

MHSN060017132013 	Presented on	11/09/2013.		
	Registered on	12/09/2013.		
	Decided on	08/05/2026.		
	Duration	DD	MM	YY
		12	7	27

IN THE COURT OF JT. CIVIL JUDGE JR. DN. MIRAJ,
DISTRICT : SANGLI.

[PRESIDED OVER BY PRAVIN UMAKANTRAO KULKARNI]

REGULAR CIVIL SUIT NO.340/2013

EXH.NO.172

Dr. Bhalchandra Gopal Sathye,
Age : 63 years, Occu. Doctor/Agriculturist
R/at Miraj, Tal. Miraj, Dist. Sangli.

} **Plaintiff**

Versus

- 1] **Nutan Ananda Kadam,**
Age : Major, Occu. Housewife,
R/o Chakkar Sadak, Old Savali Road,
Opp. Nasheman Hotel, Pandharpur Road,
Tal. Miraj, Dist. Sangli.
- 2] **Gramsevak,**
Tanang Grampanchayat, Tanang,
Tal. Miraj, Dist. Sangli.
- 3] **Sarpanch,**
Tanang Grampanchayat, Tanang,
Tal. Miraj, Dist. Sangli.

} **Defendants**

CLAIM : SUIT FOR INJUNCTION AND DECLARATION

Advocate for the Plaintiff : Shri. M. H. Gramopadhye
Advocate for the Defendant No.1 : Shri. S. K. Yadav
Advocate for the Defendant No.2 & 3 : Shri. M. N. Inamdar

J U D G M E N T[Delivered on 8th day of May, 2026]

This is suit is for injunction and declaration.

Subject matter of the lis :-

01. **Description of the suit property :-** Gut No.307+308 situated at village Tanang, Tal. Miraj, Dist. Sangli area to the extent of 6861.1 Sq.Mtr. has following four boundaries :-

Towards East :- Gut No.306 & Road.
Towards South :- Road.
Towards West :- N.A. Plots in Gut No.306.
Towards North :- Road & plots in Gut No.307+308.

(Hereinafter referred as “suit property”)

Case of the Plaintiff :-

02. It is the contention that, defendant No.1 is owner of Plot No.42. Suit property is in Gut No.307 and 308. The defendant No.1 without any measurement and without construction permission commenced the construction over the suit property. In Gut No.306, Plot No.42 there were two land owners i.e. one is defendant No.1 and another is one persons namely Suryawanshi. The said Suryawanshi is in possession of northern side of suit property. Defendant No.1 has started the construction. Therefore, he has requested her to stop the construction. But, defendant No.1 did not pay any heed to his complaint. Thus, he filed complaint to the defendant No.2 and Sub-Divisional Officer, Miraj. The

construction of defendant No.1 is without any valid construction permission and without any space according to Maharashtra Regional Town Planning Act.

03. The construction permission issued by defendant No.2 is illegal and defendant No.2 has no authority to issue construction permission. The construction permission dated 11/09/2013 is illegal. Hence, this suit is for declaration that, construction permission dated 11/09/2013 is void and illegal and also to restrain defendant No.1 to prohibit the construction over suit property. It is also prayed to demolish the construction erected by defendant No.1.

Written Statement Of Defendant No.1 :- (Exhibit No.24)

04. The defendant No.1 denied all the contentions of the plaint. The construction is according to the permission of the Village Panchayat. Defendant No.2 and 3 are added as a defendant after the judgment in R.C.A 182/2016 and Review application 6/2022. The suit is filed only to harass her. Hence, prayed to dismiss the suit.

Written Statement Of Defendant Nos.2 & 3 :- (Exhibit No.158)

05. The contentions in the plaint are before addition of the party to the suit. The suit is barred by the Section 180 of the Maharashtra Village Panchayat Act. The plaintiff had filed one suit R.C.S No.329/2014 against these defendants. In that suit, plaint has been rejected by the Court. The plaintiff has added them in the

suit after the judgment in previous suit. The suit is not within Limitation period. Hence, prayed to dismiss the suit.

