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|---|---------------|---|------------|----|----|
| MHSO070001962007  | Received on | : | 26.02.2007 | | |
| | Registered on | : | 27.02.2007 | | |
| | Decided on | : | 18.03.2026 | | |
| | Duration | : | YY | MM | DD |
| | | | 19 | 00 | 22 |

**IN THE COURT OF JT. CIVIL JUDGE, JUNIOR DIVISION,
PANDHARPUR, TAL. PANDHARPUR, DIST. SOLAPUR**
(Presided over by - Smt. S.S.Raul)

Regular Civil Suit No. 105/2007

Exh.No. A/104

1. **Hari Vasant Thombare**
Age : 36 Years, Occ. : Service,
At present R/o : Mumbai.
 2. **Vasant Pandurang Thombare**
Age : 65 Years, Occ. : Agriculturist,
R/o : Kasegaon, Tal. Pandharpur, Dist. Solapur.
- } ... Plaintiffs

:: VERSUS ::

Achyutrao Bhagwan Doiphode
Age : 47 years, Occ. : Agriculturist,
R/o. Kasegaon, Tal. Pandharpur, Dist. Solapur.

} ... Defendant

**Suit for Declaration,
Possession & Mesne Profits.**

Advocate for Plaintiffs : Mrs. S.V.Shirke.
Advocate for Defendant : Mr. K.B.Dharurkar.

J U D G M E N T

(Delivered on 18th Day of March, 2026)

1. This is the suit for declaration, possession and mesne profits against the defendant.

2. Brief facts of the case is as follows.

It is the case of plaintiffs that suit properties are agricultural lands situated at village Kasegaon, Tal. Pandharpur, Dist. Solapur more particularly described in plaint and as follows.

| Sr. No. | Gat No. | Admeasuring H-R. | Boundaries | | | |
|---------|-----------|------------------|------------|---------|---------|-------|
| | | | East | South | West | North |
| A. | 1634/2B/2 | 0H:40R | 1633 | 1634/2A | 1634/2B | Road |
| B. | 1634/2A | 0H:46R | 1633 | 1634/2A | 1634/2B | 1642 |

These properties are subject matter of the suit. (Hereinafter this property is referred as '**the suit properties**' for the sake of brevity and convenience).

3. Previously Gat No.1634 admeasuring 4H:23R with potkharaba 13R was owned by Namu Tayappa Dhone and Bhagubai Bhigu Dhone having half share each. On 18.01.1980 they partitioned and land admeasuring 2H:05R towards east side came to the share of Namu Dhone. It is numbered as Gat No.1634/2. Out of this land admeasuring 46R towards north side was sold to plaintiff No.2 by Namu by registered sale-deed dated 31.03.1983. It is further numbered as Gat No.1634/2A i.e. suit property B. Further, Sarjerao Kale had purchased land admeasuring 40R situated towards southern side of suit property B from Namu. On 11.06.1991 by registered sale-deed plaintiff No.1 purchased this land from Sarjerao Kale and it is numbered as 1634/2B/2 i.e. suit property A.

4. Defendant purchased land admeasuring 69R situated towards southern side of suit property B on 10.12.1993 and it is

numbered as Gat No.1634/2B/2A. Entire Gat No.1634/2 though sub-divided, there is no sub-division as per revenue record. There is no measurement and fixation of boundaries of four parts of Gat No.1634/2. Each party was in possession of their respective land. The last week of previous month of filing of suit when plaintiff No.2 had gone to Mumbai, defendant constructed illegally tin-shed of 80 x 60 feet over 4R land owned by plaintiffs for drying raisins. Upon confrontation he refused to remove the shed and handover the possession. Legal notice was given to him on 09.02.2007. Though notice was duly served, he has not removed this illegal construction. Thus, plaintiffs have filed present suit for removal of encroachment over 4R land owned by them where tin-shed of 80 x 60 feet has been constructed and to handover its possession to plaintiffs. They have also sought declaration that 4R land is in possession of defendant illegally. They have also sought mesne profits in respect of allegedly encroached area of 4R land.

5. Defendant appeared through his learned Advocate and filed his written statement vide Exh.31 and 50. He opposed all pleadings of the plaintiffs. He submitted that the plaintiffs have mentioned incorrect boundaries of the suit properties. When suit property B was purchased in the sale-deed on east side there is mentioned of Gat No.1631. However, in the plaint Gat No.1633 is mentioned as being situated towards east side of suit property B. After perusal of map of Gat No.1634, nowhere Gat No.1631 is found. Thus, plaintiffs are attempting create their right in the land owned by defendant.

