

MHRG010031182016	 	Presented on	: 27/09/2016
		Registered on	: 27/09/2016
		Decided on	: 23/03/2026
		Duration	: Y M D 09 05 26

BEFORE THE PRINCIPAL DISTRICT JUDGE, RAIGAD-ALIBAG
Presided over by R. D. Sawant

Reg. Civil Appeal No. 165/2016
Exhibit No.: 32

1. Smt. Vijayeta Vijay Mandlekar @ Khaire)
Age :- 43 Yrs., Occu.:- Agriculture,)
2. Shri. Vipin Vijay Mandlekar @ Khaire)
Age :- 25 Yrs., Occu.:- Service,)
3. Shri. Jitesh Vijay Mandlekar @ Khaire)
Age :- 25 Yrs., Occu.:- Service,)
4. Shri. Mahendra Dharma Mandlekar @ Khaire)
Age :- 46 Yrs., Occu.:- Agriculture,)
5. Shri. Sunil Dharma Mandlekar @ Khaire)
Age :- 45 Yrs., Occu.:- Agriculture,)
6. Smt. Neeta Prakash Jadhav @ Khaire)
Age :- 51 Yrs., Occu.:- Agriculture,)
All R/o. At & Post Saygaon, Tal Murud,)
Dist Raigad)
7. Smt. Jaywanti Dharma Mandlekar @ Khaire)
[Since deceased through Legal Heirs at)... Appellants
Sr. No. 1 to 6 above]) (Ori. Plaintiffs)

V/s.

1. Smt. Nurjaha Sayed Munashi,)
Age :- 68 Yrs., Occu.:- Household,)
2. Shri. Mobin Sayed Munashi,)
since deceased through Legal Heirs)
- 2/1. Smt. Rubina Mobin Munashi,)
Age :- 44 Yrs., Occu.:- Household,)

- 2/2. Shri. Abdul Mobin Munashi,)
Age :- 17 Yrs., Occu.:- Education,)
- 2/3. Shri. Ahmad Mobin Munashi,)
Age :- 13 Yrs., Occu.:- Education,)
[No. 2/2 & 2/3 under guardian of)
Mother 2/1])
3. Shri. Matin Sayed Munashi,)
Age :- 38 Yrs., Occu.-Business,)
4. Shri. Mohamad Hussein Sayed Munashi,))
Age :- 36 Yrs., Occu.- Business,)
All R/o.Randive Lane, Murud) ... Respondents
Tal. Murud, Dist. Raigad) (Ori. Defendants)

**Appeal against Judgment and Decree dt.
20.08.2016 passed by Ld.C.J.J.D.Murud
in Reg.C.S. No. 37/2013.**

Appearances :-

Advocate for Appellants - Shri. P V. Patil
Advocate for Respondents - Shri.S. K. Wakade

JUDGMENT
(Delivered on 23/03/2026)

This civil appeal u/sec. 96 r/w. Order 41 Rule 1 of CPC is filed by original Plaintiffs challenging the Judgment and Decree dt. 20.08.2016 passed by Ld. Civil Judge Junior Division, Murud, in Regular Civil Suit No.37/2013 whereby the suit is dismissed.

Appellants are the original Plaintiffs whereas Respondents are original Defendants and hereinafter they are referred as per their original status in the suit.

02. Brief facts necessary for disposal of the present appeal are as under -

(a) The suit for declaration, cancellation of Sale-deed and for permanent injunction, in respect of suit property mentioned in para 1 of the suit, was filed by Appellants herein i.e. original Plaintiff.

(b) Deceased Dharma Mandlekar owned and possessed the suit property. Dharma left behind three sons viz 1] Vijay 2] Mahendra 3] Sunil and one daughter named Nita Prakash Jadhav and widow Jaywanti. After death of Vijay names of Plaintiff nos. 1 to 3 being widow and sons were recorded in the revenue records. Plaintiff no. 7 – Jaywanti is widow of deceased Dharma, and Plaintiff nos. 4 and 5 are sons and Plaintiff no. 6 is daughter of deceased Dharma.

