

MHRG110013832017



Received on	05.12.2017
Registered on	05.12.2017
Decided on	31.03.2026
Duration	08Y 03M 26D

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION
MANGAON, TAL.MANGAON, DIST.RAIGAD

(Presided over by : Smt.A.B.Sontakke(Smt.A.P.Manav)

Regular Civil Suit No.173/2017
Exh.No.86

- 1) Ajay Shankar Chavan,
Age : 45, Occ. - Agriculture,

- 2) Shankar Vithoba Chavan(Deceased),

- 2/1) Atul Shankar Chavan
Age : 50, Occ. - Job,
Both R/o. Potner, Vave Diwali,
Tal.Mangaon, Dist.Raigad.

- 2/2) Amod Shankar Chavan
Age : 44, Occ. - Job,
Both R/o. Potner, Vave Diwali,
Tal.Mangaon, Dist.Raigad.

- 2/3) Dipali Dattatrey Sukhadare
Age : 48, Occ. - Housewife,
Both R/o. Potner, Vave Diwali,
Tal.Mangaon, Dist.Raigad.

2/4) Sharada Shankar Chavan
Age : 68, Occ. - Housewife,
Both R/o. Potner, Vave Diwali,
Tal.Mangaon, Dist.Raigad.

.....Plaintiffs

1) Balkrishn Sadashiv Shinde (Deceased),

1/1) Pooja Balkrishn Shinde
Age : 63, Occ. - Housewife,
R/o. 711 B wing, Shri Sai Siddhivinayak,
Co. housing society, A.V. Nagvekar Marg,
old Prabhadevi Mumbai-400025.

1/2) Aarya Atit Mayekar
Age : 39, Occ. - Housewife,
R/o. Akanksha society, A wing 3rd floor,
plat no.306, Vir Nariman road, Mumbai.

1/3) Pradnya Pradip Musadkar
Age : 33, Occ. - Housewife,
R/o. 32/15, B.D.D. chawl, N.M. Joshi
Marg, near Bawla mashid Mumbai
Delights road.

1/4) Pritesh Balkrishn Shinde
Age : 29, Occ. - Job,
R/o. 711 B wing, Shri Sai Siddhivinayak,
Co. housing society, A.V. Nagvekar Marg,
old Prabhadevi Mumbai.

2. Dwarakanath Sadashiv Shinde
Age : 57, Occ. - Agriculture

3. Prakash Sadashiv Shinde
Age : 48, Occ. - Agriculture

4. Vijay Sadashiv Shinde
Age : 43, Occ. - Agriculture

5. Ravindra Sadashiv Shinde
Age : 50, Occ. - Agriculture
All Umroli, Talashet, Tal.Mangaon,
Dist.Raigad.

.....Defendants

Advocate for Plaintiff	:- Shri. S. K. Wakde
Advocate for Defendant	:- Smt. M. V. Metha

JUDGMENT

(Delivered on this 31st March 2026)

Plaintiff filed present suit for declaration and perpetual injunction.

Facts of plaintiff's case :

2. The land in Gat No. 116/2, adm. 31 H. 80 R. situated at village Patner, Tal. Mangaon, Dist. Raigad, is the disputed property in present suit (This disputed property is hereinafter referred as "suit property" for sake of convenience.)

3. The suit property originally belonged to Balu Ramji Chavan, who has three sons—Vaman, Vithoba and Narayan, which are now deceased. Narayan died unmarried. Vaman was survived by his wife Anusaya and daughter Shevanti (since deceased), whose sons are the defendants. Vithoba was survived by Plaintiff No. 2 and daughters.

4. Plaintiff submitted that, as the ancestral properties at Mouje Potner were not partitioned earlier, Plaintiff No. 2 filed R.C.S. No. 39/1981 for partition. The suit was decreed on 29/04/1982 and confirmed in Civil Appeal No. 103/1982 on 29/04/1991. In execution (Application No. 37/1991), possession was delivered to Plaintiff No. 2 on 10/12/1999. Though land in Gat No. 116 was divided into 116/1 and 116/2, defendants did not take possession of 116/2, which remained with the plaintiff.

