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IN THE COURT OF PRINCIPAL DISTRICT JUDGE, WASHIM.
[Presided over by Anil Subramaniam]

Regular Civil Appeal No. 02/2015
CNR No. MHWS010000272015

Exh. No. 75

1)	Kishore S/o. Gangadhar Pendharkar, Aged about 55 years, Occu. Business, R/o. Near Shivaji Chowk, Ravivar Bazar, Washim, Dist. Washim.	... Appellant/original defendant No. 1.
<u>V E R S U S</u>		
1)	Chhaya W/o. Gopal Rangbhal, Aged about 50 years, Occu. Agriculture, R/o. Tilak Chawk, Washim, Dist. Washim.	... Respondent/ original plaintiff.
2)	Pralhad S/o. Narsingrao Wasamwar (Dead),	
	<u>LRs</u> - 2-A) Chandrakala wd/o. Pralhad Wasamwar, Aged about 55 years, Occu. Household, 2-B) Prakash wd/o. Pralhad Wasamwar, Aged about 35 years, Occu. Labour, Both R/o. Partur, Tq. Partur, Dist. Jalna.	
3)	Baburao S/o. Kesharao Wasamwar, Aged about 44 years, Occu. Labour, R/o. Hingoli Gate, Nanded, Dist. Nanded.	
4)	Sanjay S/o. Kesharao Wasamwar, Aged about 36 years, Occu. Labour, R/o. Kautha, Tq. & Dist. Nanded.	
5)	Babu S/o. Satwaji Wasamwar, Aged about 40 years, Occu. Labour,	
6)	Pappu S/o. Satwaji Wasamwar, Aged about 35 years, Occu. Labour, Both 5 & 6 R/o. Navghat, Burad Galli,	

	Nanded, Dist. Nanded.	
7)	Dipak S/o. Devidas Wasamwar, Aged about 32 years, Occu. Labour,	
8)	Balaji S/o. Devidas Wasamwar, Aged about 29 years, Occu. Labour, Both 7 and 8 R/o. Near Habib Talkies, Nanded, Dist. Nanded.	Respondents/ Original Defendant Nos. 2 to 8.
9)	Smt. Tulsabai wd/o. Gangadhar Pendharkar (Dead),	Respondent/ Original Counter claim Defendant No. 3.
	<u>LRs -</u> 9-A) Shriram S/o. Gangadhar Pendharkar, Aged about 55 years, Occu. Business, R/o. Near Chamunda Devi Temple, Washi, Tq. Washi. 9-B) Smt. Kamalabai wd/o. Subhash Pendharkar, Aged about 45 years, Occu. Household, 9-C) Sumit S/o. Subhash Pendharkar, Aged about 22 years, Occu. Labour, 9-D) Ku. Pooja d/o. Subhash Pendharkar, Aged about 20 years, Occu. Education, 9-A) to 9-D) all R/o. Bhawani Nagar, Ravivar Bazar road, Washim, Dist. Washim. 9-E) Vinayak @ Dilip S/o. Gangadhar Pendharkar, Aged about 50 years, Occu. Business, R/o. Behind K.D.K. College, Nagpur, Dist. Nagpur.	

APPEAL UNDER SECTION 96 OF THE CIVIL PROCEDURE CODE

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Appearance:-

Mr. A. S. Beriya, Advocate for appellant.
 Mr. K. P. Belokar, Advocate for respondent No. 1.
 Ex-parte against respondent Nos. 2-A) and 2-B).
 Mr. C. S. Poddar, Advocate for respondent Nos. 3 to 8.

Ex-parte against respondent Nos. 9-A) to 9-E).

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J U D G M E N T

(Dated 13/04/2026)

1. By the present appeal, the appellant/original defendant No. 1 is challenging the judgment and decree passed by Ld. 2nd Jt. Civil Judge (Jr. Dn.), Washim in RCS No. 238/2004 dated 15/11/2014.
2. It is herewith clarified that against the said judgment there is another appeal preferred namely 7/2015 which is also being decided simultaneously with this appeal. The scope and nature of both the appeals would be different and hence, different judgments are being passed. As the result of the other appeal being a partition/title suit, this appeal is to be treated as subject to that appeal.
3. The plaintiff respondent No. 1 hereinafter referred to as 'the plaintiff' filed suit against only the appellant initially (hereinafter referred to as occupier) contending that the plaintiff's husband namely Gopal purchased sites namely the suit property from different sale deeds from the mother of the defendant namely Tulsabai and the properties purchased from the sale deeds are duly reflected in the plaint A. The four sale deeds of different portions are dated 20.11.1990, 09.01.1991, 03.10.1996 and 24.01.1997. The said properties are situated near Shivaji statue of Patni Chowk and there is road on the western side. All the four sides were consolidated and now it bears Common No. 84, City Survey Nos. 740 and 741. The name of the plaintiff appears in the Nazul record. The Portion marked by letters HFKJH was initially used as approach road and this was also purchased and approach is kept in the middle instead of the southern side. The plaint B shows that portion marked A, B, C, D, A is constructed in bricks and mud with tin roof and old construction. The defendant had requested the plaintiff to grant him the said

