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Decided on : 13/05/2026.

Duration : Ys: Ms : Ds.

04 : 05 : 24.

**IN THE COURT OF CIVIL JUDGE, JR. DIV. DODAMARG,****AT : DODAMARG**

(Presided over by Shri. Y. P. Bavkar)

**Regular Civil Suit No. 38 of 2021****Exhibit No. 74**

01. Shri. Chandrakant Jayaram Shirodkar, }  
Age about 68 Yrs, Occu. Agriculture, }  
R/o. Matane, Tal. Dodamarg, Dist. Sindhudurg } **Plaintiff**

**Versus**

01. Kalawati Gajanan Sawant, }  
Age about 44 Years, Occu. - Agriculture, }  
R/o. Ghotagachiwadi, Vazare, }  
Tal. Dodamarg, Dist. Sindhudurg }  
02. Priti Krishna Mhavaskar, }  
Maiden name :- Priti Gajanan Sawant }  
Age about 27 Years, Occu. - Household, }  
R/o. Gavthanwadi, Vazare, }  
Tal. Dodamarg, Dist. Sindhudurg }  
03. Shri. Arjun Dnyaneshwar Gawas, }  
Age about 33 Years, Occu. - Agriculture, }  
R/o. Girode, Tal. Dodamarg, Dist. Sindhudurg } **Defendants**

**Suit for Declaration and for  
Mandatory injunction.****Appearances : -**

Plaintiff

- Adv. Mr. S. P. Desai.

Defendants Nos. 1 to 3

- Adv. Mr. V. V. Ghogale

**J U D G M E N T****(Delivered on 13<sup>th</sup> of May, 2026)**

This is a suit for declaration and for mandatory injunction against defendants.

**Plaintiffs case in brief is as follows :-**

2A) The area of 0-57-09 H. R. within landed property situated at village Girode as more particularly detailed below :-

Sr. No.	Survey No.	Hissa No.	Area (H.R.)	Assessment (Rs. Ps.)
1.	72	1	5-10-00 P.K. 1-18-00	2-38

is the subject matter of suit (hereinafter referred as 'suit property')

2B) On 12.02.2015, an agreement was executed between the plaintiff and defendants No. 1 and 2, concerning the purchase of 2-15-40 H. R. of land from the owners of the suit property, including defendants No. 1 and 2. Prior to this agreement, the plaintiff had been granted possession of the suit property by Gajanan Gunaji Savant, the predecessor of defendants No. 1 and 2, upon acceptance of the purchase amount. Following Gajanan Gunaji Savant's demise, the names of defendants No. 1 and 2 were recorded in the revenue records of the suit property. However, defendants No. 1 and 2 subsequently avoided executing the sale deed. Defendants No. 1 and 2 hold a share of 0-26-57 H. R. and PK. 0-06-15 H. R. in the suit property. A discrepancy arose during digitization, where an area of 0-75-09 H. R. was incorrectly reflected in the 7/12 extract under the plaintiff's name. Consequently, at the request of defendants No. 1 and 2, the plaintiff filed an application with the Tahsildar for necessary corrections. However, defendants No. 1 and 2, taking advantage of this erroneous entry, sold their share in the

suit property to defendant No. 3 via a registered sale deed dated 26.07.2021, bearing registration No. 446/2021. The plaintiff became aware of this transaction on 31.08.2021 and, on 06.09.2021, issued a notice to the defendants demanding the execution of the sale deed. On 21.09.2021, the defendants responded with a false reply, denying the plaintiff's notice. It is contended that the sale deed dated 26.07.2021, bearing registration No. 446/2021, executed by defendants No. 1 and 2 in favor of defendant No. 3 regarding the suit property, is illegal and was executed solely to dispossess the plaintiff. Therefore, the said sale deed is liable to be set aside, and defendants No. 1 and 2 should be directed to execute a sale deed in favor of the plaintiff. This forms the basis of the present suit.

3) Upon receiving the suit summons, defendants No. 1 and 2 appeared and contested the suit by filing a written statement at Exhibit-13. They denied the contents of the plaint and asserted that the suit is false. They further contended that the alleged agreement is neither an agreement to sell nor is it registered, despite being required by the Transfer of Property Act and the Indian Registrations Act. It was also argued that the agreement does not specify the time period for executing the sale deed and was executed on insufficient stamp paper. Defendants No. 1 and 2 maintained that they owned and possessed the suit property and that no transaction occurred between the plaintiff and them. They claimed the plaintiff has no right or interest in the suit property. On 26.07.2021, defendants No. 1 and 2 sold the suit property to defendant No. 3 via registered sale deed No. 446/2021 and handed over possession to defendant No. 3. It is contended that the defendants executed the agreement with the plaintiff due to financial needs, with an agreed consideration of Rs. 15,00,000/- (Rupees Fifteen Lakh Only).

