


RCS NO. 19/2009
Bhalchandra Vs. Shantaram
Judgment

MHRG140000512009 	Presented on	02/03/09
	Registered on	02/03/2009
	Decided on	30/03/2026
	Duration	YY – MM – DD 17 00 28
<u>IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, AT URAN, TQ- URAN, DIST- RAIGAD.</u>		
Regular Civil Suit No. 19/2009		Exh. No. 115
SUIT FOR DECLARATION AND INJUNCTION		
Plaintiff	Bhalchandra Janardan Mhatre, Age 53 Years, Occ: Service, R/o Suruchi Building, 'A' Wing, Ground Floor, Room No. 1, Bori Naka, Uran, Dist. Raigad.	
Represented By	Adv. Shri. P. D. Mhatre : Counsel for plaintiff	
	1. Shantaram Janardan Mhatre, Age 49 Years, Occ: Service,	

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Defendants	R/o Suruchi Building, 'A' Wing, First Floor, Room No. 5, Bori Naka, Uran.
	2. Ankush Janardan Mhatre, Age 47 Years, Occ: Service, R/o Suruchi Building, 'A' Wing, Second Floor, Room No. 9, Bori Naka, Uran.
	3. Ankush Janardan Mhatre, Age 47 Years, Occ: Service, R/o Suruchi Building, 'A' Wing, Second Floor, Room No. 9, Bori Naka, Uran.
	4. Maharashtra State Electricity Distribution Co. Ltd., Through Junior Engineer, Karanja Division, Tal. Uran, Dist. Raigad.
Represented By	Adv. Shri. Mohan Thali : Counsel for defendant No.1 Adv. Smt. Bharati Bhoir : Counsel for defendant No.2 Proceeded without Written Statement of defendant no. 3 and 4.

JUDGMENT

(Delivered on this 30th day of March, 2026)

1. The plaintiff has instituted the present suit for a declaration that he has a right to get an electricity connection from defendant No. 4, for a mandatory injunction directing defendant No. 4 to restore the electricity connection and meter, for a mandatory injunction directing defendant No. 3 to issue a No Objection Certificate (NOC), and for a perpetual injunction restraining defendants No. 1 and 2 from raising objections regarding the electricity meter.

The facts of the Plaintiff's case, in brief, are as under:

2. The agricultural land bearing Survey No. 130, Hissa No. 3, situated at Nagaon, Taluka Uran, was owned and possessed by the mother of the plaintiff and defendants No. 1 and 2, namely late Rukhmini Janardan Mhatre. She died on 05/01/2006. Prior to her death, she allegedly executed a Will on 22/12/2005, bequeathing the suit property equally (1/3rd share each) to the plaintiff and defendants No. 1 and 2, excluding their sister. The plaintiff claims that an oral partition took place among the brothers, and the southern portion of the land (admeasuring 2.66 gunthas) came to his share. The plaintiff filled the land and applied to defendant No. 3 (Grampanchayat) on 11/07/2008 for permission to construct a house. Due to a lack of response, he claims deemed permission and constructed a house by spending Rs. 5 lakhs. He applied

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for an electricity connection from defendant No. 4, paid the requisite charges, and a meter was installed. However, acting on the false objections of defendants No. 1 and 2, defendant No. 4 disconnected the supply and removed the meter on 04/02/2009 for want of a Grampanchayat NOC. Hence, the suit.

3. Defendant No. 1 appeared and filed a Written Statement (Exh- 45), which was adopted by defendant No. 2. They denied the plaintiff's claim in toto. It is contended that no oral partition ever took place, and the suit property is joint. Defendant No. 1 has already filed R.C.S. No. 147/2008 for the partition of the suit property, which is pending. It is further contended that the suit property is agricultural tenancy land governed by Section 43 of the Bombay Tenancy and Agricultural Lands Act. The plaintiff has carried out unauthorized construction without obtaining Non-Agricultural (NA) permission from the Collector and without permission from the Grampanchayat. Defendant No. 3 rightly issued notices to stop the illegal construction. The suit is also undervalued. Suit against Defendants No. 3 and 4 proceeded without a written statement.

4. Based on the rival pleadings, my learned predecessor framed issues at Exh. 51 and additional issues were framed vide order at Exh- 107. The issues and my findings thereon are as follows:

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Sr. No.	Issues	Findings
1.	Whether the plaintiff proves that the suit property came to his share vide oral partition?	In the Negative.
2.	Whether the plaintiff is entitled to the declaration as prayed for?	In the Negative.
3.	Whether the plaintiff is entitled to set relief of mandatory injunction as prayed for?	In the Negative.
4.	Whether the plaintiff is entitled to relief of perpetual injunction as prayed for?	In the Negative.
5.	Whether the plaintiff has valued the suit correctly and paid proper Court fees?	In the Affirmative.
6.	What Order and Decree?	As per final order.

