



Presented on : 06/10/2016
Registered on : 14/10/2016
Decided on : 09/06/2026
Duration : Y. M. D.
09 08 03

IN THE COURT OF CIVIL JUDGE [SR. DN.], WASHIM.
(Presided over by Shri S. S. Sahasrabudhe)

R.C.S. No.193/2016

Exh.No.73.

(CNR No: MHWS020006072016)

- 1] Punjabai w/o. Shivaji Gawai,
Age about 70 years, Occu. : Agriculture & Labourer,
- 2] Sindhubai w/o. Kundlik More,
Age about 50 years, Occu. : Labourer,
- 3] Mandabai w/o. Vishwanath Wankhede,
Age about 47 years, Occu. : Agriculture & Labourer,
- 4] Gajanan Shivaji Gawai,
Age about 45 years, Occu. : Agriculture & Labourer,
- 5] Mangesh Shivaji Gawai,
Age about 40 years, Occu. : Agriculture & Labourer,

Plaintiff Nos.1, 4 & 5 R/o. Kalambeshwar,
Tq. Malegaon, Dist. Washim.

Plaintiff No.2 R/o. Plot No.4 Malegaon,
Tq. Malegaon, Dist. Washim.

Plaintiff No.3 R/o. Wadap,
Tq. Malegaon, Dist. Washim.

... **Plaintiffs.**

..V E R S U S...

- 1] Tatyarao Kisan Wankhede,
Age about 28 years, Occu. : Agriculture,

- 2] Shivaji Saduji Gawai,
Age about 75 years, Occu. : Agriculture,
Both R/o. Kalambeshwar,
Tq. Malegaon, Dist. Washim.
- 3] Sub-Registrar Officer,
Sub-Registrar Office, Shirpur,
Tq. Malegaon, Dist. Washim.
- 4] State of Maharashtra
Through Collector, Washim,
Dist. Washim.
- ... Defendants.

**CLAIM : SUIT FOR DECLARATION, PERMANENT INJUNCTION AND
MANDATORY INJUNCTION.**

Shri. R. S. Gawali : Advocate for Plaintiffs.
Shri. M. S. Gawai : Advocate for defendants.

J U D G M E N T

[Delivered on 09th day of June, 2026]

The plaintiffs have filed the suit for declaration, permanent injunction and mandatory injunction.

2] It is the case of plaintiffs that plaintiff No.1 is wife of defendant No.2 rest of the plaintiffs are daughters and sons of defendant No.2. It is also submitted that the plaintiffs are owners of small agricultural land they are totally depend on the said income. The defendant No.2 is blind person he could not perform his routine work without help of other family members. The plaintiffs also submitted that the suit property bearing Gat No.221 admeasuring 0.40 R. land

bounded as under -

On the East – Land of Prakash Bhikaji Chatarkar,

On the West – Land of Vikas Nivrutti Wankhede,

On the North – Land of Dattatraya Nivrutti Wankhede,

On the South – Road leading to Malegaon – Kalambeshwar.

3] The plaintiffs also submitted that the suit property is in possession of the plaintiffs. Due to the old age and becoming blind, the defendant No.2 could not personally worked over the land, therefore, the land is in possession of the plaintiff Nos.4 and 5. The suit property was originally owned by Gyanu Chatarkar. The total Survey No.76/2 admeasuring 4 Acres 4 Guntha's was originally owned by Gyanu Harasaji Marathe (Chatarkar). It was his ancestral property. Thereafter, out of the 4 Acres of land, the 3 Acres of land has been purchased by one Sampat Mukinda of Kalambeshwar by registered sale deed in the year 1958. Thereafter, this 3 Acres of land has been purchased by Dattatraya Nivrutti Wankhede by registered sale deed vide Survey No.383 dated 03/03/1980 bounded by on East by land of Bhika Awadhoot, on West by land of Nivrutti Ragho, on North by land of Sadu Dhondur and on the South by Nala. Remaining 1 Acres of and was in possession of Gyanu Chatarkar. Thereafter, the defendant No.2 becoming owner of the said 1 Acre of land and his name is recorded in the revenue record since then he is owner of the said land and he is cultivating the said land as a owner thereof. The livelihood of the family members of the plaintiffs and defendant No.2 is depends upon

the income of the said land. There is no legal necessity to the family of the plaintiffs and defendant No.2. Out of the 0.40 R. land some portion of the land has been occupied for road leading to Malegaon – Kalambeshwar and rest of the land is under cultivation.

