

Reg. Civil Appeal No. 26/2023
Madansingh ..vs.. State of Maharashtra and ors.

Received on	20/06/2023
Registered on	22/06/2023
Decided on	06/04/2026
Duration	02 Y. 09 M. 17 D.

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

Regular Civil Appeal No. 26/2023
CNR No. MHWS010008152023

Exh. No. 19

1)	Madansingh s/o. Harsingh Rathod, Aged about 67 years, Occu. Agriculturist, R/o. Januna Sonawal, Tq. & Dist. Washim.	... Appellant/ original plaintiff.
<u>VERSUS</u>		
1)	State of Maharashtra, Through Collector, Washim.	
2)	Tahsildar, Washim, Dist. Washim.	
3)	Dilipsingh Amarsingh Rathod, Aged about 58 years, Occu. Service, R/o. Manish Nagar, Besa road, Near Mahajan Flour Mill, Nagrpu, Dist. Nagpur.	
4)	Kisarsingh Amarsingh Rathod, Aged about 53 years, Occu. Nil,	
5)	Vijaysingh Amarsingh Rathod, Aged about 60 years, Occu. Nil,	
6)	Vishnu Mohansingh Rathod, Aged about 63 years, Occu. Nil,	
7)	Prabhusingh Mohansingh Rathod, Aged about 55 years, Occu. Nil, 4 to 7 R/o. Januna Sonawal, Tq. & Dist. Washim.	... Respondents/ original defendants.

APPEAL UNDER SECTION 96 OF THE CIVIL PROCEDURE CODE

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Appearance:-

Mr. K. C. Padghan, Advocate for appellant.
Ex-parte against respondent Nos. 1 & 2.

Mr. D. Y. Kale for respondent Nos. 3 to 5.
Ex-parte against respondent Nos. 6 and 7.

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J U D G M E N T

(Dated 06/04/2026)

1. By the present appeal, the appellant/original plaintiff is challenging the judgment and decree passed by Ld. Jt. Civil Judge (Sr. Dn.), Washim in RCS No. 116/2017 dated 02/05/2023.
2. It is the case of the plaintiff/appellant herein that the suit property as described in para No. 1 of the plaint is in the name of the defendants. One Harising Rathod was father of the plaintiff and he owned various lands including the suit land. The said Harising had 8 sons and 4 daughters. As Harising had number of properties, he purchased the suit property by sale-deed dated 02/02/1954 in the name of his son Amarsing. The other share of Prabhakar and Vilas was also in possession of Harising alongwith this purchased portion. In the year 1969 and 1970, there was oral partition between family members and since then, they are in occupation of their shares. Pratapsing received 4 H of Gat No. 69, Amarsing received 4 H, Mohansing received 6 H from Gat No. 36 and 40, Parashram received 4 H from Gat No. 65, Ratansing received from Gat Nos. 37, 42 and 45, Madansing received 2 H 85 R from Gat Nos. 42, 44 and 63. All these lands were earlier in the name of Amarsing. The portion of Gat Nos. 32 and 44 were recorded in the name of plaintiff's father portion but mutation entries of Gat No. 63 was not recorded. The land of Mohansing was not of good quality. Hence, additional land of 40 R was given to Mohansing. 1 H 30 R land from Gat Nos. 63 and 40 is in possession of plaintiff and Mohansing and after death of Mohansing, the land is in possession of Vishnu Rathod. The

7/12 extracts are so noted in the name of plaintiff and Mohansing. The land mentioned in gift deed were never owned and possessed by Amarsing. Amarsing was in possession of land of Prabhakar and Vilas along-with Parashram. Harising died in the year 1997 and Amarsing has no right to execute gift deed in favour of his son Dilipsing. Kishorsing and Vijaysin are witnesses to gift deed. Dilipsing is in service at Nagpur since 25 years. Amarsing was on bed due to old age and not having any proper understanding and taking disadvantage of mental condition, Vijaysing and Kishorsing have taken him to the Registrar office and got executed gift deed in favour of Dilipsing. The plaintiff and Vishnu are in possession of the suit property. On the basis of gift deed, mutation was tried to sought and it was objected to and inquiry is pending. Threat was given by the Tahsildar of mutating name. The gift deed dated 31/12/2016 is void ab-initio and possession of the plaintiff is obstructed. Hence, the suit for declaration of gift deed dated 31/12/2016 has cancelled and not binding on the plaintiff, injunction not to interfere with possession of the plaintiff, injunction against the State authorities to not to mutate names of defendants.