site as gratuitous license as he could not be able to search for new site for residence and he would be thrown on the road. Taking into consideration the urgent need and difficulties, the plaintiff permitted the defendant to reside in the said site as her licensee and same was granted on the date of purchase of site that is 24.01.1997. The defendant is doing business of bamboo and hence requested grant of another site namely ECFGE as a licensee and same was also granted to him gratis. Since 01.02.1997, he has made a temporary compound to the said property. The possession of the said two parts of property with the defendant are as licensee of the plaintiff and they are referred to as suit property. The brothers of the defendant are witnesses to the sale deeds executed by the mother of the defendant and there is no question of money lending transaction as claimed in the notice reply. Tulsabai had succeeded to the said property from her father Narsingrao and the said property is in her possession since long and she had pre-existing right of maintenance in the said property. After death of the father, she has succeeded and inherited this property being his heir and successor and hence, Tulsabai became absolute and exclusive owner of the property. The property is her Stridhan coming from her father. No other son or daughter has any right in the said property either by birth or any other means. None of the brothers of the defendant or other relatives have taken objection to the sale deed of plaintiffs. The brothers of defendant have put their signatures as attesting witnesses to the sale deeds. In spite of several requests, the defendant has not vacated the suit property. Notice came to be issued on 01.12.2001 revoking the license. In spite of receipt of the said notice, the defendant has not vacated the suit property nor handed over the possession and gave a false reply dated 18.12.2001. As there is non compliance of the notice, present suit is filed including possession and mesne

profit. It is pleaded that inadvertently in the notice, the plaintiff has stated that the suit property has been purchased by Tulsabai by registered sale deed and the said statement is withdrawn. The suit property is succeeded and inherited by the mother of defendant from her late father. Defendant is liable to pay damages at the rate of Rs. 15,000/- per month from 17.12.2001. The damages are reasonable considering the location of the property. Hence, the suit for possession of the two portions of Plot B and damages of Rs. 54,000/-.

4. The said suit came to be amended and defendant Nos. 2 to 8 came to be added. These defendant Nos. 2 to 8 are alleged LR's of Late Narsingh Rao. The defendant Nos. 2 to 8 who were added filed their written statement vide Exh. No. 26 and contested the claim of the plaintiffs and filed cross objection claiming partition and possession (this is consideration of other appeal). They included Tulsabai also in their array of defendants.
5. It is specifically contended in WS that the mutation entries does not make or unmake title. It is not disputed that defendant No. 1 is doing business of Bamboo in the portion of the premises. It is denied that the sale deeds are executed with valid authority and that if Tulsabai has no right, title or authority to execute the sale deeds and all the sale deeds are illegal, null and void, they executed in favour of plaintiff. It is denied that Tulsabai was the sole owner of the property with any pre-existing right of maintenance and that she was holding the property under the category of Stridhan and that no one has any right in the said property.
6. By way of counter claim, it is contended that the said defendant Nos. 2 to 8 have four fifth share in the said property. The said property was owned by one Narsing Rao. Wife of Narsing Rao has expired. The defendants are legal

heirs of late Narsingrao. He had four children and each of the children have one fifth share in the suit property namely four brothers and sister Tulsabai. The names of the said brothers were removed without any notice from the Nazool record. Late Tulsabai seem to have done the same to manipulate the Nazool record. They got knowledge of the suit filed recently and got implicated themselves as party defendants to the said suit. It is during this that it was revealed that Tulsabai has executed sale deed in favour of various persons and she had no authority to execute sale deed of the entire portion. She having only one fifth undivided share in the said property. All the sale deeds executed by defendant Tulsabai are null and void and not binding on the original defendant Nos. 2 to 8. The defendant No. 1 Kishore is residing in the suit plot on grant of permission by the LRs of deceased Narsingrao and the possession is permissive on behalf of legal heirs of deceased Narsingrao. Sale deeds are null and void. They are executed without authority and liable to be cancelled. They got knowledge of these agreements in the year 2005. They have no faith in Tulsabai and hence, they want separation of the property. Hence, claiming possession by partition and possession of fourth and fifth share of the suit property.

