and possession over 7 Acres and 6 Gunthas land from survey No. 141/4. However, the pleading of defendants shows that, they have claimed ownership over only 5 Acres and 6 Gunthas land and they have instituted previous suit RCS No. 142/2011 for the said relief. Therefore, it clearly appears that, there is material contradiction in the oral evidence of defendants which goes to the root cause of the case. Angad (DW-2) categorically admitted during cross-examination that, defendants have no right and interest in the land of plaintiff *Prakash*. He further admitted that, field Survey No. 141/4 is acquired for river and public road. He further admitted that, land field survey no. 141/4 is not in existence. In view of these admissions by Angad (DW-2) who is the son of defendant No. 1 Subhadrabai, it appears that defendants have failed to particularize existence of their land.

28. *Dnyaneshwar Walwante* (DW-3) is the measurer, Taluka Land Record Office, Purna. He deposed that, on 15.04.2019 he measured the field Survey No. 141 in presence of plaintiff and defendants as per the order of the Court in Civil Appeal No. 50/2012. In the said Court Commissioner report and panchanama are filed on record vide Exh. 148 and 149 respectively. He further stated that, he prepared the map of measurement. 'C' copy of the map is at Exh. 150.

During course of cross-examination he stated that, as per the Court order Deputy Superintendent was directed to carry out the measurement. He is not the Deputy Superintendent of Taluka Land Record Office. He admitted that, he was not directed to measure the said land as per the Court order. He further stated that, as per the Court order, it was directed to measure Survey No. 141/1, 141/2, 141/3 and 141/4. He is further stated that, there is no record of said four pot hissas in the record of his office. He further admitted that, said pot hissas are not mentioned in the measurement map at Exh. 150.

29. Dnyaneshwar (DW-3) further stated that, as per the report of measurement for river and nala area of 1 Acre of 36 R and barren land 64 R land and area 98 R land for road is mentioned. He further admitted that, in measurement map area for road 68 R is shown which is not found on the spot.

30. It clearly appears from the record that, the Hon'ble Appellate Court has directed the measurement of all Survey No. 141/1, 141/2, 141/3 and 141/4. Measurer (DW-3) stated during cross-examination that, as per the documents brought by him before the Court, field Survey No. 141/1 is admeasuring 2 Hectors 89 R and *pot kharab* 38 R land, 142/2 is admeasuring 2 Hector 89 R and *pot kharab* 35 R, 141/3 is admeasuring 2 Hector 87 R and *pot kharab* 35 R and 141/4 admeasuring 2 Hector 87 R and *pot kharab* 45 R land. Therefore, it clearly emanates that, the measurer was having the record about the all pot hissas of field Survey No. 141. However, he has measured the entire Survey No. 141 without demarcating the separate land field Survey No. 141/1, 141/2, 141/3 and 141/4. Therefore, it

appears that, measurement of the suit property is not conducted as per the order of the Court.

31. Plaintiff has filed xerox copy of report of Sub-Divisional Engineer, PWD office, Purna. It is the contention of plaintiff that, after collapse of bridge, new bridge was constructed on the same place. The report of concern department is not proved. If it presumes that, the new bridge was constructed on new place then the said land would have been acquired as per the provisions of law. However, there is no evidence on record that, new bridge was constructed on another place. Therefore, it cannot be said that, PWD department has constructed bridge at another place.

32. Plaintiff has filed the sale deeds of land purchased by Dr. Nagnath Junjare from Manchak Kirde at Exh. 189, 190, 191 and 192. Dr. Nagnath Junjare (PW-3) has proved the said documents beyond preponderance of probabilities. It is the pivot of the defence of the defendants that, Dr. Nagnath Junjare executed sale deed at Exh. 187 in favour of the plaintiff when he was minor. There is no document coming forwards on behalf of defendants to establish the minority of plaintiff at the time of execution of sale deed. Therefore, in my considered opinion, defendants have failed to establish that, at the time of execution of sale deed plaintiff was aged about 11 to 12 years. So also it is contended by the defendant that, father of PW 2 Sanjay Kakde who was working as Engineer in Irrigation Department has purchased the suit property in the name of plaintiff without payment of any consideration. However, there is no clenching and convincing evidence on record to establish that, Dr. Nagnath Junjare executed sale deed in

respect of the suit property without payment of consideration. It has come on record during cross-examination of plaintiff Prakash that, he has paid the consideration of the sale deed the income received from the agricultural field situated at his birth place. The sale deed at Exh. 187 shows that, initially plaintiff has paid the less stamp duty than was required. The endorsement over the last page of the sale deed (Exh. 187) shows that, plaintiff has paid the deficit stamp duty and penalty over the sale deed. Therefore, in view of these circumstances it can be said that, the sale deed (Exh. 187) is not a valid document conferring title of the suit property. In my considered opinion, the plaintiff and Dr. Nagnath Junjare (PW 3) and Sanjay Kakde (PW 2) has proved the sale deed at Exh. 187 beyond preponderance of probability. Thereafter, the suit property is mutated in the name of plaintiff by virtue of mutation entry at Exh. 167.

33. 7/12 extract of the suit property at Exh. 172, 173, 174 and 175 clearly shows that, plaintiff having ownership and cultivating possession over the land survey No. 141/1, 141/2, 141/3. It also shows cultivating possession in the year 2011-2012. It is contention of defendants that Dr. Nagnath Junjare mentioned wrong four boundaries in the sale deed at Exh.187 and thereby included the land of defendants in the sale deed. The sale deed at Exh.187 is executed in favour of plaintiff on 16.11.1995. The record shows that the sale deed at Exh.187 and mutation entries in favour of plaintiff are not challenged by the defendants. Therefore, in my considered opinion, the plaintiff has proved his possession over the suit property.

34. Thus, the conspectus of the above discussion is that,

plaintiff has proved that, he is owner and possessor of the suit property. Hence, I answer issue No. 1 in the affirmative.

As to issue No. 2 :-

35. It has come in the evidence of Prakash (PW 1) and Devidas Kakde (PW 4) that, defendants are trying to create disturbance to the peaceful possession of the plaintiff over the suit property. I have already hold that, plaintiff is the owner and possessor of the suit property. Therefore, it is necessary to protect the possession of the plaintiff by grant of perpetual injunction in his favour and against the defendants. In view of my affirmative finding to the issue No. 1 plaintiff is entitled for the relief of declaration of ownership and perpetual injunction. Therefore, I answer issue No. 2 in the affirmative.

36. Thus, conspectus of the above discussion that, suit is liable to be decreed with costs. Hence, to answer issue No. 3, I pass following order.

ORDER

1.	Suit is decreed with costs.
2.	It is hereby declare that, plaintiff is the owner and possessor of agricultural land Survey No. 141/1, 141/2 and 141/3 total area 2 Hector 5 R (5 Acre 5 Gunthas) situated at Purna, Taluka Purna, District Parbhani.
3.	Defendants, their agents, relatives and any person related to them, are hereby permanently restrained by perpetual injunction from creating obstruction in any manner to the possession of

	plaintiff over the suit property without following due process of law.
4.	Decree be drawn up accordingly.
5.	Copy of the judgment be filed with the Civil Suit RCS No. 142/2011.

Date : 22.10.2019

(T.H. Shaikh)
Civil Judge Junior Division
Purna