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Exh 25

**IN THE DISTRICT COURT SINDHUDURG
AT: OROS**

TAL. : KUDAL, DIST. : SINDHUDURG

(Presided over by Dr Sudhiir M Deshpande, Principal
District Judge, Sindhudurg)

REGULAR CIVIL APPEAL NO. 85 OF 2018
(CNR MHSl010005712018)

Manohar Aatmaram Sawant Murkar
Age 80 years, Occu. Agriculture
Through power of attorney holder
Santosh Manohar Sawant Murkar
Age-49 yrs., Occu Agriculture
R/o- House No.37, At/Post-Bandiwade,
Taluka Malvan, District Sindhudurg.

Appellant
(Original
Plaintiff)

Versus

1. Ranjan Hareshwar Prabhu
Age 58 yrs, Occ. Service
2. Swapnil Govind Prabhu
Age 43 years, Occ. Service
3. Sunita Govind Prabhu
Age 63 years, Occ. Service
Respondents No. 1 to 3
R/o- Bandiwade, Palayewadi,
Tal Malvan, Dist Sindhudurg.

Respondents
(Original
Defendants)

4. Babaji Ravji Murkar (Deceased)

A) Vijaya Babaji Murkar
Age about 72 yrs., Occ. Household

B) Suresh Babaji Murkar
Age about 45 yrs., Occ. Agriculture

C) Vitthal Babaji Murkar
Age about 43 yrs., Occ. Agriculture

D) Madhukar Babaji Murkar Respondents
Age about 41 yrs., Occ. Agriculture (Original
Defendants)

Respondent Nos. 4A to 4D
R/o- At/Post-Bandiwade,
Malawadi, Taluka Malvan,
Dist. Sindhudurg

Appearance:

Mr U B Kulkarni, Ld advocate for the appellant.

Mr G N Desai, Ld advocate for the respondents No.1 to 3.

Mr A P Barve, Ld advocate for the respondents No.4-A) to 4-D).

J U D G M E N T

(Declared on: 18th day of March 2026)

This appeal is directed against the judgment and decree dated 27.04.2018 passed by the learned Civil Judge, Junior Division, Malvan in Regular Civil Suit No. 88/2009, whereby the suit came to be partly decreed.

2] Respondent No. 4(A) to 4(D) have filed cross-objection Exh 13 in the present appeal under Order XLI

Rule 22 of the Code of Civil Procedure to challenge the adverse findings recorded by the trial court in the judgment and decree dated 27/04/2018. Though the suit was partly decreed, the respondents are aggrieved by the findings whereby the trial court held that the suit property is owned and possessed by the plaintiff and granted an injunction against them. The respondents contend that the suit property is tenanted land, that they have acquired ownership under the tenancy law (32M certificate), and that they are in lawful possession having constructed a house, cattle shed, and other structures thereon. By way of cross-objection, they seek the setting aside of the findings on ownership and possession, quashing of the injunction order passed against them, and dismissal of the suit in its entirety as against them.

3] In this appeal, for perceptual convenience, unless the context otherwise requires, the parties are referred to as per their positions and nomenclatures as in the suit before the trial Court.

4] The property is as follows.

The property bearing Survey No. 18, Hissa No. 21A, admeasuring 0-19-2, P.K. 0-00-8 is situated at village Malawadi, Bandivade, Tal. Malwan, District Sindhudurg.

5] The facts leading to the suit present an appeal are like this. The plaintiff has pleaded that the suit property is his ancestral property and is in his lawful possession. The defendants have no right, title or interest therein, yet they unlawfully interfered with his possession by cutting a tree and making encroachments through the construction of a toilet and cattle shed. Hence, the plaintiff has sought a permanent and mandatory injunction, removal of encroachment, possession in the alternative, and compensation for the loss caused.

6] In the present suit, there are in total four written statements on record. A common written statement was filed by Defendant Nos. 1, 3 and 4, while Defendant Nos. 4A, 4C and 4D filed a separate written statement. Defendant No. 4B filed a written statement adopting the defence of Defendant No. 4, and Defendant No. 2 also filed a written statement adopting the pleadings of the other defendants.