However, the plaintiff never paid the consideration amount to the defendants. The defendants waited for the plaintiff for almost one year, but despite repeated requests, the plaintiff neglected to execute the sale deed. It is also contended that for the past 6 to 7 years, the plaintiff never demonstrated willingness to execute the sale deed. The defendants further contend that the plaintiff has not even specified the date or recipient of the consideration amount. They allege that the plaintiff is an estate agent and a habitual fraudster who acquires properties by deceiving people. Additionally, it is contended that the plaintiff has not arrayed other three parties to the document in the present suit. Based on these grounds, it is contended that the plaintiff's suit should be dismissed with compensatory costs of Rs. 25,000/- (Rupees Twenty Five Thousand Only). Accordingly, they prayed for the dismissal of the suit.

4) Defendant No. 3 appeared upon receipt of the suit summons and filed his written statement at **Exhibit-14**, contesting the suit. He denied the contents of the plaint. His written statement further contended that the suit property was originally owned and possessed by defendants No. 1 and 2, who sold it to him on 26.07.2021 via registered Sale-deed No. 446/2021, and possession was accordingly handed over to him. Defendant No. 3 purchased the property after verifying the ownership and possession of defendants No. 1 and 2, and after confirming that a registered document had been executed by these defendants concerning the suit property. It is further contended that the sale deed was executed after the payment of consideration and is a registered Sale-deed. He further contends that if the suit is decreed as prayed, it would cause irreparable loss to defendant No. 3. Based on these grounds, he prayed for the dismissal of the suit.

5) Following are the Issues for my determination and its findings along with reasons are as follows :-

Sr. No.	Issues	Findings
01.	Whether plaintiff proves that, on 12.02.2015, an agreement was executed between the plaintiff and the defendants in respect of the purchase and sale of the suit property, and that the plaintiffs have paid the entire sale consideration amount to the defendants towards the said land?	Partly in Affirmative.
	वादी असे शाबीत करतात काय की, दि.१२.०२.२०१५ रोजी वादी व प्रतिवादींमध्ये दावा मिळकत खरेदी-विक्री संदर्भात करार झाला असून जमीनीच्या मोबदल्याची संपुर्ण रक्कम वादीने प्रतिवादींना दिलेली आहे ?	अंशतः होकारार्थी.
02.	Whether the plaintiff proves that, the Sale Deed dated 26.07.2021 executed by Defendant Nos. 1 and 2 in favour of Defendant No. 3 is illegal, void, and liable to be cancelled?	Negative.
	वादी असे शाबीत करतात काय की, प्रतिवादी क्र. १ व २ यांनी प्रतिवादी क्र. ३ च्या लाभात करून दिलेले दि.२६.०७.२०२१ रोजीचे खरेदीखत बेकायदेशीर असून रद्दबातल होण्यास पात्र आहे ?	नकारार्थी.
03.	Whether the plaintiff is entitled to a declaration that the Sale Deed dated 26.07.2021 executed by Defendant Nos. 1 and 2 in favour of Defendant No. 3 is illegal ?	Negative.

	दि.२६.०७.२०२१ रोजी प्रतिवादी क्र. १ व २ यांनी प्रतिवादी क्र. ३ च्या लाभात करून दिलेले खरेदीखत, बेकायदेशीर असल्याचा ठराव करून मिळणेस वादी पात्र आहे काय ?	नकारार्थी.
04.	Whether the plaintiff is entitled for the relief of mandatory injunction as prayed ?	Negative.
	वादी मागणीप्रमाणे आज्ञार्थी ताकीद मिळणेस पात्र आहे काय ?	नकारार्थी.
05.	What Order and Decree ?	The suit is dismissed with costs as per final order.
	आदेश व हुकुमनामा काय ?	दावा अंतिम आदेशान्वये खर्चासह फेटाळण्यात येत आहे.