06. Considering the plaint, written statement and documents on record, my learned predecessor framed the issues below Exhibit No. 37 which are reproduced as follows with my findings thereon :-

S.N.	ISSUES	FINDINGS
1]	Does the plaintiff proves that, defendant started to erect construction just adjacent to compound of property described in Para No.1 of the plaintiff illegally, without taking measurements and without permission of competent authority ?	No
1A]	Does the plaintiff prove that defendants No.2 and 3 issued false, unauthorized and illegal construction permission on 11/09/2013 in favour of defendant No.1?	Does not survive
1B]	Whether the plaintiff is entitled for declaration that construction permission dated 11/09/2013 issued by defendants No.2 and 3 in favour of defendant No.1 is illegal and unauthorized?	Does not survive
2]	Does the plaintiff proves that, the construction erected by defendant is illegal & unauthorized ?	No
2A]	Whether the plaintiff is entitled for mandatory injunction of demolishing illegal construction made by defendant No.1?	No
3]	Whether plaintiff is entitled to prohibitory and mandatory injunction as prayed for ?	Does not survived to the extent of prohibitory injunction and in the negative for mandatory injunction.

S.N.	ISSUES	FINDINGS
3A]	Whether the suit is instituted within the period of limitation?	No
4]	What order and decree ?	Suit is dismissed.

EVIDENCE :-

07. The considerable evidence was amassed. The available evidence on record to arrive at just conclusion is as follows :-

EVIDENCE ON BEHALF OF THE PLAINTIFF**Oral Evidence :-**

Sr.No.	Name of the witness	Relevance	Exhibit
01]	Dr. Bhalchandra Gopal Sathye	Plaintiff-PW1	58
02]	Kalpana Arjundas Rathod	PW2	69
03]	Samir Mansingrao Shingate	PW3	78

Documentary Evidence :-

The plaintiffs have relied on the following documentary evidences formulated in a tabular form :-

Sr.No.	DOCUMENTS	EXH.
01]	7/12 extract of Gut No.307+308.	7
02]	7/12 extract of Gut No.306.	8
03]	Report of Court Commissioner, Asstt. Director, Town Planning Office, Sangli.	43
04]	Letter of Sub-Divisional Officer Miraj to Tahsildar, Miraj.	79
05]	Letter of Sub-Divisional Officer Miraj to Tahsildar, Miraj.	80

Sr.No.	DOCUMENTS	EXH.
06]	Spot copy of complaint to Tanang Grampanchayat.	83
07]	Spot copy of complaint to Sub-Divisional Officer, Miraj.	84
08]	Circle Officer, Kavalapur letter No.107/2014, dated 12/03/2014.	85
09]	Block Development Officer letter dated 05/12/2013.	86
10]	Letter of Deputy Chief Executive Officer, dated 16/12/2014.	87
11]	Letter of Block Development Officer-1, Miraj dated 19/12/2014.	88
12]	Spot copy of complaint letter of plaintiff dated 28/08/2013.	89
13]	Order No.LNA/SR/5/1989 of Sub-Divisional Officer, Miraj dated 07/04/1989 (N.A. Order).	90
14]	Power of Attorney, dated 06/07/2023.	124

EVIDENCE ON BEHALF OF THE DEFENDANTS :-**Oral Evidence :-**

Sr.No	Name of the witness	Relevance	Exh.
01]	Amol Ananda Kadam	DW1	95
02]	Sushma Digambar Kulkarni	DW2	125

Documentary Evidence:- Defendants have filed following documentary evidence.