REASONS

5. Heard Ld. Counsel for both the sides. They argued as per their application and say. Counsel for the defendant No-1 relied on the decision in Rajendra Kumar Barjatya and another Vs. U.P. Avas Evam Vikas Parishad & Ors. (2025 AIR SC 259). I have given thoughtful consideration to the arguments and the relied authority.

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AS TO ISSUE NO-1:

6. To prove his case, the plaintiff examined himself as PW-1 (Exh- 55). In his cross-examination, PW-1 categorically admitted that the suit property was owned by his mother and that there is no documentary evidence to show that a partition took place between him and his brothers. He further admitted that he did not inform the Talathi regarding the alleged oral partition, nor is there any mutation entry reflecting the same. More importantly, he admitted that a suit for partition (R.C.S. No. 147/2008) filed by defendant No. 1 is already pending before the Court. In the absence of any concrete evidence, the self-serving statement of the plaintiff cannot be accepted to establish an oral partition. Hence, the plaintiff has failed to prove that the specific southern portion came to his exclusive share. Hence, Issue No. 1 is answered in the negative.

AS TO ISSUES NO- 2, 3 & 4:

7. These issues are interconnected and taken up together. The plaintiff seeks equitable reliefs based on his alleged lawful construction. However, during cross-examination, PW-1 admitted that the suit property is agricultural land and is governed by Section 43 of the Tenancy Act. He explicitly admitted that he did not obtain any Non-Agricultural (NA) permission from the Collector before carrying out the construction. The plaintiff relied on a 'Will' executed by his mother, but he admitted in his

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cross-examination that he has not produced the original Will on record. Furthermore, the evidence of PW-2 and DW-3 (Gram Vikas Adhikari, Exh-78 & 98) clearly establishes that the Grampanchayat had passed a resolution refusing permission to construct and had issued notices (Exh-100, 103) to the plaintiff to halt the unauthorized construction. The plaintiff's argument of 'deemed permission' under the Maharashtra Village Panchayats Act cannot be sustained because the fundamental requirement of lawful title over a partitioned share and the requisite NA permission from the Revenue Authority were completely absent. An illegal construction cannot be regularized under the guise of deemed permission.

8. Crucially, in the cross-examination of the plaintiff (PW-1) recorded on 22/01/2020, he made a vital admission. He admitted that pursuant to the orders of the Block Development Officer (BDO), the electricity connection by MSEDCL and the water connection by the Grampanchayat were restored to him on 04/08/2012. The plaintiff admitted on oath that since 2012, his electricity supply has been running smoothly and he currently has no grievance against MSEDCL or the defendants in that regard. He admitted that he did not amend his suit to reflect this change in circumstances. Since the electricity supply has already been restored, the primary cause of action for a mandatory injunction against defendant No. 4 and for a declaration regarding the same does not survive and has become infructuous.

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9. It is a settled principle of law that a person seeking equity must come to the court with clean hands. The plaintiff carried out construction on joint, undivided agricultural land without NA permission and without Grampanchayat approval. He failed to prove the oral partition and withheld the original Will from the Court. Furthermore, his main grievance regarding electricity stands resolved since 2012. Therefore, the plaintiff is not entitled to any declaration or injunction. Hence I answered Issues No. 2, 3, and 4 in the negative.

AS TO ISSUE NO-5:

10. The defendants contended that the suit is undervalued. However, the plaintiff has sought reliefs of declaration and injunction, which are incapable of monetary valuation. The plaintiff has valued the suit at Rs. 1000/- for jurisdiction and affixed a court fee of Rs. 400/- under Section 6(iv)(d) and (j) of the Maharashtra Court Fees Act. The defendants failed to adduce any positive evidence regarding the market value to non-suit the plaintiff on this technical ground. Hence, Issue No. 5 is answered in the affirmative.

AS TO ISSUE NO- 6 :

11. In view of the findings on the above issues, the suit of the plaintiff is devoid of merits and is liable to be dismissed. Hence, I pass the

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following order;

ORDER

1. This Suit is hereby dismissed.
2. The plaintiff shall bear his own costs and pay the costs of the defendants.
3. Decree be drawn up accordingly.

(Pronounced in open Court.)

Date: 30/03/2026

S. P. Wankhade
Civil Judge Junior Division, Uran,
Tq- Uran, Dist- Raigad.