3. The defendant No. 6 namely Vishnu filed WS vide Exh. 20 and admitted all the contents of the plaintiff and that he his in occupation of 40 R of land and balance land is in possession of the plaintiff. Thus, supported plaintiff.
4. The defendant Nos. 3 to 5 namely Dilipsing and Kishorsing and Ajaysing contested the claim of plaintiff by filing WS at Exh. 26. It is contended that the plaintiff has no right over the property. It is denied that Harising owned and possessed the land including the suit land, relationship is not disputed, partition of ancestral property is not

disputed. The execution of gift deed is not disputed. It is contended that the land bearing Gat No. 63 was purchased by Amarsing out of his own funds in the year 1954 and mutation entry subsists in that regard. It is further pointed out that Amarsing is absolute owner of the suit property and was in peaceful occupation of the property till his death and transferred the suit property by registered gift deed dated 31/12/2016. The plaintiff has no right over the suit property. The plaintiff was never in occupation of the property and in collusion with revenue authorities has taken entries which cannot be relied upon. The partition of 1969 and 1970 was duly affected but the property never allotted to the plaintiff. The late Amarsing was working as commission agent and purchased the land out of his own funds. All the brothers and sisters are not impleaded.

5. The suit proceeded ex-parte against defendant Nos. 1 and 2. They are the statutory bodies.
6. The Ld. Trial Court in pursuance of the pleadings, framed issues vide Exh. 35.
7. Parties led evidence. After hearing both the sides, the Ld. Trial Court was pleased to dismiss the suit and hence, the present appeal.
8. Heard both sides. Perused the pleadings and evidence on record. Considered the submissions advanced. 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 the suit property was owned by late Harising and was allotted to the plaintiff ?	... In the negative.
2]	Whether the plaintiff proves his possession and	... In the

	occupation over the suit property ?	negative.
3]	Whether the plaintiff proves that gift deed is not binding on the plaintiff ?	... In the negative.
4]	Whether the impugned judgment and decree requires any interference ?	... In the negative.
5]	What order ?	... As per final order.

REASONS

As to Point Nos. 1 and 3 :-

9. It is not disputed that the property was purchased in the year 1954 and the purchaser was shown as late Amarsing. It is also part of record and part of pleadings and admitted that that Amarsing has executed gift deed in favour of defendant No. 3 Dilipsing. Thus, initial flow of title from the documents on record indicates that sale-deed is in favour of Amarsing as well as gift deed is executed by Amarsing in favour of Dilipsing. The said gift-deed is said to be registered and the attesting witness is examined by the defendants. So much so that he is also party defendants to the suit. In such circumstances, the first flow of title in favour of the defendant No 3 is clear.
10. The plaintiff intends to counter said flow by the suit and to rebut this claim on the ground that in fact the sale-deed was nominal in the name of Amarsing, but it was joint family property purchased in the name of Amarsing. To quote it is pleaded that *“as the father Harising was having various landed property in his name, therefore, he purchased half of the property by sale-deed dated 02/02/1954 in the name of deceased Amarsing”*.
11. The second pleading is of material importance as in para No. 3 that *“in the year 1969-70, there was oral partition between family and since*

then respective members are in possession of their shares that before partition these lands were in the name of Amarsing Rathod”.

Thus, it is tried to be brought forth that Gat Nos. 69, 36, 40, 65, 37, 42, 45, 44 and 63 were all in the name of Amarsing, but were joint family properties and were partitioned I 1969-70. The suit property to reiterate is Gat No. 63 which is shown to be admeasuring 3 acres 45 R. It is contended that 1H.73R is the suit property out of this 3 acres 45 R. The boundary to the said share is shown to be on the west by one Nandu and Kishor and south by Vijay, Amarsing. North is shown to be of Prabhakar Kanthe. This area and boundaries are important as plaintiff alleges occupation of this land by way of partition.

12. It is necessary to point out that thus exact location of the property out of Gat No. 63 has been misleadingly kept away, if two portions of Gat No. 63 exists. Certainly, at least one or two boundaries there would be other Gat numbers. Thus, description is incomplete and shall be considered in detail, while be considered the possession aspect of it. Thus, to show that there was departure from the family flow of title by way of sale-deed, it was incumbent to the plaintiff to establish that Harising purchased the property in the name of Amarsing or Amarsing had no funds and did not purchase property or since 1969-70, Amarsing or Dilipsing did not exercise use of the property.