5. The plaintiff claims continuous, open and peaceful possession of the suit property, including Gat No. 116/2, and other lands, even after partition. Despite revenue entries in defendants' names, they never possessed or cultivated the land. A spot inspection and panchnama dated 16/10/2002 confirmed plaintiff's possession. Plaintiff further averred that defendants attempted to create third-party rights without possession. The plaintiff claims title by adverse possession over land in Gat No. 116/2 (0-31-80 H.R.) and prayed for declaration of title and injunction.

6. Defendant No. 1, 2 and 4 appeared and filed their written statement vide Exh.13. Defendant admitted the description of suit property. The defendants denied the plaintiff's claim and contend that the suit is not maintainable. They admit the genealogy, relationship, description of property, and earlier proceedings including decree and appeal.

7. Defendants asserted that pursuant to the decree in partition suit, Gat No. 116 was divided into 116/1 and 116/2, and land in Gat No. 116/2 allotted to their share and remains in their possession. The decree was confirmed by appellate court. Their names are recorded in revenue records. Defendants denied plaintiff's possession and adverse possession, contending that the plaintiff has no right, title or interest. They further contend that revenue entries or panchnama cannot override the civil court decree. The suit for declaration and injunction against true owners is not tenable. Defendants prayed for dismissal of suit with costs and compensation of Rs. 25,000/-.

8. My Ld. Predecessor has framed issues at Exh.25. I have produced those issues below and recorded my findings on each issue for the reasons given below.

Sr.No	POINTS	FINDINGS
1.	Whether the plaintiffs proves that, they became owner of the suit property on the basis of adverse possession ?	Negative
2.	Does the plaintiff prove that the defendant has obstructed his possession over suit property ?	Negative
3.	Whether plaintiff is entitled for declarations as prayed for ?	Negative
4.	Whether the plaintiffs are entitled for perpetual injunction as prayed ?	Negative

5.	What order and decree ?	As per final order.
----	-------------------------	----------------------------

9. Plaintiffs has examined following witnesses:

Sr.No.	Witness	Exhibit
1.	Ajay Shankar Chavan	35
2.	Dilip Sakharam Dabhekar	44

10. Plaintiff has filed following documentary evidence ;

Sr.No.	Nature	Exh.
1	Copy of 7/12 extract of Gat no.116/2	36
2	Copy of 7/12 extract of Gat no.116/1	37
3	Copy of 7/12 extract of Gat no.115	38
4	Copy of 7/12 extract of Gat no.451	39
5	Copy of letter dt.02.09.2002	40
6	Copy of letter of Gat no.116/2	41
7	Copy of panchnama of Gat no.116/1 and 116/2 dt.16.10.2002	42

11. Plaintiff has filed evidence closed pursis at Exh.45.

12. Defendant has examined following witnesses:

Sr.No.	Witness	Exhibit
1	Balkrishn Sadashiv Shinde	48

13. Defendant has produced documentary evidence as follows :-

Sr.No.	Nature	Exh.
1.	Copy of Decree RCS no.39/1981	49

2.	Copy of judgment RCS no.39/1981	50
3.	Copy of Decree RCS no.103/1982	51
4.	Appeal RCS no.103/1982	52

14. Defendant has filed evidensce closed pursis at Exh.59.

Arguments of parties-

15. Heard Ld. Advocate for the plaintiffs Shri. S. K. Wakde and Ld. Advocate for the defendant Adv. M. V. Metha at considerable length. The Ld. Advocate Shri. S. K. Wakde for the plaintiff vehemently argued that the present suit is filed for declaration of ownership over the suit property bearing Gat No. 116/2, situated at village Potner, Taluka Mangaon, District Raigad, on the basis of adverse possession, along with consequential relief of permanent injunction. It is submitted that the suit property originally formed part of ancestral properties of Balu Ramji Chavan and was subject to partition proceedings in R.C.S. No. 39/1981, followed by Civil Appeal No. 103/1982 and execution proceedings bearing Darkhast No. 37/1991. Though Gat No. 116/2 was allotted to the defendants, at the time of execution on 10/12/1999, the defendants were not present, and the plaintiff came into possession of the said property. The plaintiffs contend that since 10/12/1999, they have been in continuous, open, peaceful and uninterrupted possession and cultivation of the suit property, without any interference from the defendants. The oral evidence of PW-1 and PW-2, coupled with documentary evidence such

as 7/12 extracts, pik pahani and panchnama (Exh. 36 to 42), clearly establish long, continuous possession of more than 12 years.