4] The plaintiffs also submitted that the defendant No.1 is a money lender and he is doing illegal money lending within the area. The defendant No.1 is not having land adjacent to suit land. The defendant No.1 has got prepared sale deed vide Sr. No.877 on 03/06/2016 without consideration and without handing over the possession. The sale deed is bogus, sham and fraudulent one. The defendant No.1 in absence of the plaintiffs taken the defendant No.2 before the Sub-Registrar and under coercion got prepared the sale deed. The defendant No.1 did not give any consideration amount as stated in the said sale deed and fraudulently obtained thumb impression of defendant No.2 over the sale deed by misrepresenting him. It is pertinent to note that defendant No.2 is blind and he could not be able to execute or register the sale deed. But the defendant No.1 taking the disadvantage of this position, got registered the sale deed illegally. The said sale deed itself is bogus, fraudulent, fake and sham. It is not acted upon the plaintiffs.

5] The plaintiffs also submitted that the sale deed in question is bad as per the provisions of Prevention of Fragmentation Act. So the sale deed is illegal and void. It is also submitted that prior to execution of the said sale deed permission was not obtained from Competent Authority on this count also the sale deed is void. The plaintiffs further pleaded that the defendant No.1 has not sold the land in question for

any legal necessity. The defendant No.1 from the defendant No.2 is not binding on these plaintiffs. The plaintiffs are/were unaware about the said sale deed. But, when the defendant No.1 came on the field on 30/07/2016 and tried to take possession of the suit land, then the plaintiffs received knowledge about the said sale deed. After getting the knowledge of the sale deed the plaintiffs immediately approached before this Court and filed the present suit.

6] The defendant No.1 filed his written statement at Exh.36. The defendant has denied all the adverse allegations raised against him. It is submitted that, the suit property situated at village Kalambeshwar, Tq. Malegaon, Dist. Washim bearing Gat No.221 admeasuring 1 H. 61 R. out of this 0.40 R. within boundaries as stated in agreement executed on dated 03/06/2016, the said suit property is purchased from the defendant No.2 by the defendant No.1 with the valuable consideration of Rs.2,32,000/- vide its registered sale deed bearing No.877/2016 in presence of Baliram Sakharam Wankhede and Vishwanath Sadashiv Gawai and since from 03/10/2016 the peaceful possession over the suit property to the defendant No.1. It is further submitted that, since from the execution of sale deed the defendant No.1 having peaceful possession over the suit property and on the basis of the registered sale deed in favour of the defendant No.1 the revenue authority took place the mutation entry in the name of defendant No.1 by name Taterao Kisan Wankhede and mutation and 7/12 extract prepared by revenue authority in the name of defendant No.1 by name Taterao and since then from the execution of sale deed specifically on dated 03/06/2016 the suit property is in standing

possession in the lands of defendant No.1 even then the plaintiffs and defendant No.2 having no interest, right or possession over the suit property, even then they are disturbing and illegal demanding and constrained to file the suit for declaration, permanent injunction and mandatory injunction which is not tenable as per the law. Therefore, the suit filed by the plaintiffs and defendant No.2 with collusion is deserved to be dismissed with heavy costs.

7] The defendant No.2 appeared in the case and filed his written statement at Exh.29. It is submitted by him that Dattatraya Nivrutti Wankhede owned land near the suit field. Therefore, he is having the right to purchase the said property. It is also submitted that there is no bar of Prevention of Fragmentation Act. The defendant No.2 further submitted that as the sale deed could not be executed. Therefore, the defendant No.2 has executed earnest note in favour of Dattatraya Nivrutti Wankhede. It is mentioned in the said note that defendant No.2 will execute the sale deed. The defendant No.2 has already received the consideration. He has already handed over the possession of land to Dattatraya Nivrutti Wankhede. The land is not in possession of Tatyrao nor he is owner of the land. The sale deed of Tatyrao is false and bogus document. So the said sale deed is not binding on the defendant No.2.