13. The plaintiff examined himself to support his case. He in his cross examination submitted that late Harising had 120 acres of land and plaintiff has not purchased any land after partition. He does not state what was allotted to each of the brothers although it is mentioned in the affidavit of examination-in-chief. He cannot specifically state as to what property was allotted in Gat Nos. 40, 41 and 43. He has allotted Gat No.

41, 1 H 61 R is his wife. In Gat No. 44, he had 55 R of land, in Gat No. 43 – 2 H 85 R and 1 H 21 R in the name of his son. It is part of evidence that each brother has appropriately have 15 acres of land after partition. He admits that his brother Amarsing was working in the market committee and that some land is in the name of step mother in Gat No. 34. He admits that Amarsing has given Gat No. 63 by gift deed to his son Defendant no 3 and also similarly other lands have been gifted to others. He denies that the property owned by Prabhakar Kanthe is in his and his brother's possession. He admits that the crop in Gat No. 63 is in the name of brother Amarsing and Parashram.

14. The plaintiff examined another witness namely sister Sunandabai to support partition and alleged share in favour of plaintiff. She does not know boundaries of Gat No. 63 or its area. She does not know which properties was purchased by her father and what was field occupied by the father or owned by the father. She does not know what share was given to each of the brothers. She does not know how much land was received by the plaintiff. She only knows about the suit property. She does not know if her brother has got property in Gat No. 44 and his wife has property in Gat No. 41 and Chandansing has property in Gat No. 43. She does not know if there is any property of her step mother.
15. Another witness Suresh was examined by the plaintiff to show possession. He does not know what share was given to each of the sons. He admits that Madansing has 23 acres of land.
16. As regards the purchase of the property in the name of Amarsing, apparently, there is no evidence led to conclusively reconsider that Harising purchased it in the name of Amarsing. The lame attempt was made to examine the sister. The sister namely Sunandabai has no

knowledge of any of the details of the property. As is seen from the cross examination, it appears that she has been specifically tutored witness for the sake of this suit to support the plaintiff. It is not comprehensible that sister would know only about one property and is not aware even of the entire holdings of Harising or the other brother and sister. Thus, it entirely falsifies the claim of the plaintiff.

17. The evidence of the plaintiff is also material to point out in this regard.

The chief goes as per pleadings. In the cross examination, he admits that he was born in the year 1954. The sale-deed is executed also in the year 1954. Thus, what was source of his knowledge that Harising purchased it in the name of Amarsing is not apparently clear. It is also not so disclosed. It also necessary to point out that none of the other brothers have been examined. It was a big family consisting of 8 sons and 4 daughters. Late Harising is said to have owned about 120 acres of land. Very surprisingly, he suddenly claims ignorance of what was share given to the brothers in the year 1969. This is so inspite of so called specific pleadings in para No. 3 of the plaint. Not only para No. 3 of the plaint indicates area but also indicates which property was given to which brother.

18. The second part which again casts doubt over the case of the plaintiff is that the plaintiff has not purchased any land whatsoever, but he has gifted 1 H 61 R of land in Gat No. 41 and 1 H 29 R of land is in the name of his son. Thus, plaintiffs family has more than 6 H of land in all namely wife 1 H 61 R + 55 R + 2 H 85 R of land of plaintiff and wife plus son has 1 H 21 R of land. This does not include the suit property. He further admits that Amarsing had his own source of income as he was employee in APMC market. He admits that Amarsing has given gift

deed of the disputed land to his sons and also has allotted other properties to other sons. He claims that his occupation is shown in the 7/12 extract. If this entire consideration is considered following circumstances appears to be clear

- a) that the suit property was purchased by a sale-deed in the name of Amarsing
- b) neither Harising nor the plaintiff in lifetime of Amarsing claimed any right.
- c) Amarsing in exercise of his right of ownership, distributed his properties amongst his sons and has executed gift deed in favour of Dilipsing of suit property.
- d) No specific case of Amarsing not having any source of income.
- e) Amarshing has seperate source of income.
- f) said area not in occupation of plaintiff.
- g) belated claim after 1969-70.

