

MHST010007372017



Presented on : 01.03.2017

Registered on : 08.03.2017

Decided on : 17.06.2026

Duration : Y-9, M-3, D-16

IN THE COURT OF DISTRICT JUDGE, SATARA,
AT SATARA.

(Presided over by N.M. Jamadar, District Judge-4)

Misc. Civil Appeal No. 58 Of 2017

Exh.No:

Madhuri Mahesh Shinde,
Age : Adult, Occup.: Agriculturist
R/o. : Shirgaon, Tal. Wai
District Satara.

...Appellant

(Orig. Deft. No.8)

V e r s u s

1. Arjun Baburao Pawar,
2. Shrimant Baburao Pawar,
3. Tulsaram Baburao Pawar,
4. Subhash Baburao Pawar,
5. Anjirabai Baburao Pawar,
6. Kantabai Laxman Mane,
7. Shantabai Hanmant Jadhav,
8. Mangal Ramchandra Anbhule,
9. Gauri Laxman Pawar,
10. Tatyaba Bacharam Pawar,
11. Parshuram Shivram Pawar,
12. Laxman Sarjerao Pawar,
13. Sagar Ramchandra Pawar,
14. Draupada Pralhad Sabale,
15. Shashikala Vaman Saste,
16. Vinayak Baburao Bhosale,
17. Dhanaji Bhauso Pawar,
18. Pratik Ankush Pawar,
19. Rekha Ankush Pawar,
20. Priti Pravin Aware,
21. Prakash Bhiku Pawar,
22. Ravindra Haribhau Pawar,

23. Baburao Dhondiba Pawar,
24. Gulab Shivram Pawar,
25. Prabhavati Vishwanath Pawar,
26. Milan Vishwanath Pawar,
27. Priyanka Amol Choudhari,
28. Shalan Jagu Pawar,
29. Kundalik Jagu Pawar,
All are Adult, Occup: Agriculture
All R/o, Gujarwadi (Bhichukale)
Tal. Koregaon, District Satara.
30. Palashi V.K.S. Seva Society
Through Secretary,
A/p. Palashi, Tal. Koregaon,
District Satara.

...Respondents

(Orig. plaintiff No. 1 to
8 and Defendant nos. 1
to 7 & 9 to 23)

**Appeal under Order XLIII Rule 1 (r)
Of the Code of Civil Procedure.**

Appearance:

- Shri. M.D.Khatavkar - Ld. Advocate for the Appellant.
Shri. S.G.Mulani - Ld. Advocate for the Respondents

J U D G M E N T

(Delivered on 17 June, 2026)

The original defendant no.8 has challenged the order dated 03.02.2017 passed by 2nd Civil Judge Junior Division, Koregaon (for short, 'the trial Court'), in R.C.S.No.85/2014, below Exh.72 whereby the defendant no.8 came to be restrained from interfering with possession of plaintiffs over the land Gat No.332, till disposal of the suit.

2. Parties to this appeal are referred to by their original Status before the trial Court.

3. Facts in brief are as follows :-

(a) By describing 09 landed properties in plaint paragraph no.1B and land Gat No.332 from Mouje Gujarwadi, Taluka

Koregaon, District Satara in plaint paragraph no.1A, plaintiffs have filed a suit for declaration and injunction and alternatively for partition and separate possession of the suit properties. In the same suit, with regard to land Gat No.332, plaintiffs filed an application at Exh.72, claiming to restrain the defendant no.8 from interfering with their possession in suit property.

(b) According to plaintiffs, defendant no.1 purchased the area of 54 R in Gat No.332 from defendant Nos. 2 to 7 by sale deed dated 07.09.2013 and then sold the same to defendant no.8 by sale-deed dated 12.02.2014. It happened, when with regard to sale transaction of defendant no.1 the matter was pending before the Sub Divisional Magistrate, Koregaon. Neither defendant no.1 nor defendant no.8 belong to family of plaintiffs. Allegedly, the transactions of sale are not legal. Defendant no.8 is a third party purchaser and a portion of joint family property cannot be sold by specifying boundaries to such purchaser. Allegedly, the earlier suit bearing Reg.C.S.No.216/2000 was dismissed in default. Under such circumstances, when defendant no.2 had sought for partition in such suit, a transaction of sale executed by defendant no.2 becomes illegal.