6. It is further pleaded that original owner Namu sold his 46R land to plaintiff No.2. He had his residences and cattle shed in land admeasuring 7R towards west side of sold land. Beyond his residences there was land of 40R which was subsequently purchased by plaintiff No.1. Towards west side of this 40R land remaining land of 69R land was in the name of Namu. This 69R land alongwith 7R land upon which residences of Namu were present, was purchased by defendant on 10.12.1993. Thus, the 7R land is between the land purchased by plaintiffs No.1 and 2. He had constructed tin-shed for drying raisins upon this 7R land 12 years before. Thus, the alleged cause of action prior to filing of suit has never occurred. Plaintiff No.2 is permanently residing at village Kasegaon. He never went to Mumbai. Thus, suit filed is false and frivolous. After measurement of lands, encroachment as alleged at the hands of defendant is not found. Entire Gat No.1634 has not been measured. Therefore, encroachment cannot be determined. Thus, he prayed to reject the suit.

7. After pleadings of the parties, my learned predecessor framed issues in the matter below Exh.33 on 27.11.2012. Thereafter, these issues were re-cast on 14.06.2013. Considering pleadings and evidence led by both parties, findings against each of the issues are recorded alongwith reasons as follows :-

| Sr.No. | ISSUES | FINDINGS |
|--------|--|---------------------|
| 1. | Whether Plaintiffs prove that they are the owners of lands Gat No.1634/2/A and 1634/2/B/2? | Affirmative. |

| Sr.No. | ISSUES | FINDINGS |
|--------|---|----------------------------|
| 2. | Whether they have proved that defendant has erected tin-shed upon the suit property by making encroachment? | Negative. |
| 3. | Whether plaintiffs are entitled for recovery of vacant possession of suit property? | Negative. |
| 4. | Whether plaintiffs are entitled for mesne profit? | Negative. |
| 5. | What order and decree ? | As per final order. |

:- REASONS :-

8. Plaintiffs have led following oral evidence :-

| Sr. No. | Witness | Name | Description | Exh. |
|---------|----------|-----------------------------|----------------|------|
| 1. | P.W.No.1 | Vasant Pandurang Thombare | Plaintiff No.2 | 43 |
| 2. | P.W.No.2 | Shankar Dattatray Parchande | Surveyor | 64 |

The Plaintiffs have led following documentary evidence :-

| Sr. No. | Exhibit | Description | Date |
|---------|---------|----------------------------|------------|
| 1. | 66 | Court's Commission Letter | -- |
| 2. | 67 | Measurement notices | -- |
| 3. | 68 | Plaintiffs' statement | 16.04.2008 |
| 4. | 69 | Measurement panchnama | -- |
| 5. | 70 | Measurement notices | 17.04.2008 |
| 6. | 71 | Certificate by Post Office | -- |
| 7. | 72 | Measurement Map | -- |

Plaintiffs evidence is closed by order passed below Exh.1 dated 10.01.2017.

9. Defendant has led following oral evidence :-

| Sr. No. | Witness | Name | Description | Exh. |
|---------|---------|----------------------------|-------------|------|
| 1. | DW1 | Achyutrao Bhagwan Doiphode | Defendant | 85 |

The defendant has led following documentary evidence :-

| Sr. No. | Exhibit | Description | Date |
|---------|---------------|--|------------|
| 1. | 90 A | Certified coy of ME No.6559 | |
| 2. | 90 B | Certified copy of Sale-deed executed in favour of defendant. | 10.12.1993 |
| 3. | Article B & C | Two photos | -- |

Defendant's cross-examination has been closed by order dated 17.10.2025 and his evidence is closed by order passed by Exh.1 dated 17.10.2025. Both parties failed to argue orally and therefore, suit is proceeded without argument by either party as per order passed below Exh.1 dated 07.01.2026.

