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Presented on : 30/04/2019  
Registered on : 03/06/2019  
Decided on : 17/04/2026  
Duration : 06Y 11M 17D

**IN THE COURT OF DISTRICT JUDGE-1, WASHIM.**

(Presided over by J. P. Zapate)

**Regular Civil Appeal No.30/2019**

**Exh.16**

[CNR No.MHWS010008162019]

- 1] Bablu @ Aniruddha Maroti Padghan  
Age : 30 years, Occu. : Agriculture
- 2] Baban Maroti Padghan  
Age : 47 years, Occu. : Agriculture
- 3] Sau. Geeta Baban Padghan  
Age : 42 years, Occu. : Agriculture
- 4] Sau. Indu Maroti Padghan  
Age : 57 years, Occu. : Agriculture
- 5] Maroti Bhaguji Padghan  
Age : 63 years, Occu. : Agriculture  
All R/o. Dudhkheda,  
Tq.Dist.Washim.

**....Appellants**

**VERSUS**

Vijaysing Amarsing Rathod  
Age : 62 years, Occu. : Agriculture,  
R/o Januna Sonwal, Post.Tandli Shevai,  
Tq. Dist. Washim.

**... Respondent**

**Appeal under Order 96 of the Code of Civil Procedure**

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Shri.B.M.Deshpande, Advocate for appellants  
Shri.G.M.Wankhede, Advocate for respondent  
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**J U D G M E N T**

(Delivered on 17<sup>th</sup> day of April 2026)

This is an appeal preferred under Section 96 & Order 41 of the Code of Civil Procedure against the Judgment and Decree in R.C.S.No.219/2012 dated 01/12/2018 whereby the Jt.Civil Judge Junior Division, Washim decreed the suit for perpetual injunction and dismissed the counter claim raised by the defendants. Appellants were defendants and respondent was plaintiff before the Ld. Trial Court. Hence, for the sake of convenience both parties here-in-after referred as per their original status as plaintiff and defendants.

2. Brief facts of the proceeding are as under :

A] **Plaintiff's Case :**

This is a suit for Perpetual Injunction.

Shortly stated it is the case of the plaintiff that the field Gat No.127, H.R.5.87, L.R.8.00, Share - 0.81R of land with all the trees standing therein, situated at village Dudhakheda, Tq. & Dist.Washim, bounded on East - land of Shivaji Bhaguji Padghan, on West - land of Dhashrath Lobhasing Rathod, on South - Remaining land of Defendants and on North-land of Keshao Govinda Kokre referred as "suit field", purchased by the plaintiff from the defendant no.1 by way of registered sale deed dated 03/06/2004 for the valuable consideration of Rs. 28,000/-. The defendant No.1 forcefully and pressurizingly demanding to reconvey the sale deed of suit land in his favour at the price from which price the plaintiff has purchased. After the plaintiff refused to reconvey the sale deed defendant No.1 raised false dispute and threatened the plaintiff.

Thereafter, on 16/06/2012 at about 9.00 a.m. the plaintiff along with his wife went at suit field for bowing the soyabean. At that relevant time the defendants No.1 to 5 in collusion with each other came

over the suit land forcefully and obstructed to plaintiff for bowing soyabean and the defendant No.1 threatened to kill the plaintiff if he or his family member will come on the suit land again and not reconvey the suit field in his favour. Defendant No.2 to 5 supported the defendant No.1 and thereafter all the defendants assaulted him in filthy language and forcefully pushed the plaintiff from suit land. As the plaintiff is law abiding person he alongwith his wife returned to the house at Januna and informed the illegal act of the defendants No.1 to 5 at police station Jaulka on 16/06/2012. Therefore, the plaintiff instituted this suit and sought the relief of perpetual injunction. The defendants No.1 to 5 filed the written statement alongwith counterclaim.

**B] Defendants Case :**

The defendant no.1 to 5 filed the written statement alongwith counterclaim.

The contents of Para No.1 to 10 are denied by the defendant No. 1 and 2 and further stated that after the death of the father of the defendant No.1 the land measuring 5H 93R is inherited by the defendant No.1, his brother Shivaji and two sisters. But their two sisters and mother relinquished their shares and their shares get partitioned by the defendant No.1 and his brother. Defendant No.1 was in financial crisis due to illness of mother and marriage of daughter and was not having money for the medical treatment. The plaintiff is doing money lending business without valid license. The defendant was in dire need of money for treatment of his mother, he approached to the plaintiff and demanded Rs. 17,500/- for which plaintiff demanded some property as a mortgage for security of the loan. It was agreed between the plaintiff and defendant No.1 that the defendant No.1 should pay 5% interest per month on the said amount and after its full realization the plaintiff will reconvey the mortgage suit

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property. Then the defendant No.1 repaid the loan amount with an interest of Rs.1,00,000/- time to time to the plaintiff but the plaintiff avoided to act as per their agreement. The plaintiff take undue advantage of the alleged sale deed dated 03.06.2004 and tried to take the forceful possession of the suit property by filling such type of false and vexatious suit. Therefore, defendant No.1 denied all the allegations made by the plaintiff in their written statement and filed counterclaim for redemption of the suit property and permanent injunction against the plaintiff.