**:: REASONS ::**

6) In support of his case, plaintiff examined himself as PW-1 at **Exhibit-19**, PW-2 Shrinivas Gawas (Notary Advocate) at **Exhibit-38**. Apart from oral evidence, he also relied upon documentary evidence such as the certified copy of 7/12 extract of the suit property at **Exhibits-05**, agreement dated 12.02.2015 at **Exhibit-23**, the Notice dated 06.09.2021 at **Exhibit-24**, the Notice Reply dated 21.09.2021 at **Exhibit-25**, the true copy of Notary Register Extract bearing Agreement Registration No. 215 dated 12.02.2015 at **Exhibit-39**, the order of Tahasildar dated 28.10.2021 at **Exhibit-65**, 7/12 extract of the suit property at **Exhibit-66**, mutation entry No. 265 and 266 at **Exhibit-67**, mutation entry No. 338 at **Exhibit-68**, mutation entry No. 560 at **Exhibit-69**, mutation entry No. 657 at **Exhibit-70**, mutation entry No. 807 at **Exhibit-71** and mutation entry No. 903 at **Exhibit-72**.

7) On the other hand, the defendants No. 1 to 3 examined Defendant No. 3 Arjun Dnyaneshwar Gawas as DW-1 at **Exhibit-42**.

Apart from oral evidence, they relied upon documentary evidence such as Power of Attorney executed by defendants No. 1 and 2 in favour of defendant No. 3 at **Exhibit-47**, Sale-deed dated 26.07.2021 at **Exhibit-48**.

**Issues No. 1 and 2 :-**

(As both these issues are interlink and in order to avoid the repetition of fact and evidence, both this issues are dealt with, discussed and decide together.)

8) In summary, it is the plaintiff's contention that the common predecessor of defendants No. 1 and 2, Gajanan Gunaji Sawant, transferred possession of the suit property to the plaintiff upon receiving the consideration amount. Following Sawant's demise, defendants No. 1 and 2 executed an Agreement to Sell in the plaintiff's favor on 12.02.2015. However, despite repeated requests, defendants No. 1 and 2 failed to execute the final Sale-deed. Subsequently, on 26.07.2021, defendants No. 1 and 2 sold the suit property to defendant No. 3 via a registered Sale-deed bearing registration No. 446/2021. The plaintiff asserts that this Sale-deed is illegal because the plaintiff was, and remains, ready and willing to perform his part of the contract, but defendants No. 1 and 2 deliberately avoided executing the Sale-deed in the plaintiff's favor.

9) Conversely, the defendants assert that the aforementioned agreement does not constitute an Agreement to Sell. They contend that the plaintiff never paid any consideration amount to them or their predecessor. Furthermore, the defendants contends that the plaintiff failed to execute the Sale-deed, which led defendants No. 1 and 2 to

execute the Sale-deed for the suit property in favor of defendant No. 3 on 26.07.2021. They maintain that this Sale-deed is legal and not subject to cancellation. The defendants contends that the agreement, as presented by the plaintiff, is defective, lacking a specified timeframe for the execution of the Sale-deed and being improperly stamped. Consequently, as per defendants the plaintiff is not entitled to any relief.

10) The Learned Advocate for the plaintiff contended that the plaintiff is in possession of the suit property. It was argued that defendants No. 1 and 2 are evading their contractual obligations and have, moreover, executed an unlawful Sale-deed in favor of defendant No. 3. The plaintiff's counsel further submitted that the execution of the agreement and the signatures thereon are admitted in the written statement at **Exhibit-13**. It was also highlighted that the plaintiff had issued a Notice to the defendant. To substantiate his claim, the plaintiff presented both oral and documentary evidence, including the Agreement to Sale and the Notary Register Extract. Accordingly, the Learned Advocate prayed for the suit to be decreed as prayed.

11) Conversely, the Learned Advocate representing defendants No. 1 to 3 argued that the agreement at **Exhibit-23** remains unregistered. It was contended that the plaint provides an inaccurate description of the suit property's area, and that the period for the execution of the Sale-deed, as well as the consideration amount, are not specified. Furthermore, it was submitted that there is no evidence to demonstrate the payment of the consideration amount to defendants No. 1 and 2. The plaintiff, it was argued, has failed to adduce relevant evidence in support of his case. Therefore, it was prayed that the suit be dismissed.

