

<u>CNRNo.MHWR040012502023</u> 	Presented on	:	03.10.2023
	Registered on	:	03.10.2023
	Decided on	:	07.07.2026
	Duration	:	Yr.--Ms.--Ds. 02--09--04

IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION
SELOO, DISTRICT-WARDHA
(Presided over by Shailesh R. Satbhai)

REGULAR CIVIL SUIT No. 69/2023

Exh.No. 35

1. **Sushila Manik Bawane,**
Aged. 54 years, Occ. Household,
R/o. Ward No. 3, Zadshi,
Tah. Seloo, Dist. Wardha.
2. **Chandrabai Kisanrao Mohije,**
Aged. 58 years, Occ. Household,
R/o. Zenda Chowk, Kanholibara,
Tah. Hingana, Dist. Nagpur.
3. **Savita Ambadas Bawane,**
Aged. 41 years, Occ. Household,
R/o. Mandgaon,
Tah. Samudrapur, Dist. Wardha.

...Plaintiffs

Versus

1. **Raju Vithoba Bhujade,**
Aged. 53 years, Occ. Agriculture,
R/o. Kherda, Post Sukli (Bai),
Tah. Seloo, Dist. Wardha.
2. **Shanta Vithoba Bhujade,**
(since deceased — name deleted, her
legal representatives being already on
record)

... Defendant

Advocates' Appearance :

For Plaintiffs	:	Shri V. B. Gomase
For Defendant No.1	:	Ex parte
For Defendant No.2 (Deceased)	:	Shri K. W. Magare,

J U D G M E N T
(Delivered on 07.07.2026)

The present suit is filed for declaration, cancellation, partition and separate possession of the of the suit property.

Description of Suit Property

2. The suit property is agricultural land bearing Field Survey No.14/2/e, admeasuring 1.00 H.R., situated at Mouza Kherda, Tahsil Seloo, District Wardha, bounded as under:

East : Survey Nos.13, 12 and River

West : Survey No.15

North : River

South : Survey No.11

(Hereinafter referred to as "**the suit property**" for the sake of brevity.)

Plaintiffs case in brief is as under -:

3. The plaintiffs are the real sisters of defendant No.1 and daughters of deceased defendant No.2. It is the case of the plaintiffs that the suit property originally belonged to their father, late Vithoba Kawdu Bhujade, who died intestate on 01.03.2013. After his death, the names of the plaintiffs, defendant No.1 and deceased defendant No.2 came to be mutated in the revenue record as co-sharers and co-owners of the suit property.

4. It is further contended that the suit property was being cultivated by defendant No.1 and the relations between the parties were cordial. Defendant No.1 represented to the plaintiffs that, as the suit property stood jointly recorded in the names of all the co-sharers, he was facing difficulty in obtaining crop loan and availing the benefits of Government schemes. He, therefore, requested the

plaintiffs and deceased defendant No.2 to execute a power of attorney in his favour only for the purpose of obtaining crop loan and Government schemes, assuring them that their rights in the suit property would not be affected.

5. It is further contended that, believing the representations made by their real brother, the plaintiffs and deceased defendant No.2 executed a registered power of attorney dated 06.07.2023 in favour of defendant No.1. However, within five days thereof, defendant No.1, by taking undue advantage of the said power of attorney, executed a registered relinquishment deed dated 11.07.2023 in his own favour in respect of the shares of the plaintiffs and deceased defendant No.2 without their knowledge, consent or any consideration, and thereafter applied for mutation of his exclusive name in the revenue record.

6. It is further contended that when the revenue authorities issued notice in the mutation proceedings, the plaintiffs for the first time came to know about the execution of the relinquishment deed. They immediately raised objections before the revenue authorities, obtained certified copies of the impugned documents and learnt that defendant No.1 had fraudulently obtained the power of attorney and, on its basis, executed the relinquishment deed in his own favour. Thereafter, the plaintiffs issued a legal notice dated 21.08.2023 calling upon defendant No.1 to cancel the said documents. Though the notice was duly served, defendant No.1 neither complied with the demand nor replied to the notice.

7. Lastly, it is contended that the plaintiffs also published a public notice and approached the Sub-Registrar, Seloo, who informed them that the registered documents could be cancelled only by a competent Civil Court. The Naib Tahsildar, Seloo, by order dated

16.10.2023, directed cancellation of the disputed mutation entry, subject to the decision of the present suit. During the pendency of the suit, deceased defendant No.2 died on 11.01.2025. As her legal representatives, namely the plaintiffs and defendant No.1, were already on record, her name came to be deleted and the plaint was amended. Consequently, the plaintiffs claimed 1/4th share each in the suit property. Hence, the present suit.

8. Defendant No.1, though duly served with the summons of the suit, failed to appear and file his written statement despite sufficient opportunities. Therefore, the suit proceeded ex parte against him. Defendant No.2 (since deceased) appeared through her advocate and filed pursis (Exh.11), whereby she admitted the claim of the plaintiffs.