ISSUE No. 1 :-

10. Plaintiffs have specifically pleaded that they have purchased suit properties by registered sale-deed. In written statement of defendant he has not denied this fact. During cross-examination of defendant vide Exh.85, he has admitted this fact when suggestion was put to him that suit properties are owned by plaintiffs No.1 and 2. As this fact is not disputed on the record, it is not needed to be proved by the plaintiffs. The fact admitted need not be proved as per Section 58 of Evidence Act. **Thus, issue No. 1 is answered in the affirmative.**

ISSUE No.2 :-

11. It is the case of plaintiffs that by taking disadvantage of absence of plaintiff No.2, defendant encroached into suit properties and constructed tin-shed of 80 x 60 feet for drying raisings. It is pleaded that this encroachment was carried out over 4R land in the last week of month preceding to the filing of suit. As the suit has been filed on 26.02.2007, the alleged cause of action, which has not been specifically mentioned in the plaint must be around last week of January 2007. Thus, plaintiffs have sought removal of encroachment carried out by defendant and possession of encroached area.

12. It is the case of defendant that he is the owner of the land upon which tin-shed has been constructed. He further pleaded that his tin-shed is in existence from the last 12 years. He has specifically denied that he constructed tin-shed in the month preceding to the filing of the suit. He specifically pleaded that original owner Namu sold land to plaintiff No.2 first. Adjacent to this land, Namu had 7R land kept for his residence and cattle shed. Beyond this 7R land, he sold land of 40R to Sarjerao Kale, who later on sold it to plaintiff No.1. After selling land to the plaintiffs, Namu had 69R land alongwith 7R land kept for his residences and cattle shed. This entire land is purchased by defendant by way of sale-deed vide Exh.90. He specifically pleaded that this 7R land is situated in between land of plaintiffs No.1 and 2.

13. During cross-examination of PW1, he has denied existence of any such land in between their land. However, he has

admitted that Gat No.1634/2 has not been sub-divided by metes and bounds. He further admitted that the balance remaining land of Namu Done was purchased by defendant. It is disputed between parties that suit property A is situated on north side of defendant's land i.e. Gat No.1634/2B/2A. However, during cross-examination of defendant he has admitted the fact that Gat No.1634/2B/2 i.e. suit property A is situated north side of his land. During this suit at two times Court Commissioner was appointed for measurement of land and his reports are filed at Exh.27 and 98. After perusal of these maps prima-facie the position of suit properties and land of defendant is clear. Suit property B is situated on extreme north side of Gat No.1634/2. Towards its south suit property A is situated. Towards southern side of suit property A land of defendant is situated. The question arises for determination of alleged encroachment as whether 7R land as alleged by defendant is situated between the lands of both plaintiffs and who has its ownership.

14. Defendant has produced his sale-deed (Exh.90-B) and mutation entry effected in his name i.e. ME No.6559 (Exh.90-A). After perusal of these documents it can be seen that the property purchased by defendant i.e. Gat No.1634/2B/2A is admeasuring 69R with potkharaba 7R. This property is sold by original owner namely Namu Dhone. In description of the property towards north side of it, Gat No.1634/2B/2 is mentioned i.e. suit property A. Therefore, land of plaintiff No.1 is situated towards north side of defendant's land. PW2 is surveyor who has conducted measurement and drawn map vide Exh.72. As per this map there is 4R land situated between suit

property B and A. Towards southern side of suit property B i.e. Gat No.1634/2A, 4R land is marked with points A, B, C, D on the map. During cross-examination PW2 admitted that this 4R land is found to be in possession of defendant and it is situated between land of both plaintiffs.

15. PW2 admitted that on 7/12 extract land of defendant is 69R with potkharaba 7R. However, he has not annexed 7/12 extract in the name of defendant to his report. He admitted that entire area of defendant is required to be measured to ascertain alleged encroachment. He admitted during cross-examination that on map area of 50R is found in the possession of defendant. If area found in possession while measurement exceeds than that of 7/12 extract then only it can be said that said land owner has encroached upon land of other person. However, in this case measurement map vide Ehx.72 shows that land admeasuring 50R is in possession of defendant. Thus, from these documents itself it can be seen that no encroachment is found at the hands of defendant when measurement was conducted by PW2.