12) It is an admitted fact that suit proeprty was originally owned by Gajanan Hunaji savant which devolved upon defendants No. 1 and 2. Further, from the written statement of defendants Nos. 1 and 2 itself, it can be gathered that the execution of an agreement is admitted. The PW-1 plaintiff, in his affidavit of evidence, reiterated the contents of the plaint, which are therefore not reproduced herein. In his testimony, he proved the agreement dated 12.02.2015, executed by defendants No. 1 and 2 in his favour, marked as **Exhibit-23**. He also proved the Notice dated 06.09.2021, issued to defendants No. 1 and 2, and its reply dated 21.09.2021, marked as **Exhibits-24 and 25** respectively. In support of his case, PW-2 Shrinivas Gawas, a Notary Advocate, deposed in his evidence at **Exhibit-38** that, on 20.02.2015, the plaintiff and defendants No. 1 and 2, along with other co-sharers, executed an Agreement to Sell in favour of the plaintiff in his presence. He further stated that he notarized the said document and produced the Notary Register Extract entry bearing No. 215 at **Exhibit-39** in corroboration of his evidence. The evidence of PW-2 Shrinivas Gawas and the extract at **Exhibit-39**, entry No. 215, further confirm this fact.

13) However, it is important to mention that, concerning the consideration amount, the plaintiff has not provided any evidence on record to establish that the plaintiff paid the consideration amount, as averred by the plaintiff himself in the plaint, to defendants No. 1 and 2 or their predecessor. There is nothing on record to show what the consideration amount fixed between the parties was during the execution of the agreement. In that respect as well, the record is silent. Considering the same, a mere averment in the plaint and the document at **Exhibit-23** is not sufficient to establish payment of the amount.

14) It is further pertinent to note that, upon perusal of the entire document, the agreement at **Exhibit-23** dated 12.02.2015 does not ascertain when the Sale-deed was agreed to be executed or whether it was to be executed upon the plaintiff's request. The timing of the Sale-deed's execution is highly important because the agreement dates from 2015, while the cause of action, as shown in the plaint, is from 2021. Furthermore, it is the plaintiff's contention that he is and was ready and willing to perform his part of the contract; however, defendants No. 1 and 2 always avoided executing the Sale-deed. In this respect, apart from the plaintiff's oral statements, there is nothing on record to show what steps were taken by the plaintiff from 12.02.2015 till 26.07.2015 to get the Sale-deed executed. There is no notice or any letter in this respect issued by the plaintiff to defendants No. 1 and 2 requesting the execution of the Sale-deed. The notable fact is that the plaintiff has put forward the notice issued to the defendants after the execution of the Sale-deed. Further, upon perusal of the pleading and evidence of the plaintiff, it can be seen that it is vaguely mentioned that defendants No. 1 and 2 started avoiding the execution of the Sale-deed. He has not demonstrated the circumstances and events which would show that defendants No. 1 and 2 avoided performing their part of the contract, i.e., the execution of the Sale-deed.

15) In respect of area of suit property, it is also highly important to mention that, as per the pleadings in the plaint, the area of the suit property is 0-57-09 H.R. in Gat No. 72 Hissa No. 1. The 7/12 extract of the suit property at **Exhibit-05** reflects the area of the suit property to be 0-57-09 H.R. However, the plaintiff himself filed on record the latest 7/12 extract of the suit property at **Exhibit-66**. On perusal of the same, the area of the suit property appears to be around

36 Guntha, which is not consistent with the pleadings in the plaint. The change in the area of the suit property appears to be the result of the order of Tahasildar dated 28.10.2021 at **Exhibit-65**. However, the plaintiff has not amended the plaint and corrected the said area of the suit property in the plaint. As such, the fact remains that the area of the suit property as pleaded, the area as per revenue record, and the agreement at **Exhibit-23** differ.

16) On the other hand, defendant No. 3 examined himself for all the defendants. He proved the Power of Attorney executed by defendants No. 1 and 2 in his favour at **Exhibit-47**. During his evidence, he also proved the sale-deed executed by defendants No. 1 and 2 in his favour in respect of the suit property to be at **Exhibit-48**. Before proceeding further, it is necessary to mention that it is a settled position that a Power of Attorney holder cannot testify in respect of matters and facts which are in the personal knowledge of the principal. In the instant case, the evidence of DW-1, which concerns the personal knowledge of defendants No. 1 and 2, cannot be considered. However, the fact remains that the execution of the sale-deed at **Exhibit-48** by defendants No. 1 and 2 in his favour is a fact within his knowledge. Considering the same, the evidence in respect of the execution of the Sale-deed is admissible. On perusal of the entire cross-examination of DW-1, he admitted that, during the execution of the sale-deed, he had knowledge that the plaintiff had applied for an amendment in the area of Survey No. 72 Hissa No. 1. However, he has specifically stated that he had no knowledge about the Agreement dated 12.02.2015. Thereafter, he has denied the entire case of the plaintiff. Apart from mere suggestions, plaintiff has produced nothing to establish sale deed

to be illegal one. The plaintiff has also not shown that defendant No. 3 is not a bona fide purchaser by adducing any material on record.