7. The plaintiff filed written statement to the counter claim vide Exh. No. 49 and denied all the contents stated therein. It is denied that they have any share in the property. It is contented that the economical condition of Tulsabai who was the only daughter was not sound. Hence, during the lifetime it was his intention to give the suit property to his daughter Tulsabai and it was expressed to all sons and wife and no objection was taken and they were happy and satisfied to give the property to Tulsabai. After death of Narasingrao, the brothers and mother gave express consent to record the plot in the name of Tulsabai only and accordingly LRs were brought on

record and later on Tulsabai is recorded as the sole owner of the suit plot. The brothers and mother are not resident of Washim and the property is in actual physical possession of Tulsabai. It was given to Tulsabai for improvement of her economically unsound position and was having pre-existing right of maintenance and it was given to her for maintenance by all the four brothers and mother. Notices of mutation were given to all and no objection was taken and such objection is taken after 25 years. No objection was taken as they had given support to Tulsabai and hence, they are liable to be stopped from challenging this. Even prior to the entry as absolute owner, Tulsabai had sold the property to defendants 4 to 11 and the same was acted upon. The said transaction is not challenged. The long standing possession of Tulsabai as absolute owner is converted into absolute ownership and no one can challenge it. It is only as a counter blast for suit for possession. Defendants 2 to 8 are residing at different places and have no real intention. And are only supporting defendant no. 1. All the defendants have considerable movable and immovable properties at their residential towns and the properties in their residential towns should also be put in the common hotchspot for fair validation. Hence, counter claim is not maintainable and liable to be dismissed. There is no reason for granting license to Kishore defendant No. 1 in the year 1975. The plaintiff has put up a shop with the permission of the Municipal Council and running since then and no objection has been taken till date. The plaintiff has made full inquiry, perused and searched the Nazool records and after finding long standing possession of Tulsabai and ownership entry in Nazool record, purchased the suit property for valuable consideration and is a bonafide purchaser. There is no transaction of money lending. The counter claim is barred by limitation. None of the sale deeds have been challenged till date. Hence, the counter

claim should be dismissed.

8. Defendant no. 1 filed WS . He denied that the property was illegally mutated by deleting the names of defendant Nos. 2 to 8. The defendant no. 1 is at the said premises since 30 to 31 years doing his bamboo business and has his separate electric connection, house built in concrete and cement and is residing therein as licensee of late Narsingrao. The sale deeds are liable to be set aside. The relationship is admitted.
9. Tulsabai filed her written statement vide Exh No. 53 to the counter claim. She contends that the said sale deeds have been executed on account of loan transaction and the plaintiff has taken forceful possession on some portion of the land. The plaintiff and her husband are politically sound and hence, no action has been taken. No property has been sold on ownership basis. The relationship is admitted. The share of the defendant Nos. 2 to 8 is also admitted. She does not know how the names came to be deleted and admits that none of the brothers released their rights of the suit property. Execution of sale deeds is admitted. The sale deeds are only as a security for the loans taken.
10. The original defendant No. 1 had also filed his written statement at Exh. 12 contending that the sale deeds executed by Tulsabai are nominal and taken under loan transaction. The plaint maps are denied. It is contended that late Narsingrao was the owner of the plot and after his death his wife, 4 sons and 1 daughter became the owner by heirship. Tulsabai had already sold out property coming to her share on 27.05.1982 to one Mohammed Rafiq. Tulsabai was not the sole owner of the said property. Late Narsingrao inducted the defendant in the suit property in the year 1975. In the year 1986, house was constructed by the defendant. The defendant has filed a

map showing the exact location or possession of the said property. It is contended that vacant plot is in possession of defendant and vacant possession is absolute approach way possessed by defendant. The defendant is paying taxes to the Nagar Parishad. There is no cause of action. No consideration has been passed by the said sale deed. Neither possession is handed over to the plaintiffs. No open plot was in existence and the sale of open plot or vacant plot is falsely mentioned in the sale deed as it was a nominal sale deed. Sale deed dated 27.11.1984 was purchased from joint family income and it was purchased by the defendant and other son being Karta of the family in name of mother. The sale deed executed by Tulsabai is not binding on the defendant. The legal heirs of Narasingrao became the owner of the property and they are necessary parties to the suit. The plaintiff has not valued the suit property as per its market value. The defendant is in lawful occupation as licensee of Late Narsingrao and hence, suit is liable to be dismissed.

11. In pursuance, there are certain developments which took place during the pendency of the suit between defendant Nos. 2 to 8 and some of the defendants. Some of the defendants came to be deleted.
12. Based on these, issues came to be framed vide Exh. No. 13 and were recasted subsequently. Plaintiff examined herself, she also examined her husband, examined the scribe, defendant No. 1 examined himself and also examined one Anil. The tax collector was examined by the defendant No. 1. Defendant no. 2 examined himself. After hearing both the sides, the Ld. Trial Court was pleased to decree the suit for possession against defendant No. 1 including damages and dismissed the counter claim. Hence, the two set of appeals as pointed out above.