16. It is further submitted that the defendants never exercised possession over the suit property and only attempted to interfere in the year 2017 by trying to create third-party rights, thereby giving rise to the present cause of action. It is submitted that the plaintiffs have proved their continuous and hostile possession over the suit property and are entitled to declaration of ownership and permanent injunction as prayed. Hence, the suit deserves to be decreed with costs.

17. Plaintiff placed reliance on the decision of the Hon'ble Supreme Court in Ravinder Kaur Grewal vs. Manjit Kaur and other judgments, it is argued that a person in settled and hostile possession for more than the statutory period is entitled to seek declaration of title by adverse possession. Plaintiff further placed reliance on the judgment in **Tmt. A. Vedanayaga Vs. Annakili** (27th January, 2025) I have gone through the judgment in Vedanayaga, the facts in the case in hand and in the case of Vedanayaga are different. Therefore the ratio laid down in the judgment of Vedanayaga judgment is not applicable to the case in hand.

18. On the other hand the Ld. Advocate for the defendant Shri. M.V. Metha vehemently argued that the present suit for declaration of ownership based on adverse possession is not

maintainable in law and is liable to be dismissed. It is contended that after the partition proceedings and execution of decree in R.C.S. No. 39/1981 and Darkhast No. 37/1991, Gat No. 116 was duly divided, and Gat No. 116/2 was specifically allotted to the defendants. Thus, the defendants are the lawful owners of the suit property and their title stands confirmed by the decree of a competent Court. It is further argued that the plaintiff has failed to establish essential ingredients of adverse possession, namely, the nature, continuity, and hostile character of possession to the knowledge of the true owner. There is no reliable evidence to show that the plaintiff has been in continuous possession since 1999.

19. The documentary evidence relied upon by the plaintiff is insufficient and not duly proved. The 7/12 extracts (Exh. 36 and 37) do not reflect the plaintiff's possession. The pik pahani and inquiry documents (Exh. 40) do not conclusively establish possession. The panchnamas (Exh. 41 and 42) are not proved in accordance with law and, therefore, cannot be read in evidence. No map or proper identification of the suit property has been produced. On the contrary, the defendants have produced documentary evidence (Exh. 49 to 52), including judgment and decree, which establish their ownership and possession over the suit property.

20. The defendants further contend that the plaintiff has failed to prove any obstruction or interference by the defendants. In absence

of proof of possession, the relief of injunction cannot be granted, particularly against the true owner. Therefore, it is submitted that the plaintiff has failed to prove his case, and the suit deserves to be dismissed with costs. Hence they prayed for the dismissal of the suit.

REASONS

As to issue no.1 and 3 :-

21. Ld. Counsel of defendants argued that suit is not maintainable on the ground that Adverse possession can not be used as a sword. On the contrary Ld. Counsel of plaintiff's argued that Adverse possession can be used only as a shield and not as a sword.

Ld. Counsel of plaintiff's relied on the judgment in *Ravinder Kaur Grewal v. Manjit Kaur* (2019) 8 SCC 729.

22. The doctrine of adverse possession is governed by Article 65 and Section 27 of the Limitation Act, 1963, whereby the title of the true owner is extinguished after expiry of limitation and the possessor acquires title. In *Gurudwara Sahib v. Gram Panchayat* (2014) 1 SCC 669, the Hon'ble Supreme Court held that, Adverse possession can be used only as a shield and not as a sword. Hon'ble court further held that adverse possession is a negative right, which merely bars the remedy of the true owner and does not confer an independent cause of action. Accordingly, a suit for declaration of title based solely on adverse possession was held not maintainable. However, this position was reconsidered by a three-Judge Bench in **Ravinder Kaur Grewal v. Manjit Kaur** (2019) 8 SCC 729, wherein the Hon'ble Supreme Court held that,

A person in adverse possession can maintain a suit for declaration of title, as such possession, once matured, confers ownership. The Hon'ble Court clarified that adverse possession is not merely defensive but results in extinguishment of the true owner's title under Section 27 of the Limitation Act, 1963 and acquisition of title by the possessor. Therefore, such a right can be used both as a shield and a sword. Nevertheless, the burden of proof remains strict, requiring clear evidence of continuous, open and hostile possession for the statutory period.