(c) According to the plaintiffs, the defendant no.8 is trying to oust the plaintiffs by disturbing their possession over the suit property. When Electricity department was intimated by notice to not to provide electricity to defendant No.8, she filed a false reply expressing that she has taken a bore-well. Allegedly, in land Gat No.332 when plaintiffs have taken crops, defendant no.8 has been threatening them to take away the crop. Therefore, plaintiff had filed an application at Exh.72 against defendant no.8 seeking the relief of temporary injunction.

(d) Defendant no.8 filed reply at Exh.81 and denied the contentions of the plaintiffs. According to defendant no.8, the family tree mentioned by plaintiffs is also incorrect. Allegedly, the defendant no.8 is in possession of 8 Anna and 10 Pai of area in land Gat No.332 from the date of purchasing the same. She also denied the contention that the plaintiffs have taken crops in the suit property. The name of defendant no.1 was mutated by Mutation Entry 444 and challenge thereto has been turned down. She has also contended, that after selling 8 Anna and 10 Pai area i.e. 0.54 R to defendant no.8, the name of defendant no.8 was recorded.

(e) Defendant no.8 has further contended, that on the basis of sale-deed, she is in possession of the suit property. Allegedly, she has made lot of improvements by making huge expenses in the property purchased by her. She has also dug a bore-well. With these contentions, by denying the prayer made by the plaintiffs, defendant no.8 had prayed to reject the application.

4. The learned Trial Court heard the arguments of both sides and by the impugned order restrained defendant no.8 from interfering with possession of plaintiffs in the land Gat no. 332. Being aggrieved by such order, the defendant no.8 had preferred present appeal mainly contending that the trial Court did not take into consideration the proper legal provisions and the trial Court did not apply its judicial mind to the revenue record. Thus, on these and other grounds, defendant no.8 had prayed to allow the appeal and thereby to reject the application at Exh.72 before the trial Court.

5. After notices were sent to respondents (i.e. original plaintiffs at Sr.Nos. 1 to 8 in the memo of appeal and original

defendants at Sr.No.9 to 30 in the memo of appeal), plaintiffs appeared and contested the appeal.

6. I have heard learned advocate Shri. M.D.Khatavkar for the defendant no.8. Learned advocate Shri. S.G.Mulani for the contesting parties did not turn for arguments. Hence, the appeal was posted for judgment.

7. Following are the points for determination along with my findings thereon for the reasons to follow :-

Points	Findings
1. Whether plaintiffs have <i>prima facie</i> case ?	Yes.
2. Whether balance of convenience lies in favour of the plaintiffs ?	Yes.
3. Whether plaintiffs would suffer irreparable loss, in the event of rejection of injunction ?	Yes.
4. Whether interference in the order passed by learned Trial Court is necessary ?	No.
5. What order ?	Appeal is Dismissed.

R E A S O N S

As to Point No.1 :

8. While allowing the application at Exh.72, the learned trial Court had taken into consideration all documentary evidence and expressed that when the partition had not taken place between parties, the defendant no.1 had no right to sell the undivided share by specifying boundaries thereof.

9. After having gone through the order passed by the learned trial Court, I have perused the documents filed before this Court.

10. As per the case put forth by defendant no.8, a portion of 8 Anna and 10 Pai in land Gat no.332 was sold by defendant no. 1 by a registered sale-deed. The factum of defendant no.2 to 7 selling 8 Anna and 10 Pai of share in land Gat No.332 to defendant no.1 is not in dispute. Even the factum of mutation no.444 with regard to defendant no.1 and dismissal of appeal filed against it, is admitted position.