9. Heard the learned advocate for the plaintiffs. Perused the pleadings, oral and documentary evidence, written notes of arguments and the documents produced on record. Since defendant No.1 has neither filed his written statement nor contested the suit and defendant No.2 has admitted the claim of the plaintiffs, there is no specific denial to the averments made in the plaint. Nevertheless, the burden lies upon the plaintiffs to establish their case by cogent and reliable evidence. Therefore, for proper appreciation of the evidence on record, the following points arise for my determination and my findings thereon are recorded as under:

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the plaintiffs prove that the registered Power of Attorney dated 06.07.2023 was obtained by defendant No.1 from the plaintiffs and deceased defendant No.2 by fraud and misrepresentation and is liable to be cancelled?	<u>Yes</u>

- | | |
|--|--|
| 2. Whether the plaintiffs prove that the registered Relinquishment Deed dated 11.07.2023 executed by defendant No.1 in his own favour on the strength of the said Power of Attorney, is illegal, void and not binding upon the plaintiffs? | <u>Yes</u> |
| 3. Whether the plaintiffs are entitled to 1/4th undivided share in the suit property and to partition and separate possession thereof? | <u>Yes</u> |
| 4. Whether the plaintiffs are entitled to perpetual injunction as prayed? | <u>Yes</u> |
| 5. Is the plaintiff entitled to inquiry into mesne profits? | <u>Yes</u> |
| 6. What order and decree? | <u>Suit is
Decreed with
costs, as per
final order.</u> |

REASONS

10. In support of their case, plaintiff No.1 Sushila Manik Bawane examined herself as PW-1 at Exh.13, plaintiff No.2 Chandrabai Kisanrao Mohije examined herself as PW-2 at Exh.27 and plaintiff No.3 Savita Ambadas Bawane examined herself as PW-3 at Exh.28. During her lifetime, deceased defendant No.2 Shanta Vithoba Bhujade also entered the witness box and examined herself at Exh.29 in support of the case of the plaintiffs. Defendant No.1, though served, neither filed his written statement nor contested the suit. Consequently, the evidence of the plaintiffs and deceased defendant No.2 remained unchallenged and there was no cross-examination on behalf of defendant No.1. Besides the oral evidence, the plaintiffs relied upon the following documentary evidence:

- 1) Copy 7/12 Extract of the suit property (Exh.17);
- 2) Certified copy of the registered Power of Attorney dated 06.07.2023 (Exh.18);
- 3) Certified copy of the registered Relinquishment Deed dated 11.07.2023 (Exh.19);

- 4) Office copy of legal notice dated 21.08.2023 (Exh.20);
- 5) Postal receipts (Exhs.21 & 22);
- 6) Public notice published in daily 'Deshonnati' dated 13.09.2023 (Exh.23);
- 7) Application submitted to the Sub-Registrar, Seloo (Exh.24);
- 8) Reply issued by the Sub-Registrar, Seloo (Exh.25); and
- 9) Certified copy of the order dated 16.10.2023 passed by the Naib Tahsildar, Seloo in RTS proceedings (Exh.26).

11. I have heard the learned Advocate for the plaintiffs and carefully considered the pleadings, the oral and documentary evidence available on record, the written notes of arguments.

As to Point Nos.1 and 2 :

12. Both these points are connected and, therefore, are taken up together for discussion. The plaintiffs have sought cancellation of the registered Power of Attorney dated 06.07.2023 and the registered Relinquishment Deed dated 11.07.2023 on the ground that defendant No.1 obtained the Power of Attorney by fraud and misrepresentation and thereafter executed the Relinquishment Deed in his own favour without the knowledge or consent of the plaintiffs and deceased defendant No.2.

13. The oral evidence of PW-1 to PW-3 and deceased defendant No.2 establishes that defendant No.1 represented that the Power of Attorney was required only for obtaining crop loan and availing Government schemes. Trusting their real brother, the plaintiffs and deceased defendant No.2 executed the document. Their evidence further discloses that they never intended to relinquish their shares in the suit property and that they came to know about the Relinquishment Deed only when notice was issued in the mutation

proceedings.

14. The conduct of the plaintiffs immediately after learning about the impugned transaction also lends assurance to their case. They raised objections before the revenue authorities, obtained certified copies of the documents, issued legal notice to defendant No.1, published a public notice and approached the Sub-Registrar. The order passed by the Naib Tahsildar directing cancellation of the disputed mutation entry, subject to the decision of this suit, also corroborates their prompt challenge to the transaction.