7] The pleadings in the four written statements, in brief, are as follows: The written statement filed by Defendant Nos. 1, 3 and 4 contends that the suit is false and that the suit property is not owned or possessed by the plaintiff but exclusively belongs to Defendant No. 4, denying all allegations of encroachment and damage. The written statement of Defendant Nos. 4A, 4C and 4D asserts

that the suit property is tenanted land, that Defendant No. 4 has acquired ownership under the tenancy law (Section 32M certificate), and that they are in lawful possession, thereby disputing the plaintiff's title and entitlement to injunction. The written statement of Defendant No. 4B adopts the defence of Defendant No. 4 and supports the claim of ownership and possession of Defendant No. 4. The written statement of Defendant No. 2 adopts the pleadings of the other defendants and similarly denies the plaintiff's ownership, possession, and allegations made in the plaint.

8] Based on the rival pleadings, the trial court framed following issues and gave findings.

Issues	Findings
1 वादीने हे सिध्द केले आहे काय की, वादग्रस्त मिळकतीचा वादी हा मालक व कब्जेदार आहे? (Whether plaintiff proves that he is owner and possessor of suit property?)	अंशतः होय.
2 वादीने हे सिध्द केले आहे काय की, प्रतिवादींनी वादग्रस्त मिळकतीतील उंडलीचे झाड तोडून त्याचे रक्कम ६०,०००/-रुपयांचे नुकसान केले आहे? [Whether plaintiff proves that, defendants cut the tree of Undal situated in suit property and thereby causing damage of Rs. 60,000/-?]	नाही.
3. वादीने हे सिध्द केले आहे काय की, प्रतिवादी क. १ ते ४ यांनी वादग्रस्त मिळकतीत अतिक्रमण करून संडासच्या इमारतीचे व	नाही.

मांगराचे बांधकाम केलेले आहे? [Whether plaintiff proves that defendant Nos.1 and 4 made encroachment in suit property and constructed latrine and cattle shed?]

4. वादी हा त्याच्या मागणीप्रमाणे नुकसानभरपाई मिळणेस पात्र ठरतो काय? [Whether plaintiff is entitled to damages as prayed?] नाही.
5. वादी हा त्याच्या मागणीप्रमाणे आज्ञार्थी ताकीद हुकूमाची दाद मंजूर होवून मिळणेस पात्र ठरतो काय? [Whether plaintiff is entitled to the relief of mandatory injunction as prayed?] नाही.
6. वादी हा त्याच्या मागणीप्रमाणे कब्जाची दाद मंजूर होवून मिळणेस पात्र ठरतो काय? [Whether plaintiff is entitled to the relief of possession as prayed?] नाही.
7. वादी हा त्याच्या मागणीप्रमाणे कायमस्वरूपी मनाई हुकूमाची दाद मंजूर होवून मिळणेस पात्र ठरतो काय? [Whether plaintiff is entitled to the relief of permanent injunction as prayed?] होय.
- 7 अ या न्यायालयास सदर दावा चालविण्याचे अधिकारक्षेत्र आहे काय? [Whether this Court has jurisdiction to try this suit?] होय.
- 7 ब दावा मुदतीत आहे काय? [Whether the suit is within limitation?] होय.
- 7 क दाव्यास अपसंयोजन, वादकारण न घडल्याची बाधा येते काय? [Whether the suit is bad for mis-joinder of causes of action?] नाही.

8. कोणता आदेश व हुकुमनामा? [What order and decree?] दावा खर्चासह
अंशतः मंजूर
करण्यांत येतो.

9] The trial court partly decreed with costs. Specifically, the trial court granted relief of permanent injunction in favour of the plaintiff, while rejecting the claims for damages, mandatory injunction, and possession. Hence this appeal by the original plaintiffs.

10] Heard.

11] Mr Kulkarni, Ld Advocate for the appellant, who is the original plaintiff, submitted that the trial court has erroneously partly decreed the suit, whereas it ought to have been decreed in its entirety. He contended that the suit property pertains exclusively to Hissa No. 21A. The trial court granted only the relief of permanent injunction but failed to grant the relief of compensation of Rs. 60,000/-, as well as the reliefs of mandatory injunction for removal of the toilet constructed by the defendants and for removal of the cattle maangar. Referring to Exhibit 9 (7/12 extract), he submitted that Hissa No. 21A of Survey No. 18 stands in the names of the plaintiff Manohar Atmaram Sawant-Murkar and Defendant No. 4 Babaji Ravji Murkar; however, the entry of Defendant No. 4 is erroneous. He further invited attention to Exhibit 133 (7/12 extract of Hissa No. 21B) to show that the name of Defendant No. 4

has been deleted from that portion, and therefore his name was subsequently entered in Hissa No. 21A without any legal basis. It is specifically pleaded in the plaint that Defendant No. 4 has no lawful right or document to support such entry.

