

Presented on : 19.06.2015  
Registered on : 19.06.2015  
Decided on : 20.04.2017  
Duration : 01 10M 01D

**IN THE COURT OF JOINT CIVIL JUDGE JUNIOR DIVISION,  
SELOO.**

*( Before Smt. N.M.Panchariya )*

R.C.S.No.18/2015.

Exh.No.59

Rambhau s/o Daulatrao Gawali,  
Age 80 years, Occu: Cultivation,  
R/o Sindi (Rly), Tq. Seloo,  
Dist. Wardha.

**... Plaintiff**

**VERSUS**

- 1.Bhagirathabai wd/o Shamrao Gawali,  
Age about 75 yrs., Occu: Cultivation,
- 2.Arun s/o Shamrao Gawali,  
Age about 56 yrs.,
- 3.Laxman Shamrao Gawali,  
Age about 55 yrs., Occu: Cultivation,  
1,2, and 3 r/o Sindi (Rly.) Harjula Mohalla,  
Tq. Seloo, Dist. Wardha.
- 4.Ashok s/o Shamrao Gawali,  
Age about 51 yrs., Occu: L.I.C. Agent,  
R/o Wardha.
- 5.Annapurnabai w/o Rambhau Dahaghane,  
Age about 45 yrs., Occu: Household,  
R/o Sindi (Rly). Tq. Seloo, Dist. Wardha.
- 6.Sindhu w/o Ravindra Sontakke,  
Age about 35 yrs., Occu: Household,  
R/o Sindi (Rly) Tq. Seloo, Dist. Wardha.

**... Defendants**

*Appearance : Shri. S.N.Gadekar, learned Advocate for Plaintiff.  
Shri. P.M.Deshpande learned Advocate for Defendants.*

**J U D G M E N T**  
***(Delivered on 20<sup>th</sup> April 2017)***

1. This is a suit for declaration, confirmation of possession and perpetual injunction in respect of field survey no.244, Mouza No.161/23 situated at Sindi (Railway), Tah.Seloo and Dist.Wardha.
2. Contents of plaint in short are as under, father of plaintiff namely Daulatrao purchased field survey nos.106/1, 106/4 and 223/2 situated at Mouza Sindi (Mothi), Tah.Seloo and Dist.Wardha. Out of said properties Daulatrao purchased the area of 5.45 Acres of above field by making North-South dhura. Dulatrao has four sons namely plaintiff Rambhau, Shamrao, Ganpat and Maroti.
3. The plaintiff and his three brothers effected partition of said property in the year 1972 and each of them got 1/4th share of above said property. After partition said property each share got separate survey numbers i.e. 241, 241, 243 and 244. The field survey no.244 came to the possession of the plaintiff and since the partition the plaintiff is in cultivating possession of field survey no.244. The brother of plaintiff, Shamrao died on 6/10/2012. defendant no.1 widow, defendant nos.2 to 4 are sons and defendant nos. 5 and 6 are daughters of deceased Shamrao.

4. He further submitted that when he had been to the office Bhumi Adhikar Abhilekh for obtaining certified copy of 7/12 extract of field survey no.244, he came to know that names defendants have mutated on 7/12 extract of field survey no.244. On the basis of said mutation entry defendants are trying to disturb the possession of plaintiff. Defendants have no concern with field survey no.244. Hence, plaintiff has filed present suit.

5. Defendants are appeared before the court but failed to file their written statement. Hence, suit proceeded without their written statement.

6. After considering averments in the plaint, evidence and document the following points arise for my determination and my findings on each of them with the reasons are as under:

<u>Points</u>	<u>Findings</u>
1. Does plaintiff prove that he is the owner of field survey no.244, Mouza No.161/23 situated at Sindi (Railway) ?	...Yes.
2. Is plaintiff entitled for decree of declaration and confirmation of possession as prayed?	...Yes.
3. Is plaintiff entitled for perpetual injunction as prayed ?	...Yes.
4. What order and decree ?	...Suit is decreed.