23. Thus, the present legal position is that, A suit based on adverse possession is maintainable. However, the plaintiff must prove Hostile, continuous, Open and exclusive possession for 12 years. Therefore, adverse possession can be used both as a defence and as a basis for a suit, but the burden of proof remains stringent. Hence present suit for declaration of ownership based on adverse possession is maintainable.

24. According to plaintiff's defendants never put in possession of suit property and plaintiffs being possessor since long became owner. In support of their claim plaintiff no. 1 examined himself as (P.W.1) at Exh.35. In chief examination plaintiff Ajay (P.W.1) reiterated the contents of plaint. In cross examination plaintiff admitted that, Suit properties were joint family properties. Ajay (P.W.1) admitted the Partition decree in R.C.S. No. 39/1981 and appeal. Ajay (P.W.1) further admitted that Gat No. 116/2 was allotted to defendants. He has not

challenged the decree. He denied lack of possession and reiterated continuous possession.

25. Plaintiff further examined Dilip (P.W.2) at Exh.44. Dilip (P.W.2) deposed that he is a resident of village Potner and that the suit property bearing Gat No. 116/2 is in possession of the plaintiff and has been cultivated by him since 1999. He stated that the plaintiff and his son are cultivating paddy and that no one else is connected with the property. In cross-examination, Dilip (PW-2) admitted that he has no documentary proof of ownership of his own land and lacks knowledge of exact area and details of the suit property. He also stated that he is unaware whether the suit property was allotted to the defendants under the court decree.

26. At the outset, it is necessary to consider the nature of the property and relationship between the parties. It is not in dispute that the suit property originally belonged to the common ancestor, Balu Ramji Chavan, and that the parties are his descendants. It is also an admitted position, as elicited in the cross-examination of Ajay (P.W.1), that the properties were subject matter of partition proceedings in R.C.S. No. 39/1981 and that the said suit culminated into a decree, which was confirmed in appeal. It is further admitted that in execution of the said decree, the properties were divided and specific portions were allotted to the respective parties. Decree remained unchallenged.

27. In the present suit till execution of partition decree i.e.

10/12/1999 Plaintiffs were in possession and on 10/12/1999, partition decree executed but defendants failed to take possession. So suit property remained in possession of plaintiffs.

28. In view admitted facts, the initial presumption in law is that possession of one family member is not exclusive, but is referable to joint ownership, unless the contrary is established by clear and cogent evidence. **The Hon'ble Supreme Court in P. Lakshmi Reddy v. L. Lakshmi Reddy (A.I.R. 1957 SC 314)** has laid down that possession of one co-heir is deemed to be on behalf of all and cannot be treated as exclusive unless there is clear proof of ouster. In such circumstances, plaintiffs first have to prove continuous, exclusive, open possession and secondly ouster of possession as well as hostile animus.

29. The plaintiffs has asserted that after the execution proceedings in the year 1999, the defendants did not take possession of Gat No. 116/2 and that he continued in possession thereof.

30. The plaintiff has placed reliance upon the 7/12 Extracts of Gat Nos. 116/2, 116/1, 115 and 451 to substantiate his possession over the suit property. It is a settled principle of law that entries in revenue records are primarily maintained for fiscal purposes and do not confer title. At the highest, such entries may raise a rebuttable presumption regarding possession.

31. In the present case, a careful perusal of the 7/12 Extracts of

Gat Nos. 116/2, at Exh. 36 reveals that the names of the defendants are recorded therein. If the plaintiffs have been in continuous and exclusive possession, as alleged, the revenue record would ordinarily reflect their name or cultivation entries in his favor. Plaintiffs names would be recorded as a possessor or cultivator. If plaintiffs have been cultivating the suit property, then entry of crops or insurance of crops or any receipt which shows that yeilds taken from suit property sold by plaintiff as cultivator or has received any benefit of suit property. Further Plaintiffs have not shown any improvement made in suit property to show their long continuous possession. Thus, the 7/12 extracts do not support the plaintiff's claim of exclusive possession and, on the contrary, indicate recognition of the defendants' title in official records.