12] He further submitted that the construction of the toilet and cattle maangar is illegal and unauthorized, having been carried out without the plaintiff's consent. The pleadings in paragraphs 4 and 5 of the written statement are false. He relied on Exhibit 119, being the reply to notice (Exhibit 88), to point out that there is no denial therein that the plaintiff was a tenant or owner of the suit property, and that the defence now taken is not reflected in the said reply dated 13/05/2009. It was further argued that Defendant No. 3, who stepped into the witness box, admitted in her cross-examination (para 32) that she could not state anything about the trees in Hissa No. 21A. She also admitted that her statement in the affidavit that the plaintiff's predecessors had inserted their names by misleading the tenancy court was false. The said witness failed to give satisfactory answers in paras 34 to 40 regarding the trees, toilet, and maangar, and even introduced facts in cross-examination regarding permission for construction of the maangar which were not pleaded in the written statement.

13] It is thus submitted that the trial court failed to properly appreciate both oral and documentary evidence while recording findings against the plaintiff. Learned advocate further relied upon the testimony of PW No. 4 Khot, an eye-witness to the cutting of the Undal¹ tree in Hissa No. 21A, whose evidence (para 5, Exhibit 104) clearly establishes the plaintiff's claim for compensation. Hence, it is prayed that the appeal be allowed and the suit be decreed in full.

14] Learned Advocate Mr G.N. Desai for Defendant Nos. 1 to 3 submitted that there was no Undal tree on Hissa No. 21A, as specifically pleaded in paragraph 3 of their written statement. He pointed out that although the plaintiff stated in his cross-examination that the tree was reflected in the 7/12 extract, Exhibit 9 does not show any such tree. Referring to the Court Commissioner's map (Exhibit 46), he submitted that the alleged remaining stock of the tree was shown only based on the plaintiff's version, as the Commissioner had not given any independent opinion. It was further argued that the Court Commissioner was not authorized to rely upon the statements of either party during inspection, and he admitted in his cross-examination (para 2, Exhibit 101) that he had taken the plaintiff's say regarding the alleged existence of the tree.

¹ This tree wood is used for small construction, tools, and boat parts.

15] He further submitted that the plaintiff failed to produce any documentary evidence to establish the existence of the tree, and his conduct in not lodging any complaint with authorities indicates that no such tree existed. It was also pointed out that PW No. 4, in his cross-examination, admitted that no trees were mentioned in the 7/12 extract, thereby contradicting his own version regarding tree cutting. Hence, the claim for compensation of Rs. 60,000/- is untenable and the trial court has rightly rejected the same.

16] Learned advocate further submitted that Exhibit 9 (7/12 extract) reflects the name of Defendant No. 4, thereby negating the plaintiff's claim of exclusive possession over Hissa No. 21A. Defendant Nos. 1 to 3 are landowners, and Mutation Entry No. 3128 (Exhibit 147) evidences transfer of land under the Tenancy Act in favour of Defendant No. 4. It was also pointed out that the plaintiff admitted in his evidence (para 17) that the 32-M certificate in joint names was never challenged by him, thereby weakening his claim of exclusive ownership. Further, agricultural tax has been consistently paid by Defendant No. 4's father, as reflected in Exhibits 121 to 130, and the heirship register (Exhibit 132) also records Defendant No. 4 as an heir under Khata No. 87. Exhibit 138 of 1994 further supports the name of Defendant No. 4.

17] It was additionally submitted that the alleged constructions of toilet and cattle maangar have no connection with Defendant Nos. 1 to 3. Issue No. 4 has been wrongly framed by placing the burden on Defendant Nos. 1 to 4 collectively, whereas it ought to have been confined to Defendant No. 4 alone. Similarly, Issue No. 7A ought to have been answered in the negative, as the dispute essentially pertains to rival claims of tenancy between two parties over the same land. Hence, it is prayed that the suit be dismissed against Defendant Nos. 1 to 3 with compensatory costs. Learned advocate further adopted the submissions advanced by Advocate Barve on behalf of Defendant No. 4.

18] Mr Barve Ld Adv for respondents No. 4A to 4D submits he is adopting the argument of Mr G N Desai. He submits that his grounds of cross-objection may be considered as points of arguments.

19] After hearing the learned advocates on both sides and perusing the record of proceedings, including the evidence and the trial court's judgment, as well as examining the contents of the appeal memo and the authorities cited by the parties, the following key points emerge for consideration. My findings on each of these points, along with the detailed reasons, are set out in the subsequent part of this judgment.