17) In order to establish that the sale deed at **Exhibit-48** to be illegal Plaintiff has to prove that, the agreement to sale at **Exhibit-23** is valid and binding. In this respect reference to Section 53-A of the Transfer of Property Act, 1882 and Section 17 (1A) of Registration Act, 1908 will be beneficial which are as under :-

**Section 53A of Transfer of Property Act, 1882 :-**

*'53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,*

*and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,*

*and the transferee has performed or is willing to perform his part of the contract,*

*then, notwithstanding that , or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed there for by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing*

*against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract :*

*Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]'*

**Section 17 (1A) of Registration Act, 1908 :-**

*'(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]'*

18) Upon perusal of Section 53A of the Transfer of Property Act, it becomes clear that if, in a suit for part performance of a contract, the transferee has taken possession of the property or is already in possession and continues to be so, and has performed some act in furtherance of the contract, and is further ready and willing to perform his part of the contract, then the transferor shall be debarred from enforcing against the transferee any right in respect of the property. However, as per Section 17(1A) of the Registration Act, such part

performance can be claimed only if the document is registered; if the document is not registered, it shall have no effect.

19) In the instant case, the plaintiff claims to be in possession of the suit property prior to the execution of the agreement at **Exhibit-23**, and thereafter claims to have continued such possession. Further, the plaintiff claims to have acted in furtherance of the agreement by making an application to the revenue department for correcting the area of the suit property in the revenue record. However, the point to be considered is that the Agreement at **Exhibit-23** is not a registered document but a notarized document. Considering this, the document, not being registered, cannot be said to have any effect for the purpose of part performance and specific performance of the contract. Under such circumstance, when the agreement has no legal effect in eyes of above mentioned provisions and for reasons more particularly discussed above, the execution of sale deed at **Exhibit-48** cannot be concluded to be illegal and hence the same is valid.

20) Considering the entire discussion above, it is established that there was an agreement executed between the plaintiff and defendants No. 1 and 2 dated 12.02.2015. However, the plaintiff has failed to establish that he has paid the entire consideration amount. Likewise, the plaintiff has failed to establish that the sale-deed dated 26.02.2021 at **Exhibit-48** executed between defendants No. 1 and 2 and defendant No. 3 is illegal. Hence, I answer Issue No. 1 '**Partly in Affirmative**' and Issue No. 2 as '**Negative**'.

**Issues No. 3 and 4 :-**

(As both these issues are interlink and in order to avoid the repetition of fact and evidence, both this issues are dealt with, discussed and decide

together.)

21) The plaintiff has prayed for the cancellation of the sale-deed dated 26.07.2021 and for a mandatory injunction directing defendants No. 1 and 2 to execute the sale-deed of the suit property in his favour. However, from the discussion made in above issues, it is clear that the Plaintiff has failed to establish that the sale deed dated 26.07.2021 is illegal. Considering the same, the plaintiff is not entitled to the relief of cancellation of the sale-deed dated 26.07.2021, nor to a mandatory injunction directing defendants No. 1 and 2 to execute the sale-deed of the suit property in his favour. Hence, I answer Issues No. 3 and 4 in the '**Negative**'.

**Issue No. 5 :-**

22) Considering the discussion made in the above Issues, it is clear that the plaintiff is not entitled to any relief as prayed. Defendants No. 1 and 2 had claimed a compensatory cost of Rs.25,000/- (Rupees Twenty Five Thousand Only). However, they have not demonstrated how the said cost is arrived at, nor have they shown any calculation. Considering the same, defendants No. 1 and 2 are not entitled to compensatory cost. Accordingly, the suit is liable to be dismissed with cost. Hence, in answer to this Issue, I proceed to pass the following :-

**- :: ORDER :: -**

1. The suit is dismissed with costs.
2. Draw decree accordingly.

(Dictated and pronounced in open Court.)

Place : Dodamarg.  
Date : 13/05/2026.

( Y. P. Bavkar )  
Civil Judge (J.D.), Dodamarg.

## **CERTIFICATE**

The contents of the above PDF file are true and correct as  
per the original judgment.

Name of Stenographer	Narendra Govind Prabhu.
Judgment pronounced on	13/05/2026.
Judgment dictated on	13/05/2026.
Judgment signed by Presiding Officer on	13/05/2026.
Judgment upload on	13/05/2026.