32. The plaintiff has produced the Application dated 02/09/2002 at Exh. 40, submitted before the Tahsildar seeking recording of his possession. This document merely evidences that the plaintiff approached the revenue authorities for recording his alleged possession. However, no any action was taken on this application and plaintiff no.1 has not submitted what action was taken on that application. Therefore such an application is unilateral in nature and cannot be treated as proof of actual possession. It neither establishes cultivation nor proves continuity or hostility of possession. It is in the nature of a self-serving document and does not carry substantial evidentiary value.

33. Plaintiffs further relied on Application for Obtaining Copy of Panchnama dtd. 16/10/2002 and 18/12/2002 at Exh. 41. This document only shows that the plaintiff sought a copy of the panchnama. It does not, by itself, prove any fact in issue. It is merely procedural and does not advance the case of the plaintiff regarding possession or title.

34. The Panchnama dated 16/10/2002 at Exh. 42 prepared after spot inspection is relied upon to show that the plaintiff was found in possession of the suit property at that time. Panchnama mentions that shankar was in possession of suit property since 1990 as prior to partition and after partition suit property belonged defendants, but actual possession of suit property was with shankar as prior to partition. This panchnama was signed by sarpanch of village and villagers. However, plaintiffs have not examined anybody who signed it, to establish continuous possession over a long period. Dilip (PW.2) had not signed the panchnama. The oral testimony of Dilip(PW.2) is also of limited assistance. Though he has deposed in support of the plaintiff, he has admitted in cross-examination that he is not aware of the exact details of the property or the partition decree. His evidence appears to be general in nature and not based on specific knowledge.

35. Panchnama not reflects that either defendant not taken possession or failed to take possession that's why plaintiff's in possession. However, panchnama shows that plaintiff shankar is in possession as previously and his name be recorded to crop inspection.

The revenue authorities conducting such inspection have not considered the title and the time since when plaintiffs are in possession, whether it is permissive or not. However, revenue authorities findings cannot override a decree passed by a civil court. Therefore, the panchnama, at the most, indicates temporary possession on the day of inspection and does not prove the essential ingredients of continuous adverse possession. Moreover, inspite of panchnama at Exh. 42 plaintiff's names were not recorded in revenue of suit property till the present suit either possessor or cultivator.

36. The 7/12 Extracts of Gat Nos. 115 and 451 at Exh. 38 and 39 shows names of plaintiffs and defendant in common land. The 7/12 extracts reveals that some properties are also jointly possessed by plaintiff and defendant till 2017. As per 7/12 Extracts at Exh. 37 to 39 defendants are in joint possession of some of the properties. According to partition decree defendants predecessor had allotted half share in ancestral property. so many properties were partitioned between plaintiff and defendants and defendants took possession of all other properties except suit properties, these circumstances creates some doubt and this averment appears inconsistent or improbable.

37. On cumulative consideration, the documents produced by the plaintiff are not able to show that he is in possession of suit property since 1999. The documents do not establish the continuous, exclusive possession. They are either revenue records of limited evidentiary value or self-serving documents, insufficient to discharge

the heavy burden required to prove adverse possession.

38. On the contrary defendants examined Balkrishna (D.W.1) on their behalf. Balkrishna (D.W.1) filed his affidavit in evidence and produced certified copies of the judgment and decree in R.C.S. No. 39/1981 and Civil Appeal No. 103/1982. In cross-examination, Balkrishna (D.W.1) admitted the relationship between the parties and that the suit property originally belonged to the family. He also admitted the earlier partition proceedings and decree. He stated that Gat No. 116 was formed from old survey numbers and that the properties were divided pursuant to the decree. However, he denied that the plaintiff was ever in possession of Gat No. 116/2 after partition. He denied that the plaintiff cultivated the land since 1999 or that possession was delivered exclusively to the plaintiff. He further denied knowledge of the panchnama and crop inspection proceedings. He asserted that the suit property is in possession of the defendants. He admitted that he resides in Mumbai and could not state exact boundaries, but denied lack of knowledge about the property. He denied all suggestions regarding adverse possession and false evidence.

39. The defendants have produced certified copies of the judgment and decree, judgment passed in the partition suit bearing .C.S. No. 39/1981 and the appellate proceedings, in Civil Appeal No. 103/1982 at Exh. 49 to 52. These documents are of decisive evidentiary value, as they constitute public documents and are admissible in evidence. They conclusively determine the rights of the

parties and specifically show that the suit property bearing Gat No. 116/2 was allotted to the defendants.