No.	Points	Findings
1.	Whether the plaintiff proves that he is the owner and in lawful possession of the suit property (Hissa No. 21A)?	Partly yes.
2.	Whether the plaintiff proves illegal encroachment and construction (toilet and maangar) by the defendants?	No.
3.	Whether the plaintiff proves that defendants cut the Undal (उंडल) tree and caused damage of Rs. 60,000/-?	No.
4.	Whether cross-objection of defendants No. 4A to 4D needs to be allowed?	Yes.
5.	Whether the judgment and decree of the trial court call for interference?	Partly Yes.
6.	What order?	Appeal is dismissed. Cross-objection is allowed.

REASONS

As to point No.1

20] It is settled law that the plaintiff must succeed on the strength of his own title and possession, and not on the weakness of the defendant's case. The plaintiff relies mainly on 7/12 extract (Exh 9) showing his name along with defendant No. 4. However, this entry is joint and not exclusive, hence, it does not establish exclusive ownership. The plaintiff contends that the entry of defendant No. 4 on the 7/12 extract is erroneous. But no independent

proceedings for correction of revenue entry or challenge to such entry is proved.

21] The plaintiff has relied on Exh 133 (7/12 extract of Hissa No. 21-B) to show deletion of the name of the defendant No.4. But this pertains to a different hissa and does not conclusively establish exclusive title over Hissa No.21-A. The evidence shows that the name of defendant No.4 continues in 7/12 extract of hissa No. 21-A. This creates a serious dispute regarding the name of the title raised by the plaintiff.

22] The plaintiff has not produced title documents conclusively proving exclusive ownership, nor has he established a clear partition separating hissa No.21-A exclusively in his favour. The defendants have placed reliance on the mutation entry dated 08.12.1969 (Exh 147) and 32-M certificate (Exh 175), indicating tenancy right and claim of ownership of defendant No.4. The 32-M certificate and Mutation entry have not been challenged, admittedly by the plaintiff. This mutation entry mentions the 32-G and 32-M certificates in the name of Ravaji Babaji Murkar and Atmaram Ganu Murkar. The plaintiff's own admission in evidence shows that the 32-M certificate in joint names was not challenged. This non-challenge weakened his claim of ownership.

23] As regards possession, the evidence indicates that Defendant No. 4 is also in possession. This is supported by the revenue entries, tax receipts, and the existence of structures like a house, toilet and cattle shed.

24] In a suit for injunction, where title is seriously disputed, the plaintiff must prove clear, settled and exclusive possession, which is lacking in the present case. The trial court has rightly held that the plaintiff is in possession but not as the exclusive owner. Hence, I answer point No.1 partly in the affirmative.

As to point No. 2

25] The burden lies on the plaintiff to prove specific encroachment, his location and unauthorized construction. The plaintiff has alleged the construction of a toilet and cattle maangar (a small structure used as a cattle shed or storehouse) by defendant No. 4 without permission. But the plaintiff has relied on oral evidence and the court commissioner's map (Exh 46). However, the court commissioner has not given independent findings and has partly relied on the statements of the parties. The Court Commissioner admitted in his cross-examination (Exh. 101) that he took the statement of the parties during the inspection, thereby reducing the evidentiary value of the record. Mr Desai has specifically argued that the court

commissioner was not authorized by the Court to take statements of parties.

26] The plaintiff has not produced clear documentary or technical evidence (measurement map, sanction plan, or better proof [establish actual encroachment]). The existence of structures like a toilet and a cattle shed is not seriously disputed, but the crucial issue is whether there are unauthorized acts on the plaintiff's land. The defendants have taken the specific stand that defendant No. 4 is in possession and has constructed structures on his land. The revenue record and evidence show a dispute regarding title and possession; hence, encroachment can not be presumed without clear proof of boundaries. It is settled law that an injunction or mandatory injunction to remove structures cannot be granted unless encroachment is clearly proved with the identity of the property. The plaintiff has failed to establish actual boundaries and the extent of alleged encroachment, and failed to prove that the construction is on his exclusive portion. The Hissa No.21A is jointly possessed by the plaintiff and defendant No. 4. In the absence of clear proof of title, possession relief of a mandatory injunction cannot be granted. The trial Court has rightly rejected the relief of removal encroachment. Hence, I answer point No.2 in the negative.