Sr.No.	DOCUMENTS	EXH.
01]	Tax receipt for the year 2022-2023.	101
02]	Tax receipt for the year 2020-2021.	102
03]	Tax receipt for the year 2013-2014.	103

Sr.No.	DOCUMENTS	EXH.
04]	Tax receipt for the year 2014-2015.	104
05]	Tax receipt for the year 2021-2022.	105
06]	Electricity Bill for the month of Feb.2022.	106
07]	Electricity Bill for the month of April.2022.	107
08]	Electricity Bill for the month of May.2022.	108
09]	Electricity Bill for the month of June.2022.	109
10]	Electricity Bill for the month of August.2022.	110
11]	Electricity Bill for the month of Sept.2022.	111
12]	Copy of judgment in RCA No.182/2016.	116
13]	Letter No.व्हीपीएम २०२१/प्र.क्र.१९/पंरा-४, दिनांक २४/०२/२०२१.	145

08. Upon evidence close pursis by plaintiffs at Exh.165 and defendants No.1 at Exh.166 and defendant No.2 & 3 at Exh.167.

ARGUMENTS

09. A) **On behalf of plaintiff** :- The learned Advocate for plaintiff submitted that, the suit property is beyond the *Gaonthan* area. It is the non-agricultural zone. The District Collector is the competent authority to issue construction permission for non-agricultural property. Plaintiff has filed the construction permission issued by Village Panchayat. The report of Court Commissioner clearly reveals that, the defendant No.1 has constructed to the extent of 1.20 meter without any space. The witness on behalf of defendant admitted the Court Commissioner report. He has also admitted the photographs of his construction.

The defendant No.1 herself never stepped into witness box. There is no necessity to join all the co-owners as a plaintiff. The tax receipts does not legalize the illegal perception. The defendant No.2 and 3 have added after the amendment and fresh cause of action starts from date when they are added. The learned Advocate for plaintiff relied on the Section 14 of the Limitation Act.

B) On behalf of defendant No.1 :- The learned Advocate for defendant No.1 submitted written notes of arguments at Exh.169, wherein it is submitted that, the construction has been completed. The plaintiff fails to prove the exclusive possession over suit property. The plaintiff has not independent right in suit property. The plaintiff has not proved the construction erected by defendant No.1. Hence, prayed to dismiss the suit with cost.

C) On behalf of defendant No.2 & 3 :- The learned Advocate for defendant No.2 & 3 submitted that, plaintiff examined Gramsevak as (PW2) and thereafter in the year 2024 by way of amendment, they are added as a party defendant. If the plaintiff has not followed by-laws of M.R.T.P. Act, then there is no appeal filed to the competent authority. The plaintiff has not filed original construction permission. The limitation for filing suit for declaration is three years. In the plaint Para No.5, it is submitted that, plaintiff got knowledge of construction permission in 2014, but sought amendment in the year 2024. Therefore, the date of declaration is time barred. There is no cause of action against

defendant No.2 and 3. Hence, he also prayed to dismiss the suit with cost.

REASONS

AS TO ISSUE NO.3A :- (Barred by Law of Limitation)

10. Before proceeding to other issues, it is apt to discuss this issue first as the fate of the case is depends upon this issue.

11. Plaintiff has prayed for the the relief of declaration by way of amendment. Plaintiff sought amendment in the year 2024. The issue of Limitation is a mixed question of law and fact. As per Article-58 of the Limitation Act, 1963, the limitation for the relief of declaration is three years from the date when the right to sue accrues. As per amended pleading of plaintiff, he has got knowledge of construction permission in the year 2013 or after the judgment in Civil Appeal No.02/2014 dated 03/05/2014. Thus, the right to sue accrued in the year 2013. Thus, the cause of action first arose in the year 2013. The amendment is not within three years, which would end in the year 2017. There is no evidence on behalf of plaintiff, why the suit or amendment has not been claimed within limitation.

12. In the evidence also, plaintiff has deposed that, on 28/08/2013, the Sub-Divisional Officer has passed an order to demolish the construction on the ground that, the construction permission issued by Village Panchayat is not the competent authority. However, defendant No.2 and 3 have not taken any

action against defendant No.1. In such situation, plaintiff has got right to sue in the year 2014 about the said construction permission but sought relief in the year 2024. As per Section 14 of the Limitation Act, 1963, there is exclusion of time of proceeding *bonafide* in Court without jurisdiction. In the present case, though the plaintiff has claimed exclusion of time in proceeding in appeal, the cause of action mentioned in the plaint is in the year 2014. Thus, the amendment does not relate back to the date of institution of suit. Even in the order below Exh.137, it is not mentioned that, the amendment is relate back to the date of institution of suit. As per Para No.5A in plaint, the knowledge of construction permission was in 2014, then in such situation, the right to sue accrues in 2014 and for that, the time in the proceeding in appeal cannot be excluded. The relief claimed by plaintiff in respect of the declaration is not within the period of limitation. Hence, I answer issue No.3A in the affirmative.