(c) It is averred by the Plaintiffs that they came to know that their names in revenue records of the suit property are substituted in the name of Defendant as per mutation entry no. 1182 and 95. When plaintiffs took the search about the same, they came to know that Defendant by way of bogus Sale-deed dt. 12.02.1993 recorded his name to the revenue record of the suit property. The Defendant has obtained the signature of Plaintiff No.7 by taking the benefit of her illiteracy. Plaintiffs never intended to sell the suit property to the Defendant and they had never executed the power of attorney nor they have given consent to the Defendant to take the permission for the sale transaction. All the plaintiffs being co-owners of the suit property, they were not parties to the disputed sale deed and therefore, the said sale deed is not binding upon them. The Defendant failed to

give reply to the notice of Plaintiffs whereupon Plaintiffs were constrained to file the present suit against the Defendant for the cancellation of sale-deed and for permanent injunction for restraining him from obstructing their possession over the suit property.

03. Defendant resisted the suit by filing written statement at Exh. 14. Defendant denied the contentions raised by Plaintiffs in toto. The suit property is purchased by the Defendant by way of registered sale-deed and since then it is in his possession. At the time of purchasing the suit property Defendant was aware of the fact that all the plaintiffs are co-owners of the suit property as per the revenue record. The suit property being the tenancy land, necessary permission was required to be obtained under Bombay Tenancy and Agricultural Land Act for completion of sale transaction. Therefore, Plaintiff No. 7 took the power of attorney on behalf of other Plaintiffs and obtained permission from the concerned authority for executing the sale-deed in favour of the defendant. All the Plaintiffs have raised the dispute with regard to the suit property after 20 years as the prices of the properties have escalated. Plaintiffs never filed any complaint or any civil suit for declaration of their ownership with regard to the suit property. Therefore, the disputed sale-deed is binding upon the Plaintiffs and they can not claim any right in the suit property. The suit is filed only with ill intention to grab the suit property. With these averments, Defendant prayed for dismissal of the suit. During the pendency of suit, since original Defendant died, his legal heirs were substituted on record.

04. On the basis of the pleadings, Trial Court framed issues at Exh.16, the same are reproduced herein for the sake of convenience :-

1. Whether plaintiffs have been in settled possession of the suit property ?
2. Whether sale deed dated 12.02.1993 executed in favour of defendant is sham and bogus ?
3. Whether plaintiffs are entitled for declaration with respect to sale-deed dated 12.02.1993 as prayed for ?
4. Whether plaintiffs are entitled for relief of permanent injunction as prayed for ?
5. Whether suit is within limitation ?
6. Whether plaintiffs are entitled for relief sought ? If so what ?
7. Whether defendant is entitled for compensatory cost as prayed for ?
8. What order and decree ?

05. In order to prove their case, Plaintiff no. 5 Sunil Mandlekar @ Khaire examined himself and on behalf of all the Plaintiffs at Exh. 17. Plaintiffs also examined PW 2 Kashinath Jadhav at Exh. 22 and PW 3 Mangesh More at Exh. 24. Plaintiffs have also placed reliance on the following documents :-

Power of attorney executed in favour of plaintiff No.5	Exh.20
Mutation entry No.1100	Exh. 21
True copy of sale deed dated 12.02.1993	Exh. 23
7/12 extract of Gut No.78	Exh.59
Mutation entry No.1182	Exh.60
Mutation entry No.95	Exh.61
Legal notice and acknowledgment dt.11.3.2013	Exh.62

06. On the other hand Defendants, examined Defendant No. 2 Mobin Munasi for self and on behalf of other Defendants at Exh. 26. Defendants also examined DW 2 Umesh Bhaskar Patil at Exh. 49, DW 3 Radheshyam Parshuram More at Exh. 56. Defendants placed reliance on following documents :-

Power of attorney dt. 05.09.2015 executed in favour of defendant No.2 Exh.29

Power of attorney dated 13.01.1992 Exh.57

Sale permission of sub-divisional officer dt.10.02.1993 Exh.63

Plaintiffs filed evidence close pursis at Exh. 25 whereas Defendants filed evidence close pursis at Exh. 58.

07. After appreciating oral as well as documentary evidence on record and after hearing arguments of both sides, Trial Court answered Issue nos. 1 to 7 in negative and dismissed the suit.