As to point No. 3

27] The burden lies on the plaintiff to prove the existence of the alleged Undal tree, which is being cut by the defendants, and the resultant damage. The plaintiff has pleaded that an Undal tree situated in Hissa No. 21-A was cut by the defendants, causing loss of ₹ 60,000/- However, as pointed out by Mr Desai, the 7/12 extract (Exh 9) does not show the existence of any tree on the suit property. This creates doubt regarding the existence of such a tree. The plaintiff has produced any documentary evidence, such as a forest record, valuation, photograph, or panchanama, to establish the existence and value of the tree. The court commissioner's map Exh 46 shows alleged tree stock, but the court commissioner has not given an independent opinion and relied on the plaintiff's say, as admitted in his cross-examination (Exh 101). The evidentiary value of the court commissioner's report is therefore weakened and not conclusive proof of the existence or cutting of the tree.

28] The plaintiff has not lodged any complaint to the police or revenue authority, which casts doubt on the alleged incident. The plaintiff relies on PW4 Santosh Yashwant Khot (Exh 104) as an eyewitness to the alleged tree cutting. However, in cross-examination, this witness himself admitted that no trees were shown in the 7/12 extract, thereby affecting his credibility. Moreover, the said

witness's testimony is not supported by independent or corroborative evidence.

29] When the plaintiff is claiming ₹60,000/- as compensation, it was his duty to provide proof of the valuation of ₹60,000/-. There is no clear proof of the valuation of ₹ 60,000/- produced on record. It is settled law that a claim for damages must be strictly proved by cogent evidence, which is lacking in the present case. The trial court has, therefore, rightly held that the plaintiff failed to prove the cutting of the tree and the alleged damage. Hence, I answer point No. 3 in the negative.

As to point No. 4

30] It is alleged that possession of Hissa No. 21A is not exclusive to the plaintiff, but his joint/shared with defendant No. 4; in such circumstances, the plaintiff has failed to establish exclusive possession, which is a sine qua non for the grant of an injunction. It is settled law that injunction cannot be granted against the co-owner or a person in joint possession, unless there is clear proof of ouster or exclusive possession. The trial Court, despite recording disputed possession, erroneously granted a permanent injunction in favour of the plaintiff, which is legally unsustainable. When both parties are in possession, the proper remedy is partition and declaration and not injunction if so advised.

31] The evidence on record, including 7/12 extract and 32-M certificates (Exh 161 and 175), indicates the presence and possession of defendant No.4, thereby negating the plaintiff's claim of exclusive possession. Defendants No. 4A to 4D are the legal representatives of the original defendant NO.4 Babaji Ravji Murkar, deceased. The cross objectors, i.e. defendant No.4-A to 4D, have successfully demonstrated that the findings of the trial court granting an injunction are contrary to the settled legal position. Hence, the decree of permanent injunction granted by the trial court requires interference. Hence, I answer point No.4 in the affirmative.

As to point No. 5

32] Considering the aforesaid discussion, it needs to be concluded that the trial Court rightly answered the issues No.1, 2, 3, 4, 5, 6, 7A, 7B and 7C. However, the trial court has wrongly answered issue No. 7. The trial Court wrongly held that the plaintiff is entitled to the relief of a permanent injunction as prayed. To that extent, the trial Court's judgment needs interference. Hence, finally, the appeal needs to be dismissed, the cross objection needs to be allowed, the judgment and decree passed by the trial Court needs to be modified partially, the suit of the plaintiff needs to be dismissed entirely.

ORDER

1. The appeal is dismissed.
2. Cross-Objection filed by defendants No.4A to 4D is allowed.
3. The judgment and decree dated 27.04.2018 passed by the Ld Civil Judge, Junior Division, Malwan in RCS No. 88 of 2009 is modified to the extent that the relief of permanent injunction granted in favour of the plaintiff is hereby set aside.
4. Consequently, the suit of the plaintiff stands dismissed in its entirety.
5. In the facts and circumstances of the case, the parties shall bear their own costs.
6. Decree be drawn accordingly.
7. Appeal and the cross objection are disposed of in the above terms.

Sd/-

(Dr Sudhiir M Deshpande)
Principal District Judge
Sindhudurg at Oros

All concerned to act upon the digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard, attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) ***Shital Krushna Dhake v. Krushna Dhake***, MANU/MH0285/2018.

Certificate

“I affirm that the contents of this P.D.F. file Judgment / Order are the same word-for-word as per the original Judgment / Order.”

Name of the affirming Steno : Mr S D Parulekar
English Grade I Stenographer

Name of the Court : Principal District Judge, Sindhudurg
at Oros
(Dr Sudhiir M Deshpande)

Date of pronouncement : 18-03-2026

Signed by the Presiding Officer : 20-03-2026
on

Uploaded on : 20-03-2026