13. The present appeal relates to the aspect of decree against defendant No. 1 for possession. Heard both sides extensively and also the other party. Considering these circumstances, and on perusal of the pleadings and evidence on record and the impugned judgment including the grounds taken in the appeal memo, following points arise for my consideration and I answer the same as under for the reasons stated hereinafter.

Sr. No.	Points	Findings
1]	Whether the plaintiff establishes that defendant no. 1 is his gratuitous licensee? ?	Does not survive
2]	Whether the plaintiff is entitled for decree for possession ?	Doe snot survive
3]	Whether the plaintiff is entitled for damages ?	Does not survive
4]	Whether the impugned judgment as regards the aspect of possession and decree requires interference ?	In the affirmative.
5]	What order ?	... As per final order.

REASONS

As to Point Nos. 1 to 3 :-

14. It is necessary to point out that the entire inheritance and documentary evidence in the said suit is mostly based on certain presumptions and assumptions.

15. Certain facts are admitted by all the parties. It is necessary to point out that admittedly late Narsingrao was the sole owner of the property. He died. Apparently, if one considers that aspect, he being survived by 4 sons and a daughter is also an admitted fact. Tulsabai being his daughter is an admitted

fact. Kishore being son of Tulsabai is also another admitted circumstance. Kishore being in possession of some part of the property and plaintiffs not being in possession of the entire suit property is also admitted. The execution of seal deeds by Tulsabai in favour of plaintiff is also an admitted fact. The dispute arises with regard to firstly whether Tulsabai had right to sell the property 1 and secondly whether the defendant Nos. 2 to 8 have right in the said property.

16. As per the claim of the defendant himself, defendant No. 1 himself, he admits that he is a licensee occupying the premises. Who is the licensor is the dispute which arises for consideration. The defendant in his written statement has specifically pointed out that he was put in occupation as licensee of Late Narsingrao.
17. Thus, if one considers these aspects one has to really consider whether the plaintiff can step into the shoes of the original owner by virtue of the sale deeds. If the plaintiff succeeds in that attempt, she will step into the shoes of the owner and in such circumstances, the main aspect would be the aspect of ownership of Tulsabai and also of the said sale deeds.
18. While considering RCA No. 7/2015, I have already held that the defendant Nos. 2 to 8 are also owners of the property having share therein. It is also necessary to point out that the plaintiff has also succeeded in establishing her share in the said property. It is also an admitted fact that defendant No. 1 claims to be the gratuitous licensee occupying the said property. In such circumstances it cannot be said that the plaintiff would be entitled to evict or claim possession from defendant No. 1 at this stage.

19. Considering the directions given in RCA No. 7 of 2015, I am inclined to remand the matter back to the Ld. Trial Court as it will have to decide which share would be to the share of the present plaintiff, if any. It is only if the share or occupation of plaintiff matches with the premises and occupation of defendant No. 1 falls within the plaintiff's share that the plaintiff will be entitled for decree for possession.

20. Considering the fact that the counter claim is remanded to the Ld. Trial Court with the above observations, I hold that at this stage the plaintiff is not entitled for decree for possession as he does not establish himself to be the sole owner of the property in possession of the defendant.

21. Needless to say that the defence of defendant No. 1 that he was put in by late Narasingrao or the other defendants in the property will not be effective defence in case the occupied property by defendant No. 1 comes to share of Tulsabai and hence to plaintiffs, to for any reason whatsoever. Hence, I pass the following order.

ORDER

- 1) Appeal RCA No. 02/2015 is partly allowed.
- 2) The judgment and decree passed by Ld. 2nd Jt. Civil Judge (Jr. Dn.), Washim in RCS No. 238/2004 dated 15/11/2014 of possession against defendant No. 1 is set aside.
- 3) The matter is remanded back to the Ld. Trial Court for fresh trial.
- 4) The Ld. Trial Court to consider if the occupied property of defendant No. 1 comes to share of plaintiff and pass further directions and orders as per law.
- 5) R & P be returned to the trial Court as per rules.

- 6) Parties to appear before the Ld. Trial Court on 08/05/2026.
- 7) Inform to Ld. Trial Court, accordingly.
- 8) No order as to costs.
- 9) Decree be drawn up accordingly.
- 10) Reg. Civil Appeal No. 02/2015 stands disposed off.

(Dictated and pronounced in open Court).

Date:- 13/04/2026.

(Anil Subramaniam)
Principal District Judge,
Washim.

CERTIFICATE

I affirm that the contents of this PDF file word to word are same as per original judgment/order.

Name of Stenographer	:	A. W. Ajmire, Steno (Grade II)
Court Name	:	Principal District & Sessions Judge, Washim.
Date of order/Judgment	:	13/04/2026
Judgment Dictated on	:	13/04/2026
Order/Judgment signed by		
Presiding Officer on	:	13/04/2026
Order/Judgment uploaded on	:	13/04/2026