40. Admittedly according to partition decree suit property was allotted to the share of defendants and plaintiffs have not challenged the decree. Thus, the decree has attained finality and operates as conclusive proof of title. A decree passed by a competent civil court determining title prevails over all other forms of evidence, including revenue entries or administrative records.

41. Once such decree is produced and proved, the title of the defendants stands established. The burden shifts heavily on the plaintiff to prove extinction of such title by adverse possession. In the present case, the plaintiff has failed to discharge this burden. The plaintiff relies on revenue documents, which have limited evidentiary value. The defendants rely on a judicial decree, which conclusively establishes title. It is a settled principle that civil court decree prevails over revenue records. Revenue entries cannot override or contradict a binding decree. Revenue records do not confer title. Applying these principles, the documentary evidence of the plaintiff fails to displace the defendants' title.

42. The documents produced by the plaintiff are insufficient to establish continuous, exclusive possession of the suit property. On the other hand, the defendants have successfully proved their title through a binding decree of a competent court. Therefore, the documentary

evidence on record supports the case of the defendants and not the plaintiff.

43. Ld. Counsel of defendants argued that plaintiffs have to show the date when their possession become adverse, etc. and relied on the judgment in **Tanaji Vs. The state of Maharashtra and Ors. MANU/MH/2778/2019, Wherein Hon'ble Bombay High Court (Aurangabad Bench)** laid down some ingredients necessary for raising and establishing a plea for adverse possession in para no. 18, i.e. a person, who claims adverse possession, should state or show;

- a. Admit that he is not owner of the land in respect of which he claims a declaration of ownership by way of adverse possession.
- b. Admit the title of the owner to the property to which he claims a declaration of ownership by way of adverse possession.
- c. On what date he came into possession.
- d. What was the nature of his possession.
- e. Whether such possession was on account of wrongful dispossession of the original owner.
- f. Whether such dispossession was actual, visible, exclusive.
- g. Whether the factum of dispossession was known to the rightful owner.
- h. Whether there was any hostile assertion of title to the knowledge

of the rightful owner.

- I. The date of such hostile assertion and the continuity of the same throughout the statutory period, to the knowledge of the rightful owner.
- j. The document which may demonstrate such hostile assertion, if there is any.
- k. In case his possession relates to or stem from agreement/document or is in the nature of permissible user, there ought to be a document in writing who demonstrates his claim of adverse possession satisfying all the ingredients as required, as an oral plea would naturally stand excluded, considering his entry was under a document or was permissible.

44. I have gone through the judgment of Tanaji. In the present suit the fact in issue is also regarding adverse possession and in the judgment of Tanaji the ingredients for proof of adverse possession are laid down by the Hon'ble Court. Therefore, the above said essential ingredients are also applicable the case in hand.

45. To establish adverse possession, it is necessary to prove that possession is hostile to the true owner and with the intention to dispossess the true owner.

46. In the present case, the plaintiff has admitted in cross-examination that the suit property was allotted to the defendants in the

partition decree and that he has not challenged the said decree. This admission clearly establishes that plaintiffs were aware of defendants title. Once the plaintiff acknowledges the title of the defendants, his possession cannot be said to be hostile unless there is a clear and unequivocal act of denial of such title. However, no such act is either pleaded or proved. The plaintiffs have not stated, When exactly his possession became adverse, in what manner he asserted hostile title, Whether such hostility was communicated to the defendants.

47. The Hon'ble Supreme Court in *Karnataka Board of Wakf v. Government of India* (2004)10 SCC 779 has held that the person claiming adverse possession must prove the date of commencement of adverse possession and the nature thereof. Similarly, in *T. Anjanappa v. Somalingappa*, (2006)7 SCC 570 it is held that mere possession, however long, does not become adverse unless accompanied by hostile animus.

48. In the present case, the evidence of the plaintiff is completely silent on these essential aspects. The claim appears to be based merely on long possession, which is legally insufficient. Therefore, this Court holds that the plaintiff has failed to prove that his possession was hostile to the defendants.