16. PW2 admitted further suggestions put to him that entire 69R land owned by defendant is not shown on the map, possession of plaintiff over tin-shed is found since many years. He further admitted that from the map drawn by him the fact of encroachment is not found. He has not obtained signature of defendant upon panchnama. However, defendant has admitted that he was present when measurement was conducted. PW2 admitted that when any

Gat is not divided as per the record of Land Record Office, then four boundaries of each sub-division are to be ascertained by taking into consideration boundaries mentioned in the respective sale-deeds of those sub-divisions. However, PW2 has not perused sale-deeds of plaintiffs and defendant. He further admitted that upon map plaintiff No.1 is found to be owner of 45R land, plaintiff No.2 is owner of 40R land and defendant is found to be owner of 50R land. He further admitted suggestion that if the area shown in map matches with the revenue record then only inference about ownership can be drawn. He further admitted that land of defendant i.e. 69R with potkharaba 7R does not match with map drawn by him. It is the case of plaintiffs that the plaintiff No.1 is owner of 40R and plaintiff No.2 is owner of 46R land. However, upon measurement map both their measurements have been shown contrary. Plaintiff No.1 is shown to be owner of 45R land instead of 40R land and plaintiff No.2 is shown to be owner of 40R land instead of 46R land.

17. Area of defendant is not shown upon map. The revenue record is not verified by PW2. Therefore, the measurement map vide Exh.72 is of no help to the plaintiffs to prove facts in issue. Measurements conducted are incorrect. However, PW2 found tin-shed in possession of plaintiffs since many years. The measurement is conducted on 03.05.2008 while suit is filed in the year 2007. Therefore, the probability of claim of defendant that he has constructed tin-shed 12 years prior to filing his written statement is very much probable than the claim of plaintiffs. It is to be noted that plaintiffs have not produced any evidence to show that defendant

has constructed a month prior to filing of the suit. Encroachment at the hands of defendant is not found. During pendency both parties filed joint application for measurement of disputed land vide Exh.94 on 02.08.2017 and accordingly Court Commissioner was appointed. He filed his report vide Exh.98 on 30.08.2018. Defendant filed his say and objected the report vide Exh.99. He submitted that measurements are not conducted entirely and boundaries are not fixed. Therefore, this report cannot be taken into consideration. Plaintiffs failed to file say and therefore, no say order is passed against them on 13.03.2025. According to Section 83 of Indian Evidence Act, maps and plans prepared by authority of the Central or State Government are presumed to be accurate. However, maps or plans made for the purpose of any cause must be proved to be accurate. As the Court Commissioner was appointed and measurement map produced with Exh.98 is prepared for a specific cause proposed by both parties vide Exh.94, unless the surveyor has been examined, the measurement map and report of Court Commissioner is not admissible in evidence.

18. Thus, after perusal of entire evidence produced by both parties, the plaintiffs upon whom the burden was put to prove the fact that defendant erected tin-shed upon suit property by making encroachment, have failed to prove this fact. Plaintiffs have not brought any evidence which shows that tin-shed erected by defendant has been erected upon their land. The tin-shed is found to be in use since many years. Therefore, in the absence of any evidence by the plaintiffs in this regard, the relief claimed cannot be granted.

Plaintiffs have failed to prove the fact that the defendant encroached upon suit property and constructed tin-shed for his purpose a month preceding to the filing of suit. **Accordingly, issue No.2 is answered in the negative.**

ISSUES No.3 AND 4 :-

19. Plaintiffs have failed to prove that defendant has committed encroachment upon suit property and constructed tin-shed of 80 x 60 feet over 4R land. As alleged encroachment at the hands of defendant is not proved, the plaintiffs are not entitled for the relief of vacant possession of suit property. As the defendant has not encroached upon suit property and he is not in possession of suit property illegally, plaintiffs are not entitled for the relief of mesne profit. **Accordingly, issues No.3 and 4 are answered in the negative.**

ISSUE No.5 :-

20. In view of findings given below issues No. 1 to 4, the Plaintiffs have failed to proved their claim against defendant. Thus, they are not entitled for any relief prayed. Accordingly, issue No.5 is answered as follows.

ORDER

1. The suit is rejected with costs.
2. Decree be drawn up accordingly.

Pandharpur.
Date : 18.03.2026.

(Smt. S.S.Raul)
Jt. Civil Judge, Junior Division,
Pandharpur, Dist.- Solapur.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

| | | |
|---|----|-----------------------------------|
| Name of Stenographer | :- | D.S.Landage (Grade-III) |
| Court | :- | Jt. Civil Court,J.D., Pandharpur. |
| Date | :- | 18.03.2026. |
| Judgment/Order signed by the Presiding Officer | :- | 18.03.2026. |
| Judgment/Order uploaded on | :- | 18.03.2026. |