08. Being aggrieved and dissatisfied with the judgment and decree dated 20.08.2016 passed by Ld. CJJD Murud in RCS No. 37/2013, Plaintiffs filed present Appeal on the grounds mentioned below :

- (a) The ld. Judge did not frame proper issues in the matter.
- (b) The ld. Judge failed to appreciate oral and documentary evidence in its proper perspective.
- (c) The ld. Judge gave undue advantage to the evidence of the Defendants.
- (d) The ld. Judge failed to consider that the original power of attorney was not on record on which disputed sale deed is based

and the said sale deed was not signed by Plaintiff and the power of attorney was not attached to the Sale-deed.

(e) The Id. Judge did not consider the evidence of Plaintiff recorded in the proceeding.

(f) The whole approach of the Id. Judge in the matter is from wrong angle.

(g) The inferences drawn and conclusion arrived at are wrong and erroneous.

09. Heard Ld. Adv. Shri. P. V. Patil for Appellants/Original Plaintiffs and Ld. Adv. Shri.S.K.Wakade for Respondents/ Original Defendants. Perused the records and pleadings. Perused the judgments cited by both sides in support of their respective contentions. Following points arise for my determination and I have recorded my findings thereto with reasons thereon as under.

Sr. No.	Points	Findings
1.	Whether plaintiffs are entitled for declaration with respect to sale-deed dated 12.02.1993 as prayed for ?	... No.
2.	Whether plaintiffs are entitled for relief of permanent injunction as prayed for ?	... No.
3.	Whether interference is called for at the hands of this Court against the Judgment and decree dt. 20.08.2016 passed by Ld. C.J.J.D. Murud in Reg.C.S. No. 37/2013?	... No.
4.	What Order ?	.. As per final order.

:: REASONS ::

10. Ld. Adv. Shri. P. V. Patil for Appellants submits that all the Plaintiffs being co-owners of the suit property are not signatory to the disputed sale-deed and that the sale-deed was executed by deceiving Plaintiff no. 7 by taking her signatures on some papers, taking disadvantage of her illiteracy and submits that none of the Plaintiff executed power of attorney in favour of Plaintiff no. 7. He further submits that, Sushila Prakash Shinde is not in existence at all. He further submits that no consideration was received by Plaintiffs and therefore the sale-deed is void and he placed reliance on the Judgment of Hon'ble Supreme Court in case of **Keval Krishna V/s. Rajesh Kumar, in Civil Appeal nos. 6989 – 6992 of 2021.**

11. On the other hand ld. Adv. Shri. S. K. Wakade for Respondents submitted that, the Trial Court after appreciating the evidence on record in proper perspective, rightly dismissed the suit and no interference is called for at the hands of this Court. He has further submitted that, sale-deed is executed by power of attorney holder i.e. PW 7 after obtaining the permission u/sec. 43 of Bombay Tenancy and Agricultural Land Act. He further submitted that, the suit is filed after 20 years and there is no evidence to show the documents are bogus or not complying legal requirements. He has also drawn my attention to the admissions given by Plaintiff in his cross-examination. He has drawn my attention to the sale permission at Exh. 63 and Exh. 57 Power of attorney executed before Tahasildar on 13.01.1992 and

Sale-deed dt. 12.02.1993. He further submitted that the sale-deed is legal and Defendant is bonafide purchaser of the suit property and there is no reason to interfere. He made submissions as to how the judgment cited by the Advocate for Appellant are not applicable to the present case.

As to Point Nos. 1 and 2 :-

12. The present suit is filed for declaration of the alleged sale-deed with relief of cancellation of the same and therefore as the suit is filed u/sec. 34 of Specific Relief Act which entitle the person to come before the Court for the declaration, if person is entitled to [a] Any legal character [b] any right, as to property. The burden is upon the Plaintiff to prove that they are entitled for declaration of any legal character or to any legal right. It is essential to prove that Defendants are denying, or interested to deny, Plaintiffs title to such character or right. On the basis of this legal aspect, it can be seen that the declaration relating to alleged sale-deed is sought on the grounds that Plaintiff no. 1 to 6 have never executed the power of attorney in favour of Plaintiff no. 7 on the basis of which the disputed Sale-deed is executed in favour of the deceased Defendant. The second ground for cancellation of sale-deed is that Plaintiff no. 1 to 6 being co-owners of the suit property were not signatories nor the consenting parties.