AS TO ISSUE NO.1A AND 1B:-

13. The plaintiff has prayed for declaration that the construction permission dated 11/09/2013 in favour of defendant No.1 is false, illegal and unauthorized. There is no dispute that, plot No.42 is plot of defendant. Thus, it is necessary to advert Section 34 of the Specific Relief Act, 1934 which reads as under:

Section 34. Discretion of court as to declaration of status or right : Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right,

and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

14. In the present case, plaintiff has to prove that, the construction permission is denying his right to enjoy the suit property. In order to prove that, the construction permission is illegal and unauthorized, plaintiff has to prove the plot of defendant No.1 is beyond *Gaothan*. The plaintiff has examined the witness Kalpana (PW2) Gramsevak of Village Panchayat, Tanang who has deposed that, land Gat No.305 to 210 is beyond *Gaothan*. Therefore, the Talathi is empowered to grant construction permission. The plaintiff has examined Sameer (PW3), Sub-Divisional Officer who deposed that, the Gat No.306, 307 and 308 are the lands beyond *Gaothan* area. He has admitted documents below Exh.79 and Exh.80. Defendant No.1 did not apply for construction permission in his office. The construction without permission beyond *Gaothan* area is illegal. His office has also issued two letters to the Tahsildar to initiate legal action against the defendant No.1. Further, he has deposed that, for the construction, there must be permission of his office. He did not cross examine by the defendants.

15. The defendant No.2 and 3 have cross examined the plaintiff at length. It is admitted by the plaintiff that he has not

filed the original construction permission dated 11/09/2013 in this case.

16. Plaintiff has not filed the original construction permission. The documents below Exh.79, 80, 85 to 88 shows that, the plot is not in *Gaothan* area. The said documents are official communications. *Per contra*, there is no document on behalf of defendant No.2 and 3 to prove that, the plot No.42 is in the *Gaothan* Area.

17. In civil cases, the evidence has to appreciate on the basis of preponderance of probability. The entire evidence reveals that the plot of defendant No.1 is not in *Gaothan* Area and Village Panchayat has not authority to issue construction permission. The plaintiff has filed the copy of permission to use the land in Gat No.306 for non residential use issued by Sub-Divisional Officer, Miraj at Exh.90 which clearly shows that, plot No.42 which is out of Gat No.306 is beyond *Gaothan* Area and the Village Panchayat has not authority to grant permission for the same.

18. The evidence of plaintiff prove that, Village Panchayat is not authorized to issue construction permission. Having answered point No.3A in the affirmative, the plaintiff has not claimed the relief of declaration within the period of limitation. Thus, the issue No.1A and 1B are does not survive.

AS TO ISSUE NO.1, 2, 3 AND 2A :-

19. In this case, the question is whether the defendant No.1

has started construction adjacent to the suit property without following any rules and measurement. It is the contention of plaintiff that, when the suit has been filed, defendant No.1 has started to erect the construction. During pendency of this suit, the defendant No.1 has completed the construction.

20. In order to prove this issue, plaintiff has to adduce evidence about the exact construction over the plot No.42 (Property of defendant No.1). The plaintiff has filed examination in chief at Exh.58 which is the replica of the plaint. During evidence, he has admitted that, his sisters are also the owners of the suit properties. The defendants have adduced the evidence of Sushma Kulkarni (DW2), who has also deposed that, alongwith plaintiff he is also the owner of suit property. Though it is so, the suit has been filed by plaintiff to preserve his property. Therefore, there is no bar to file suit by one of the owner of suit property.