The contents of Para No.1 to 10 are denied by the defendants No. 3 to 5 and they further stated that after the death of the father of defendant No.1 his brother Shivaji and sisters inherited the land on 11.05.1998, thereafter sisters and mother of the defendant No.1 relinquished their shares. The shares get partitioned by defendant No.1 and his brother in which the defendant No.1 got western 2H 96R land on his share which is the suit property of this counter claim. The defendant No.1 has executed a nominal sale deed dated 03.06.2004 in favour of plaintiff No.1 for the security of loan amount Rs.17,500/-as he was in need of money. However, he was also having bad habits of drinking liquor, it is possibility that for the completion of his bad habits he might have been executed the alleged sale deed. The suit property is ancestral joint family property which is undivided till today hence the defendant No.1 was not having any right to execute the sale deed in favour of plaintiff of the area measuring 81R from the suit property. Hence, the defendants No.3, 4 and 5 have filed counterclaim for partition and separate possession of the suit property.

The defendants No.1, 2, 3 and 4 in counterclaim filed their written statement as below in short -

In their written statement they did not disputed the relationship amongst them. After the death of father of defendant No.1,

he alongwith his brother Shivaji, Sisters and Mother inherited the 5H 93R land on 11.05.1998 but thereafter sisters and mother relinquished their shares and total 5H 93R land get partitioned by defendant No.1 and his brother. It is not disputed that the claimants and opponent No.4 Sangita are having right by birth in the said suit property and having 1/5th share each along with opponent No.1 and 2. It is not disputed that the defendant No.1 has executed a nominal sale-deed dated 03.06.2004 in favour of plaintiff/opponent No.1 for the security of loan amount Rs.17,500/-as he was in need of money. It is denied that he was also having bad habits of drinking liquor, therefore it is possibility that, for completion of his bad habits he might have been executed the alleged sale-deed dated 03.06.2004. The suit property is ancestral joint family property which is undivided till today, hence the defendant No.1 was not having any right to execute the sale deed in favour of plaintiff of the area measuring 81R from the suit property. They did not gave any reply to para No.14 to 17 because the contents are formal in nature. They further submitted that, if the partition is effected then these opponents are also entitled to the equal share along with claimants. They further prayed that the counter claim of original defendant No.1 and 2 may be allowed and these opponents are having no objection to allow the counterclaim of original defendant No. 3 and 5.

As per the reply of plaintiff to the counterclaims the suit property bearing Gat No.127 admeasuring 2 hector 96 R was acquired by the defendant No.1 by way of partition taken place in between his brother and defendant No.1. The defendant No.1 is absolute owner of the suit property and during his life time the defendant No.3, 4 and 5 have no right over the counterclaim suit property. The defendants No.3, 4 and 5 in collusion with defendant No.1 and 2 filed the said suit for declaration partition and separate possession so as to grab the suit property of the

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plaintiff. It is submitted that the plaintiff has purchased out of counterclaim suit property 0.81R land by way of registered sale deed dated 03.04.2004. The same fact is very known to the defendant No.3, 4 and 5. In spite of that no action was taken in spite of having full knowledge of execution of registered sale deed in favour of the plaintiff. It is submitted that the defendants have not made a party in the counter claim suit property to the brother, sister and mother of the defendant No.1 as the necessary parties to the counter claim suit property. Due to non-joining of necessary parties to the counterclaim suit property, the counter claim is liable to be dismissed with costs and further allegations are denied by the plaintiff, who is the defendant in the counterclaim

3. On the basis of rival pleading Ld.trial Court framed eight issues. After considering the evidence Ld.trial Court held that plaintiff is in possession of suit property by way of execution of registered sale deed and by recording affirmative findings and negative findings to counter claim Ld.trial Court decreed the suit for perpetual injunction and dismissed the counter claim raised by the plaintiff. Being aggrieved with the judgment and decree present appeal came to be preferred by the defendants on the ground mentioned in appeal memo.