49. In the present case, the plaintiff has neither pleaded nor proved, the specific date or documents of execution of decree showing plaintiffs possession and defendants had failed or not available to take

possession of suit property in execution proceeding, which shows plaintiffs were put in possession and date it became hostile. Further plaintiffs have not shown any overt act denying the title of the defendants. Any communication or conduct indicating hostile animus. In absence of these essential ingredients, the plea of adverse possession cannot be accepted.

50. In cases involving family members or co-sharers, the requirement of proving ouster is stringent. Ouster must be established by clear evidence of Exclusive possession, Open denial of title and Knowledge of such denial to the true owner. **In Karbalai Begum v. Mohd. Sayeed (1980) 4 SCC 396**, Hon'ble court held that long possession of one co-sharer does not become adverse unless there is clear and unequivocal evidence of ouster.

51. In the present case, there is no evidence to show that the plaintiff ever excluded the defendants from possession or prevented them from enjoying the property. There is also no evidence of any dispute or assertion of hostile title prior to filing of the suit. The contention that the defendants were not cultivating the land is not sufficient. In **Darshan Singh v. Gujjar Singh (2002) 2 SCC 62**, it is held that mere non-use of property by the true owner does not amount to ouster. Thus, the plaintiff has failed to prove ouster. Further, there is no evidence of any mutation entry exclusively in the name of the plaintiff, nor any independent act asserting exclusive ownership prior to the institution of the suit. In absence of such evidence, the plea of ouster

cannot be accepted.

52. The plaintiff has sought declaration of ownership based on adverse possession. In view of the law laid down in Ravinder Kaur Grewal v. Manjit Kaur, such a suit is maintainable. However, maintainability does not dispense with the requirement of strict proof. In the present case, as discussed above, Exclusive possession is not proved, Hostile animus is not established and Ouster is not proved. Moreover, the plaintiff's admission regarding the decree and allotment of the suit property to the defendants is fatal to his claim. The defendants, on the other hand, have established their title through a binding decree, which has attained finality. Therefore, the plaintiff is not entitled to declaration of ownership. Hence, I answer point no.1 and 3 in Negative.

As to Issue No.2 and 4:

53. The relief of injunction is equitable in nature and can be granted only when the plaintiff establishes lawful possession or better title. In the present case, the plaintiff has failed to establish either lawful possession or title. On the contrary, the defendants have established their ownership through a decree of a competent court. It is a settled principle that injunction cannot be granted against the true owner at the instance of a person who fails to establish his own right. As above discussed, plaintiffs have not brought any evidence on record for proving their aforesaid pleas. The burden of proof was on the shoulder of plaintiff to prove possession. However, plaintiffs failed to

establish continuous, hostile possession over suit property, the allegations of obstruction at the hands of defendants appear to be notional. Therefore, the plaintiff is not entitled to the relief of injunction.

54. Upon careful consideration of the pleadings, evidence and applicable legal principles, this Court is of the opinion that the plaintiff has failed to establish the essential ingredients of adverse possession. The admissions given by the plaintiff regarding the partition decree and allotment of the suit property to the defendants are fatal to his case. The evidence on record is insufficient to prove exclusive possession, hostile animus or ouster. On the contrary, the defendants have established their title through a valid and binding decree. Hence, the plaintiff is not entitled to any of the reliefs claimed. Hence, I answer point no.2 and 4 in Negative.

As to Issue No.5:

55. Considering the relation between parties and nature of the dispute between them it would be just and proper that parties bear their own costs. As I have answered issue Nos.1 to 4 in Negative therefore, in answer to this issue I pass the following order:

ORDER

1. The suit is dismissed.
2. Parties to bear their own costs.
3. The decree be drawn up accordingly.

(Judgment pronounced in open court)

Mangaon.

Date : 31.03.2026.

[Smt.A.B.Sontakke(Smt.A.PManav)]

Judicial Magistrate First Class, Mangaon.

CERTIFICATE

I affirm that the contents of this PDF file are same as per original.

Name of Stenographer :- A.V.Chavan, Stenographer

Name of the Court :- Smt. A.P.Manav,
Civil Judge Jr. Dn.,&J.M.F.C.,
Mangaon. Tal:-Mangaon.

Date of decision :- 31.03.2026

Order signed by P.O. on :- 31.03.2026

Order uploaded on :- 04.04.2026