#### REASONS

7. To prove the claim plaintiff has examined himself as

P.W.1 Ex.No.23 and P.W.2 Bhagwan Marotrao Gawali at Ex.No.32. He has also filed documentary evidence i.e. map of survey no.244 at Ex.No.28, ferfar panji at Ex.No.29, certified copy of R.C.S.No.110/16 and copy of evidence at Ex.No.30 and 31 respectively.

**As To Issue No.1:**

8. In support of the claim, plaintiff has examined himself on affidavit vide Exh.No. 41. The plaintiff in his affidavit mention all the averments made in the plaint. He deposed that his namely Daulatrao purchased field survey nos.106/1, 106/4 and 223/2 situated at Mouza Sindi (Mothi), Tah.Seloo and Dist.Wardha. Out of said properties Daulatrao purchased the area of 5.45 Acres of above field by making North-South dhura. Dulatrao has four sons namely Rambhau(plaintiff), Shamrao, Ganpat and Maroti.

9. He further deposed that he and his three brothers effected partition of said property in the year 1972 and each of them got 1/4th share of above said property. After partition said property each share got separate survey numbers i.e. 241, 241, 243 and 244. The field survey no.244 came in his possession and since the partition he is in cultivating possession of field survey no.244. He deposed that his brother Shamrao died on 6/10/2012. Defendant no.1 widow, defendant nos.2 to 4 are sons and defendant nos. 5 and 6 are daughters of deceased Shamrao.

10. He further deposed that when he had been to the office Bhumi Adhikar Abhilekh for obtaining certified copy of 7/12

extract of field survey no.244, he came to know that names defendants have mutated on 7/12 extract of field survey no.244. On the basis of said mutation entry defendants are trying to disturb his possession on survey no.244.

11. The plaintiff has also filed copy of Adhikar Abhilekh panji at Ex.No.29. After perusal it reveals that partition among the plaintiff and his brother was took place in the year 1972 as deposed by the plaintiff. The plaintiff has filed copy of RCS No.110/1996 and copy of deposition of Shamrao (husband of defendant no.1). In that deposition Shamrao himself deposed that he is owner of field survey no.242 and plaintiff is owner of survey no.244. The evidence adduced by the plaintiff went unchallenged as defendants not appeared before court and not cross-examined the plaintiff. Therefore, there is no hurdle in placing reliance on the unchallenged evidence of the plaintiff. Therefore, on the perusal of oral and documentary evidence it seems that the plaintiff is owner of field survey no.244. Hence, I answer point No. 1 in affirmative.

**As To Issue Nos.2 and 3 :**

12. As to finding to issue no.1, I have already held that the plaintiff is the owner of field survey no.244, Mouza No.161/23 situated at Sindi (Railway). Therefore, he is entitled for decree of declaration, confirmation of possession and perpetual injunction. Therefore, I answer issue nos.2 and 3 in affirmative and hence I pass following order.

**ORDER**

1. The suit is decreed with costs.
2. It is declare that the plaintiff is the owner of field survey no.244, Mouza No.161/23 situated at Sindi (Railway) and his possession is confirmed.
3. Defendants, his servants, representatives or anybody through him are restrained from interfering in the possession of plaintiff over the field survey no.244, Mouza No.161/23 situated at Sindi (Railway)without following due process of law.
4. Decree be drawn up accordingly.
5. The judgment pronounced in open Court

Dt. 20.04.2017

(Smt.N.M.Panchariya)  
Joint Civil Judge, Jr.Dn. Seloo.

CERTIFICATE

I certify that this is word to word copy of judgment as dictated.

Name of Steno :- R.H.Pathan,

Name of Court :- Judicial Magistrate, F.C.  
Seloo

Judgment dictated on :- 20-04-2017

Judgment signed on :- 20-04-2017

Judgment uploaded on :- 02-05-2017