11. The sale-deed dated 12.02.2014 is not made available for perusal. Therefore, in that regard the observations made by learned trial Court have to be taken aid of. Before referring to observations pertaining to sale-deed it shall be noted, that there is no document of partition between the parties and similarly, there is no decree of partition between the parties. What would be the effect of Reg.C.S.No.216/2000 which was dismissed in default, would be the matter of merit. At this moment, what appears is that there is *prima facie* case regarding existence of joint family of plaintiffs and defendants except the third party purchasers. Even the law presumes existence of jointness of family. *Prima facie* the properties in the suit are joint family properties. Legally, an undivided share in joint family property can be sold. However, while executing such sale-deed of undivided share, it is not permitted to specify the boundaries because, unless there is partition by metes and bounds legally, the coparceners enjoy joint ownership and possession. Therefore, when the sale-deed executed in favour of defendant no.8 had expressed the boundaries regarding 8 Anna and 10 Pai share, this *prima facie* would make the sale-deed improper and not legal. Unless there is partition by metes and bounds, transferring share with specifications of boundaries is not permitted.

12. If the above discussion is taken into consideration, the coparceners in the joint family of plaintiffs have unity of ownership and possession over land Gat No.332. Therefore, there could be a possibility that with the help of sale-deed executed in favour of defendant no.8, she must be trying to interfere with possession of the plaintiffs which may amount to ouster of plaintiffs from the specified area of boundaries mentioned in sale-deed of defendant no.8. When defendant no.8 has come up with a theory that she has dug a borewell in the property purchased by her, this aspect of interference and possibility to oust plaintiffs gets strengthened. Merely filing the documents showing purchase of some articles would not substantiate that the defendant no.8 is in possession of land Gat no.332. At the cost of repetition, though it is believed for arguments, that she purchased some portion in Gat No.332, she cannot claim exclusive possession on a specified portion of joint family property. Therefore, the sale-deed and the mutation extracts would not come to the rescue of defendant no.8. Legally, a stranger purchaser cannot be introduced in the property unless there is partition of the joint family property. Thus, if seen from that angle, there is *prima facie* case in favour of plaintiffs. Thus, I answer point no.1 in the affirmative and record my finding accordingly.

As to Point No.2 to 5 :

13. Once it is clarified that the coparceners in the joint family property have unity of possession and ownership and that a stranger purchaser cannot claim exclusive possession in specified area, it would follow that the balance of convenience lies in favour of plaintiffs. Under such circumstances, if defendant no.8 is not restrained from ousting plaintiffs from land Gat No.332, it would cause irreparable loss to the plaintiffs. However for a moment, if the sale-deed of

defendant no.8 is considered to be legal for undivided share, granting of injunction against defendant No.8 would not cause any irreparable loss to her, since *prima facie* her title if any, will not go away. Admittedly, being purchaser, defendant no.8 has not filed a suit for general partition and she has not claimed for partition. Of course, this aspect would be relevant for trial. But the fact remains that the principle of irreparable loss lies in favour of plaintiffs. In such circumstances, the order passed by the learned Trial Court does not require any interference since it is perfectly legal and valid order passed on the observations made on the basis of revenue record and sale-deed of defendant no.8. Therefore, no interference in the order of trial Court is necessary. As such, the appeal having no merits has to be dismissed. Therefore, I answer point nos. 2 and 3 in the affirmative and point no.4 in the negative and record my findings accordingly. As a result, in answer to point no.5 and in the result, I pass following order.

O r d e r

- 1) The appeal is dismissed with costs.
- 2) The order passed by 2nd Joint Civil Judge, Junior Division, Koregaon, dated 03.02.2017 below Exh.72 in R.C.S. No.85/2014 thereby restraining defendant no.8 from interfering with possession of plaintiffs over the land Gat No.332, is hereby confirmed.
- 3) Inform the learned Trial Court accordingly.

(Dictated and pronounced in the Open Court).

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of the Steno	:	Jitendra R. Bartakke
Name of the Court	:	N. M. Jamadar
		District Judge-04 Satara.
Date	:	17.06.2026
Judgment digitally signed by		
Presiding Officer on	:	17.06.2026
Judgment uploaded on	:	17.06.2026