19. In such circumstances, it is clear that there is no evidence to show that Harising purchased all the properties in the name of Amarsing which were partitioned to all the brothers in the year 1969-70. The shares which came in the partition of 1969-70, are mutated to the respective brothers. The shares of plaintiff and sons with others have no grievance of the suit property. In these circumstances, the regular flow of title by way of sale-deed and subsequent conduct till filing of the suit or till execution of the gift deed ought to have been rebutted by the plaintiff by leading cogent evidence. Same has not been done. In such circumstances, there is nothing on record to consider that Harising purchased the property in the name of Amarsing and that it was joint family property.

20. The second aspect of gift deed is only academic. So much so that admittedly, the gift deed is by father in favour of the son. The plaintiff, if he had any share or property was joint would not be affected by any such gift deed, as it would have been restricted to the share of Amarsing.

21. It is necessary to point out that plaintiff does not specifically claim declaration with regard to the title of the plaintiff over the suit property. Apparently, from the pleadings in the plaint, there is serious cloud over the title of the plaintiff. In such circumstances, whenever there is cloud, same has to be removed by getting declaration to that effect. In absence of such declaration, even if the gift deed is cancelled or not binding on the plaintiff, same would not create any title in favour of the plaintiff as in such case, the sons of Amarsing may inherit to the property at the most. In such circumstances, absence of declaration of title in favour of plaintiff is fatal to the present suit and more so, it shows conduct of the plaintiff to have doubt about his own title and claim about his own title. Considering this circumstances, I hold that the plaintiff has failed to establish that it is joint family property and has also failed to establish that gift deed is sham and bogus and not binding on the plaintiff. Hence, I answer point Nos. 1 & 3 in the negative.

As to Point No. 2 -

22. With regard to the possession, there is no evidence led except both parties relied on the mutation entries as well as 7/12 entries. The Ld. Trial Court has taken pains and has tabulated the possession part from the year 1980 till 2015 i.e. couple of years before the suit was filed. All along Amarsing is shown to be occupying part of the property. It is pleaded that the share or half property of Prabhakar and Vilas Kanthe

was being cultivated by Harising. A very unique case is tried to be brought forth by way of evidence and not pleading that this property of Kanthe's is now with Amarsing. This aspect is not specifically pleaded. As pointed out earlier while considering boundaries of one side, it shows property of Kanthe namely Prabhakar Kanthe and on second boundary, it shows properties of LRs of Amarsing. No numbers are given and it implies that it is of the same gat number. Thus the case of plaintiff is falsified.

23. The Ld. Trial Court has elaborately considered these entries. It is true that revenue entries cannot be said to be conclusive, but if parties are relying on the same, it can be considered as evidence. The plaintiff has failed to establish that he was in occupation of 1 H 70 R at any moment of time throughout 1981 till 2015-16. No explanation for this discrepancy has been given. In such circumstances, I hold that the aspect of occupation of plaintiff over the suit premises is not established or proved. The Ld. Trial Court has considered this aspect and pointed out that Amarsing in the year 1980, 1981 and 1982 was occupying 1 H 73 R of land. The said position continues till 1998-99 and thereafter it gets lessened to 80 R or there about. The reasons for the same are not apparent from the face of record. Suffice to say that plaintiff has to give explanation for this discrepancy or any discrepancy in the record by him from 1969 till the filing of the suit. Thus, the plaintiff has failed to establish his possession over the suit property. Hence, I answer point No. 2 in the negative.

As to Point No. 4 -

24. The Ld. Trial Court has appreciated all the facts and circumstances of the case in proper prospective and elaborately considered evidence on

the record. No discrepancy can be said to exists. Considering the same, I pass the following order -

ORDER

- 1] The appeal stands dismissed.
- 2] The the judgment and decree passed by Ld. Jt. Civil Judge (Sr. Dn.), Washim in RCS No. 116/2017 dated 02/05/2023 is hereby confirmed.
- 3] R & P be returned to the trial Court as per rules.
- 4] No order as to costs.
- 5] Decree be drawn up accordingly.
- 6] Reg. Civil Appeal No. 26/2023 stands disposed off.

Date:- 06/04/2026.

(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	:	06/04/2026
Judgment Dictated on	:	06/04/2026
Order/Judgment signed by Presiding Officer on	:	06/04/2026
Order/Judgment uploaded on	:	06/04/2026