21. Initially when the suit has been presented, defendant No.1 started construction and during pendency of the suit it has been completed. Thus, there is no question to decide the issue of prohibitory injunction. It is clear from the evidence that permission issued by Village Panchayat is dated 11/09/2013. However, it is admitted fact that construction permission is not produced on record. Amol Kadam (DW1) has admitted the photos of construction.

22. The plaintiff has applied for appointment Court

Commissioner for measurement of actual construction. The Assistant Director Town planning Office, Sangli has been appointed for measurement. He has filed his report at Exh.43. The defendant No.1 has opposed the report of Court Commissioner. However, the plaintiff did not adduce oral evidence of Court Commissioner.

23. Defendant No.1 has not stepped into witness box. The power of attorney holder, her son stepped into witness box. He has filed his affidavit in lieu of examination-in-chief at Exh.95. In the examination in chief, he has deposed that, suit property is not the Plot No.42. He has deposed that, the construction is not adjacent to the suit property. According to report of Court Commissioner, the F.S.I. is less than 1.0 Sq.Mtr. His construction is according to the permission of the Village Panchayat.

24. During cross examination, he has admitted the photographs filed below list of document Exh.02 is of his construction. These photographs are at the initial stage of the construction. The report of Court Commissioner is admitted to him, but he did not know whether the Court Commissioner has been appointed or not. His plot is not partitioned between him and Tukaram Suryanwanshi. The construction has been completed.

25. The Power of Attorney Holder must have full knowledge of the entire facts of the case and the defendant has to be appointed to the Power of Attorney holder, if Power of Attorney

holder has knowledge of the facts of the case. The same has to be introduced in the examination-in-chief of the witness. In the present case, the Power of Attorney is not proved. In the cross-examination, he has deposed that, he has information about the suit and documents. This must be deposed or mentioned in the Power of Attorney by the defendant herself that, the witness has knowledge about entire facts of the case. As the Power of Attorney not proved, his admissions cannot be considered. Even, he has admitted the report of the Court Commissioner, it cannot be considered as a proved document. The report of Court Commissioner is evidence of expert witness. Unless, the substantial evidence is proved, the corroborative evidence cannot be considered. The substantial evidence in the present case is the construction permission. However, it is not filed on record by the plaintiff.

26. The report of Court Commissioner is opposed by defendant No.1. Therefore, admission of defendant's witness cannot be treated as an admission of defendant No.1. There is no village map to show that plot No.42 is not in *Gaothan* area. Unless, there is a construction permission, the Court cannot ascertain which norms have been breached by defendant No.1. In view of the discussions on the above issues, the plaintiff is not entitled for declaration that, construction permission is unauthorized and illegal. It is settled law that, when the relief of declaration is barred by the period of limitation, the suit for relief of injunction

does not survive. Hence, I answer issue Nos.1 in negative, issue No.2 and 2A in the negative and issue No.3 is does not survives to the extent of permanent injunction and negative for mandatory injunction.

AS TO ISSUE NO.04 :-

27. In view of above discussion, I come to the conclusion that plaintiffs are not entitled for any relief. Considering the nature of the suit, the suit is an exception to the rule of costs '**costs shall follow the event**' so that, it is desirable to saddle the cost on plaintiff and defendants to bear the costs of the suit. Hence, evidence on record and discussion thereon propelling me to pass the following order :-

ORDER

- 01] Suit is hereby dismissed.
- 02] Parties to bear their own costs.
- 03] Decree be drawn up accordingly.

(Dictated and pronounced in open Court)

Place : Miraj.
Date : 08/05/2026.

(Pravin U. Kulkarni)
Jt. Civil Judge Jr. Dn., Miraj.

CERTIFICATE

I affirm that, contents of this PDF file is same word to word, as per original Judgment :-

Name of the Stenographer	:-	Sagar Anil Kate.
Court Name	:-	Jt. Civil Judge Jr. Dn., Miraj.
Date of Judgment		08/05/2026.
Date of Signature	:-	08/05/2026.
Date of Uploading	:-	08/05/2026.