13. To prove the power of attorney dt. 13.01.1992 at Exh. 57 executed by other Plaintiffs in favour of Plaintiff no. 7, Defendants examined retired Nayab Tahasildar Radhesham More

at Exh. 56 before whom the said power of attorney was executed by the parties. The said witness has identified the signature of the witness who has given the identification for the parties to the document. Out of his evidence, it is brought on record that the said power of attorney was executed in his presence who has identified his signature over the disputed document. During the cross-examination it is brought on record that he has not brought the concerned register wherein entry of the said power of attorney is taken. Therefore, from the evidence of the said witness, defendants have duly proved the execution of power of attorney by other Plaintiffs in favour of the Plaintiff No.7.

14. With regard to the allegations in respect of the disputed sale-deed, Plaintiff No.5 in his cross-examination stated that he got the knowledge about the disputed document prior to 5 to 6 years. He has admitted the fact that his mother i.e. Plaintiff No.7 has executed the disputed document in favour of deceased defendant. He has also admitted that prior to the said transaction, necessary permission was taken for the sale transaction from Sub-divisional Officer as per the documents attached with the disputed sale-deed.

15. Plaintiff has also placed reliance on the evidence of attesting witness PW 2 Kashinath Jadhav at Exh. 22 to the Sale-deed dt. 12.02.1993. He has deposed that he is not aware with the disputed transaction between the parties. At the particular time deceased defendant only took his signature on one paper whereupon deceased defendant never told him about the

contents of the document and the nature of the transaction. He has further deposed that deceased defendant has not taken his signature in the Sub-Registrar Office and therefore, alleged transaction is a bogus and false. In the cross-examination, the said attesting witness denied his signature over the disputed document however admitted that he gave the evidence as per the say of the plaintiffs. Being the adjoining owner of the suit property he denied to give the details of his property including its number. Therefore, the contention of the Plaintiff cannot be said to be true. The evidence of PW 2 is not helpful to the Plaintiffs as the said witness is not aware of the details of the transaction and he has also denied his signature over the disputed document in that behalf.

16. Plaintiff No.7 who alleged to have executed sale deed for self and other Plaintiffs, in favour of Defendant would have been the best witness to substantiate its case that Plaintiff no. 7 has not signed the Sale-deed as alleged. Plaintiffs have contended that they have never executed the power of attorney dtd. 13.01.1992 in favour of plaintiff No.7. Therefore, considering these allegations, it was necessary on part of the Plaintiffs to prove their contentions by examining the said witness. However, the plaintiffs have not examined the said witness to support their contentions. On the contrary, the defendants have duly proved the execution of the power of attorney dtd. 13.01.1992 on the basis of which sale deed is executed in favour of the deceased Defendant. In the evidence of DW 1 the son of the deceased Defendant, it is brought on record that consolidation scheme

extract bears the names of the plaintiffs over the suit property. Except this nothing has been brought on record with regard to the allegations in respect of sale deed dtd. 12.2.1993 that can be considered here.

17. Considering the nature of the present suit, mere assertions that the co-owners were not signatories and consenting parties to Sale-deed. Mere contention that they have not executed power of attorney in favour of plaintiff No.7 will not suffice the purpose for the entitlement of the reliefs as prayed for. Plaintiffs have not brought any evidence on record to show that they have acquired the legal character or the legal right in respect of the suit property and therefore, alleged sale deed is not binding upon them. Though both the parties have relied upon the disputed sale deed, the said document is not proved in the evidence though the certified copy of the same filed on record was referred only for identifying the signature to the attesting witness of the said document. The defendants have duly proved the execution of the power of attorney at Exh. 57 on the basis of which the disputed sale deed was executed in favour of defendant. The Defendants have also filed on record the permission letter at Exh.63 of the Sub-Divisional officer granted to the deceased defendant on the basis of which disputed sale deed is executed. Considering this documentary evidence on record, nothing contrary is shown at the instance of Plaintiffs that the disputed sale deed was executed on the basis of bogus paper and due to illiteracy of the plaintiff No.7.