8] It is further submitted by the defendant No.2 that the defendant No.1 Tatyrao and other persons of his village have pretended to him that they will help him to get the money in respect of Garkul Scheme and by taking dis-advantage of the fact that the defendant No.2 is not able to see or hear anything. The defendant

No.1 has got executed sale deed from defendant No.2. He has not handed over any consideration to him. So the sale deed is false and bogus document. It is also submitted that the land in question is ancestral property.

9] The defendant No.3 appeared in the case and filed her written statement at Exh.22. It is submitted by the defendant No.3 that all the contents of plaint are denied by her. It is also submitted that the plaintiffs are not entitled for any of the relief claimed by them against the present defendants. The suit of plaintiffs against the present defendants are liable to be dismissed. As per Registration Act the defendant No.3 is duty bound to register the document presented before him unless it is barred under the provisions contemplated under Registration Act. The 7/12 extract of the impugned sale deed shows that the agricultural property is irrigated. The fragment area for irrigated land and non-irrigated land is different. The fragment is to be noted on 7/12 extract. Perusal of 7/12 extract of said property reflect that no fragment is noted in it. Under the set of circumstances it cannot be said that the defendant No.3 has exceeds its jurisdiction. The suit filed against the present defendants is liable to be dismissed with heavy compensatory costs.

10] Suit is proceeded without written statement against defendant No.4.

11] Issues framed by my learned predecessor are at Exh.30, those are reproduced along-with my findings thereon as under -

Sr. No.	<u>Issues</u>	<u>Findings</u>
1]	Whether plaintiffs prove that they are in exclusive possession of the suit property ?	In the Negative.
2]	Whether plaintiffs prove that sale deed dated 03/06/2016 executed by defendant No.2 in favour of defendant No.1 is illegal and void ?	In the Negative.
3]	Whether the sale deed dated 03/06/2016 is hollow and without consideration ?	In the Negative.
4]	Are the plaintiffs entitled to the relief of declaration as sought ?	In the Negative.
5]	Are the plaintiffs entitled to the relief of perpetual injunction as prayed ?	In the Negative.
6]	Are the plaintiffs entitled to the relief of mandatory injunction as prayed ?	In the Negative.
7]	What order and decree ?	As per final order

REASONS

As to Issue No.1 :-

12] The plaintiffs have pleaded that the suit property is in their possession. It is also submitted that as the defendant No.2 could not cultivate the suit property personally due to his old age. So he has handed over the possession of same to the plaintiff Nos.4 and 5. In order to prove their claim the plaintiffs have adduced evidence of Punjabai (PW-1) at Exh.31 and Gajanan (PW-2) at Exh.49. It is deposed by both these witness in their chief-examination that suit property is in their possession. However, on perusal of cross-examination of these witness. It appears that Punjabai (PW-1) has

admitted in her cross-examination that the possession of suit property was handed over to the defendant No.1 on the date of sale deed. She also admitted that the land is in possession of defendant No.1 since the date of sale deed. Gajanan (PW-2) admitted in his cross-examination that in the year 2021-22 the defendant No.1 has sown the crop of Soyabean in the suit property. He also admitted that the defendant No.1 used to cultivate the suit property.

13] On the other hand the defendant No.1 deposed that the suit property is in his possession and he used to cultivate the same. He also deposed that he has purchased the said property by virtue of registered sale deed bearing No.877/2016 from the defendant No.2. It is also deposed that seen the date of sale deed he used to cultivate the suit property. It appears that learned counsel for the plaintiffs has conducted the cross-examination of this witness at length. During the course of cross-examination it was suggested to him that the defendant No.2 has executed earnest note in favour of Dattatraya. So also at the same time he has handed over the possession of suit property to him. The witness has denied this suggestion. It appears that in support of oral evidence the defendant No.1 has produced 7/12 extract Exh.63 and 8-A extract Exh.64 on record. On perusal of 7/12 extract. It appears that the suit property shown in possession of the defendant No.1. Moreover, the plaintiff No.1 and Gajanan (PW-2) have in clear terms admitted the fact that suit property is in possession of defendant No.1 and he is cultivating the same. Therefore, considering this admission given by the plaintiff so also considering the 7/12 extract Exh.63 and 8-A extract Exh.64, I came to the

conclusion that the plaintiffs failed to prove their possession over the suit property. On the other hand considering the evidence adduced by the defendants certainly it can be gathered that the defendant No.1 has established his possession over the suit property. Therefore, considering these aspects, I came to the conclusion that the plaintiffs failed to prove their exclusive possession over the suit property. Therefore, I answer issue No.1 in the negative.