4. **Evidence :**

A] **Plaintiff's Evidence :**

In order to prove his case, plaintiff has examined himself PW-1 Vijaysing Amarsing Rathod at Exh.32, PW-2 Prabhu Mohansing Rathod at Exh.43.

B] **Defendants Evidence :**

Defendants have examined DW-1 Maroti Bhaguji Padghan at Exh.50, DW-2 Mahadu Sakharam Paikrao at Exh.61, DW-3 Dashrath Lobhasing Rathod at Exh.64, DW-4 Jitendra Govinda Kokre at Exh.69.

**Arguments :**

5. It is argued by Ld.advocate Shri.B.M.Deshpande for appellants that plaintiff and his witnesses in their cross-examination have admitted that suit property is ancestral property of Maroti Bhaguji Padghan i.e. defendant no.1. Defendant no.2 to 5 are having by birth right in the suit property. In fact, transaction was mortgage transaction because plaintiff was doing money lending business illegally. Therefore, defendant no.1 Maroti Bhaguji Padghan had no exclusive right to sell suit property to plaintiff. All these aspects are brought on record by cross-examination as well as by oral evidence of defendants and their witnesses. But these aspects are not considered by the Ld.trial Court. Hence, they are praying for allowing the appeal and dismissal of the suit and for allowing the counter claim.

6. Per contra, it is argued by Ld.advocate Shri.G.M.Wankhede for plaintiff that transaction is effected by way of registered sale deed. Document is placed on record which proves title and possession of plaintiff. Plaintiff is in exclusive possession of suit property by way of adducing documentary evidence. They have not proved that suit properties are ancestral one. Therefore, they are supporting the judgment of Ld.trial Court.

7. Having heard perused record and proceeding following points arise for my consideration together with my findings thereon for the reasons recorded below :

| Sr. No. | Issues                                                           | Findings            |
|---------|------------------------------------------------------------------|---------------------|
| 1       | Whether the order passed by Ld.trial Court is legal and proper ? | Accordingly         |
| 2       | Whether interference is required ?                               | Accordingly         |
| 3       | What order ?                                                     | As per final order. |

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### **REASONS**

#### **As to point no.1 to All :**

8. Admittedly, on 7/12 extract name of defendant no.1 Maroti Bhaguji Padghan was mentioned and not as joint family manager. Admittedly, registered sale deed is placed on record at Exh.38 which shows that on 03/06/2004 defendant no.1 has sold the suit property to plaintiff and put him in possession of the suit property. Plaintiff and his witnesses have specifically stated this fact in their oral evidence. During the cross-examination they have remained stick up with their version. Defendants are coming with a case. In fact, transaction was not of a sale but mortgage transaction. But to that effect they have not produced on record any kind of document to show that it was not sale deed but mortgage. In fact, recital of sale deed Exh.38 shows that on 03/06/2004 suit property i.e. Gat no.127 has been sold in clear terms to plaintiff and defendant no.1. Accordingly entry of his name is taken into 7/12 extract. Recital of page no.3 of sale deed shows that ownership and possession of suit property is handed over to plaintiff by defendant no.1. So it is transaction of out and out sale and not mortgage. So as per Section 91 & 92 of Indian Evidence Act oral evidence against contents of document is not admissible.

9. The counter claim is partition and declaration which is based on ancestral nature of suit property. Admittedly, defendant no.1 is husband of defendant no.2 and father of defendant no.3 to 5. So it is case of sale of agricultural land husband and father of joint family. It is settled position under Hindu Law that a father can sell joint family property for legal necessity and benefit of joint family members. Defendants have not raised case that property was sold without any legal necessity. In fact, except bare admission in cross-examination no other proved document is

produced on record which would prove counter claim. In such circumstances, I am of the view that plaintiff has proved his ownership and possession over the suit property whereas defendants have failed to prove counter claim. As these aspects are rightly considered by the Ld. trial Court and decreed the suit. Hence, there is no need to interference into it. Hence, I record my findings accordingly and pass following order :

**ORDER**

Appeal is dismissed.

[Judgment dictated and pronounced in open Court]

Date: 17/04/2026

[ J.P Zapate]  
District Judge -1, Washim.

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CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word, as per the original judgment/order.

Name of Stenographer :- R.K.Pawar, Stenographer (Grade-I)  
Name of Court :- District Judge-1 and Additional Sessions Judge, Washim.  
Date of Judgment/ Order :- 17/04/2026  
Judgment/Order signed by the Presiding Officer on :- 17/04/2026  
Judgment/Order uploaded on :- 17/04/2026