18. It is contended by Advocate for Appellants that the consideration amount has not passed in favour of Plaintiff in lieu of Sale-deed and therefore disputed sale-deed is not binding upon Plaintiffs and placed reliance on Judgment of Hon'ble Supreme Court in case of **Keval Krishna V/s. Rajesh Kumar**, cited supra however in the preset case consideration amount was passed from Defendant to Plaintiff no. 7 as can be seen from the receipt annexed with sale-deed. As already observed, it was necessary on part of Plaintiffs to examine Plaintiff no. 7 to prove that the contents of the receipt are not true. Moreover, as the disputed sale-deed is alleged to have been executed by the Plaintiff No.7, she must be conversant with the disputed transaction. As the said receipt is not disproved, the contentions raised on behalf of Advocate of Appellant are not proved. Ld. Adv. for Appellants further contended that the sale permission for the disputed sale-deed is not taken at the instance of Plaintiff Nos. 1 to 7. However, the sale permission at Exh.63 makes it clear that the permission is taken on behalf of all the plaintiffs. Therefore, the said contention of the Appellant/Plaintiffs is also not tenable.

19. Considering the evidence on record, it can be seen that Plaintiffs have not brought any evidence on record to infer that the alleged sale-deed is not binding upon them. As discussed earlier, Plaintiffs have failed to bring on record any circumstance to show that the alleged sale deed is illegal and bogus. On the contrary, the documentary evidence on record clearly shows that after taking necessary permission, sale-deed dtd. 12.02.1993 was

executed by the Plaintiff No.7 and accordingly, mutation entries were carried out. Therefore, in absence of reliable evidence on record, it can not be said that the said sale-deed dtd. 12.02.1993 is illegal and bogus document. Therefore, as the Plaintiffs have failed to produce necessary evidence in that behalf, they are not entitled for the relief of declaration in respect of sale-deed as prayed for. Plaintiffs have also failed to show their possession over the suit property and therefore, they are also not entitled for the relief of permanent injunction in respect of the suit property. Therefore, point nos. 1 and 2 are answered in the negative.

As to Point No. 3 :-

20. In view of reasons recorded above in answer to point nos. 1 and 2, the Plaintiffs are not entitled for declaration in respect of Sale-deed dt. 12.02.1993. The Plaintiffs have failed to show that they are in possession of the suit property. The Judgment of Hon'ble High Court in case of **Dinannath Badriprasad Sreshta V/s. Chandradevi M. Upadhyaya, reported in 2001(4) ALL MR 92** wherein it has been held that once court decides that Plaintiff is not entitle for declaration as sought for the consequential relief of injunction can also not be granted. Hence Plaintiffs are not entitled for the permanent injunction as prayed. Hence, I hold that the Trial Court rightly dismissed the suit and therefore I find no reason to interfere with the impugned Judgment and Decree dt. 20.08.2016. Hence I answer point no. 3 in Negative accordingly.

As to Point No. 4 :-

21. In view of reasons and findings recorded in answer to

point nos. 1 to 3, I proceed to pass the following order.

:: ORDER ::

1. Reg. Civil Appeal no. 165/2016 is hereby dismissed with costs.
2. The Judgment and Decree passed by Ld. Civil Judge J. D., Murud in Reg. Civil Suit No. 37/2013 is hereby confirmed.
3. Decree be drawn accordingly.
4. R & P of Reg. Civil Suit No. 37/2013 be sent back to the court of C.J.J.D. Murud.

Alibag.
Date :-23.03.2026

Sd/-
(R. D. Sawant)
Principal District Judge
Raigad-Alibag.

CERTIFICATE

I affirm that, the contents of this PDF file is same word to word, as per the original judgment.

Name of Steno	:- S. S. Puro (Grade-I)
Name of Court	:- Principal District Court, Raigad-Alibag.
Judgment Dictated on	:- 23.03.2026
Judgment signed by P.O. on	:- 25.03.2026
Judgment uploaded on	:- 25.03.2026