As to Issue No.3 :-

14] The plaintiffs deposed that the sale deed executed by the defendant No.2 in favour of defendant No.1 dated 03/06/2016 is illegal and void. It is also deposed that the defendant No.1 has got executed the sale deed of suit property from the defendant No.2 without paying any consideration for the same. So the sale deed is bogus, sham and fraudulent one. It is also deposed that the defendant No.2 is blind person by taking dis-advantage of the same the defendant No.1 has got executed sale deed from him.

15] It appears from pleading of defendant No.2 it appears that he has also pleaded that he is blind and deaf. It is also pleaded that by taking dis-advantage of the same the defendant No.1 has got executed sale deed from him. On the other hand the defendant No.1 has deposed that he has paid the consideration of Rs.2,32,000/- by virtue of registered sale deed bearing No.877/2016. The defendant No.1 has produced copy of sale deed Exh.58 on record. On perusal of said sale deed it can be gathered that the sale deed in question is a registered document. It also appears from the sale deed that the sale deed bears thumb impression of defendant No.2 on the said sale deed was

executed in presence of attesting witnesses Baliram Sakharam Wankhede and Vishwanath Sadashiv Gawai. The defendant No.1 has adduced the evidence of one of the attesting witness Baliram Sakharam Wankhede at Exh.71. He deposed that the plaintiffs and defendants known to him. He also deposed that the defendant No.2 is his relative. He also deposed that the defendant No.2 has sold suit property to defendant No.1 on 03/06/2016 for the consideration of Rs.2,32,000/-. It is also deposed that the said sale deed was registered at Sub-Registrar Officer, Shirpur, Tq. Malegaon, Dist. Washim. He also deposed that the defendant No.2 as handed over the amount of Rs.2,32,000/- in his presence. The witness also deposed that the sale deed bears his signature as attesting witness. It appears that the plaintiffs have not conducted cross-examination on this witness. Therefore, the evidence of this witness remained unchallenged.

16] Admittedly, the plaintiffs came with specific case that the defendant No.1 has got executed sale deed from the defendant No.2 by deceiving him. The plaintiffs pleaded that the defendant No.1 has not paid any consideration to the defendant No.2. Certainly the defendant No.2 is party to the present proceeding. Therefore, it was necessary for him to enter into witness box so also it was necessary from him to depose before the Court that he has not received any consideration from the defendant No.1. However, the defendant No.2 has not adduced his oral evidence. Therefore, it can be gathered that the defendant No.2 has avoided to face the cross-examination by the defendant No.1.

17] On the other hand, the defendant No.1 has specifically

deposed that he has paid the consideration of Rs.2,32,000/- to the defendant No.2. Not only this, the attesting witness of the sale deed namely Baliram (DW-2) has also deposed that the defendant No.1 has paid the consideration to the defendant No.2 in his presence. Moreover, there are specific recitals in the sale deed that the defendant No.1 has paid the consideration of Rs.2,32,000/- to the defendant No.2. It appears from the cross-examination of Tatyrao i.e. defendant No.1 it appears that he was cross-examined at length. It was suggested to him that he has not paid the consideration to the defendant No.2. It appears from the evidence that in his cross-examination the witness has deposed in respect of denomination of currency notes. He deposed that he has handed over 100 notes of Rs.1000/-, 200 notes of Rs.500/-, 300 notes of Rs.100/- and 4 notes of Rs.500/-. Therefore, it can be easily gathered that the witness has described denomination of currency notes. Considering this evidence of defendant No.1 and his witness, the recitals in document i.e. sale deed it can be gathered that the defendant No.1 has proved his contention that he has paid the consideration amount of Rs.2,32,000/-. On the other hand, though the plaintiffs have pleaded that the defendant No.1 has not handed over any consideration to the defendant No.2 still the plaintiffs have not adduced sufficient evidence to prove their contention. Certainly though the defendant No.2 failed to adduce his evidence still it was possible for the plaintiffs to submit an application before the Court to call him for cross-examination by doing so the plaintiffs ought to have proved their contention that the defendant No.2 has not received any consideration. However, the plaintiffs have not taken such steps. Therefore, considering these aspects I hold that the plaintiffs failed