15. A Power of Attorney merely creates an agency and does not authorise an agent to derive personal benefit by acting against the interest of the principal. An agent occupies a fiduciary position and is bound to act in good faith. In the present case, defendant No.1 utilised the authority conferred upon him to execute a Relinquishment Deed in his own favour, thereby securing the entire benefit for himself. Such conduct is clearly inconsistent with the fiduciary obligations of an agent. The plaintiffs have successfully established that the Power of Attorney was obtained by fraud and misrepresentation and that the subsequent Relinquishment Deed is the result of abuse of the said authority. Accordingly, both the documents are liable to be cancelled. Hence, Point Nos.1 and 2 are answered in the Affirmative.

As to Point No.3 :

16. The evidence on record establishes that late Vithoba Kawdu Bhujade died intestate on 01.03.2013. The suit property being coparcenary property, the share of late Vithoba first devolved in accordance with Section 6 of the Hindu Succession Act, 1956 and thereafter by intestate succession. Consequently, after the death of late Vithoba, each of the plaintiffs and defendant No.1 became

entitled to 6/25th share, whereas deceased defendant No.2 became entitled to 1/25th share.

17. During the pendency of the suit, deceased defendant No.2 died intestate on 11.01.2025. Her 1/25th share devolved equally upon her four children, namely the three plaintiffs and defendant No.1, each receiving an additional 1/100th share. Thus, each of them became entitled to an equal 1/4th undivided share in the suit property.

18. Since the impugned documents have been held to be illegal and liable to be cancelled, the parties continue to remain co-owners of the suit property. Every co-owner is entitled to seek partition and separate possession of his or her share. The plaintiffs are, therefore, entitled to a declaration of their respective 1/4th share and for partition and separate possession thereof. Hence, Point No.3 is answered in the Affirmative.

As to Point No.4 :

19. The evidence on record further shows that defendant No.1 attempted to mutate his exclusive name in the revenue record on the strength of the impugned Relinquishment Deed. Unless restrained, there is every possibility of defendant No.1 alienating the suit property or creating third-party rights to the prejudice of the plaintiffs. Since the plaintiffs have established their title and co-ownership in the suit property, they are entitled to protection of their rights till partition is effected. Hence, Point No.4 is answered in the Affirmative.

As to Point No.5 :

20. The plaintiffs have also prayed for an inquiry into mesne profits. The material on record discloses that defendant No.1 has been cultivating the suit property and enjoying its income. The exact

quantum of mesne profits cannot be determined in the present proceedings without a separate inquiry. Therefore, it would be appropriate to direct an inquiry into future mesne profits under Order XX Rule 12 read with Rule 18 of the Code of Civil Procedure from the date of institution of the suit till delivery of separate possession. Hence, Point No.5 is answered in the Affirmative.

As to Point No.6 :

21. In view of the findings recorded on Point Nos.1 to 5, the plaintiffs have succeeded in proving that the registered Power of Attorney dated 06.07.2023 was obtained by defendant No.1 by fraud and misrepresentation and that the registered Relinquishment Deed dated 11.07.2023 executed by defendant No.1 in his own favour on the strength of the said Power of Attorney is illegal, void and not binding upon the plaintiffs. The plaintiffs have further established that each of them is entitled to 1/4th undivided share in the suit property and to partition and separate possession thereof. They are also entitled to perpetual injunction and an inquiry into future mesne profits. Hence, the suit deserves to be decreed with costs. Accordingly, I proceed to pass the following order:

ORDER

1. The suit is decreed with Costs.
2. It is hereby declared that the registered Power of Attorney dated 06.07.2023, is null, void and not binding upon the plaintiffs and accordingly stands cancelled.
3. It is further declared that the registered Relinquishment Deed dated 11.07.2023, is null, void and not binding upon the plaintiffs and accordingly stands cancelled.
4. It is hereby declared that each of the plaintiff Nos.1 to 3 and defendant No.1 is entitled to 1/4th undivided share in the suit property, namely, agricultural land bearing Field Survey No.14/2/e, admeasuring 1.00 H.R., situated at

Mouza Kherda, Tahsil Seloo, District Wardha.

5. The precept under section 54 of the Code of Civil Procedure along with copy of the decree be sent to the Collector, Wardha for effecting partition and separate possession of the aforesaid suit property 'A' and 'B'.
6. The defendant No.1, his agents, or any person claiming through him is permanently restrained from alienating, transferring, or creating any third-party interest in the suit property until actual partition and delivery of separate possession of the plaintiffs' share.
7. An inquiry into future mesne profits under Order XX Rule 12 read with Order XX Rule 18 of the Code of Civil Procedure, 1908, from the date of institution of the suit till delivery of separate possession, shall be held separately on an application to be made by the plaintiffs.
8. Decree be drawn up accordingly.

(Dictated and pronounced in the open Court.)

Seloo.

Dated: 07.07.2026

(S. R. Satbhai)

Civil Judge Jr.Dn., Seloo

CERTIFICATE

I affirm that the contents of this P.D.F. file is same, word to word as per the original.

(R. M. Khan)
Stenographer (Grade-III)