to prove that the sale deed dated 03/06/2016 is hollow and without consideration. Therefore, I answer issue No.3 in the negative.

As to Issue No.2 :-

18] The plaintiffs deposed that the sale deed dated 03/06/2016 executed by the defendant No.2 in favour of defendant No.1 is illegal and void. It is also deposed that the said sale deed is hit by the provisions of Consolidation and Fragmentation Act. Certainly the provisions of Act is considered then the sale deed of non-irrigated land which is below 40 R. is hit by the provisions of Act. However, in the present case if the sale deed in question is perused then it can be gathered that by virtue of said sale deed 40 R. land was sold out by the defendant No.2 to the defendant No.1. Moreover, the said sale deed is duly registered with Sub-Registrar. Therefore, from this fact itself it cannot be inferred that the said sale deed is null and void or same is illegal as contended by the plaintiffs. Therefore, considering all these aspects I came to the conclusion that the plaintiffs failed to prove that the sale deed dated 03/06/2016 executed by the defendant No.2 in favour of defendant No.1 is illegal and void. Hence, I answer issue No.2 in the negative.

As to Issue No.4 :-

19] The plaintiffs have sought relief of declaration that the sale deed dated 03/06/2016 is illegal, null and void and same is not binding on the plaintiffs. However, I have already held that the plaintiffs failed to prove that the said sale deed is illegal and void. Therefore, I came to the conclusion that the plaintiffs are not entitled for the relief of declaration as sought. Hence, I answer issue No.4 in

the negative.

As to Issue No.5 :-

20] The plaintiffs have sought relief of permanent injunction thereby restraining the defendant No.1 from creating third party interest in the suit property. However, I have already held that the defendant No.1 has proved the fact that he has purchased the suit property by paying valuable consideration of Rs.2,32,000/-. The suit property is already mutated in the name of defendant No.1 in revenue records. Thus, the defendant No.1 became owner of suit property. Hence, it can be gathered that the defendant No.1 is entitled to dispose of the suit property as per his sweet choice. Hence, injunction cannot be issued as prayed. Therefore, I answer issue No.5 in the negative.

As to Issue No.6 :-

21] The plaintiffs have sought relief of mandatory injunction thereby giving directions to the defendant No.4 to declare the sale deed dated 03/06/2016 as null and void. Certainly if the provisions of Act is perused then it can be gathered by the defendant No.4 is not only entitled to make inquiry in respect of the fact of fragmentation and if found so he can declare the sale deed as void. Not only this, the defendant No.4 is entitled to impose penalty. However, that are power vested with the State i.e. defendant No.4. However, this Court is not empower to give directions to the defendant No.4 to declare any particular sale deed or transaction as void or against the provisions of law. Therefore, considering this fact I came to the conclusion that the plaintiffs are not entitled for the relief of mandatory injunction as

sought. Hence, I answer issue No.6 in the negative.

As to Issue No.7 :-

22] I have already held that the plaintiffs are not entitled for the relief of declaration nor the plaintiffs are entitled for the relief of permanent injunction or mandatory injunction as sought. Therefore, I came to the conclusion that the plaintiffs are not entitled for any relief. Hence, I answer to this issue, I pass the following order-

ORDER

- 1] The suit is dismissed.
- 2] Parties to bear their own costs.
- 3] Decree be drawn up accordingly.

(Dictated & pronounced in the open Court.)

Date:- 09/06/2026.

(S. S. Sahasrabudhe)
Civil Judge (Sr. Dn.), Washim.

CERTIFICATE

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

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 09/06/2026
- 4) Order signed by the
presiding officer on :- 09/06/2026
- 5) Order uploaded on :- 09/06/2026