



Presented on : 16/12/2015
Registered on : 17/12/2015
Decided on : 28/04/2026
Duration : Y. M. D.
10 04 12

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

R.C.S. No.214/2015

Exh.No.99.

(CNR No: MHWS020006152015)

Keshao S/o. Haribhau Thakare,
Age about 46 years, Occu. : Agri.,
R/o. Kharola, Tq. Dist. Washim.

... **Plaintiff.**

..V E R S U S..

- 1] Datta S/o. Namdeo Thakare,
Age about 57 years, Occu. : Agri.,
R/o. Kharola, Tq. Dist. Washim.
- 2] Sub-Registrar Washim,
Near Nagar Parishad Washim,
Tq. Dist. Washim.
- 3] State of Maharashtra Through
Collector, Washim,
- 4] Kamalabai W/o. Laxman Raut,
Aged about 54 years, Occu. : Agri.,
R/o. Kharola, Tq. Dist. Washim.
- 5] Prashram Ramchandra Thakre,
Aged about 53 years, Occu. : Agri.,
R/o. Kharola, Tq. Dist. Washim.
- 6] Jayaji Ramchandra Thakre,
Aged about 62 years, Occu. : Agri.,
R/o. Kharola, Tq. Dist. Washim.

... **Defendants.**

CLAIM : SUIT FOR DECLARATION AND MANDATORY INJUNCTION

Shri. S. K. Pathade : Advocate for Plaintiff.
Shri. K. R. Dhagade : Advocate for defendant Nos.1, 4 & 5.
AGP Smt. M. T. Misar : Advocate for defendant No.2 & 3.
Shri. S. K. Malas : Advocate for defendant No.6.

J U D G M E N T

[Delivered on 28th day of April, 2026]

Present suit is filed for declaration and mandatory injunction. It is the case of plaintiff that the suit property admeasurement 10 R land from Gut No.113 is the suit property. The said gut number is of 1H. 03R. same is situated at village Kharola. The suit property is bounded to the East- Land of Jayaji, to the West- Land of Jayaji, to the North- Land of Gajanan Thakare and to the South- land of plaintiff. It is pleaded by the plaintiff that the total Gut No.113 is of 1 hector 03 R. of land. Out of which at the southern side of above gut number admeasuring 0.43 R. land is belonging to plaintiff and remaining admeasuring 0.60 R. land is jointly owned by defendant no.1 and his sister Kamlabai Laxman Raut i.e. defendant No.4.

2] It is submitted that adjacent to above gut number towards southern side there is another adjoining field gut no.114 admeasuring 1 H. 08 R. of plaintiff in which as well having full of water is dug by the plaintiff. Therefore, the land of plaintiff is irrigated one whereas the suit land belonging to defendant no.1 is dry land due to lack of

water and irrigation facility. It is further pleaded by the plaintiff that in the second week of month of December 2015 the defendant no.1 is about to sold the fragment out of suit land to either third party of above gut number 113 or Jayaji Ramchandra Thakare R/o Kharola who is not holder of gut number 113 by violating the provision of prevention of fragmentation and consolidation Act 1947 and its rules and govt. resolution. As per provision of section 7 and of said act the alienation of fragment and to have remaining land fragment is prohibited. In the Washim district the fragment is deemed to be land below admeasuring 2 acre in case of dry land whereas below 1 acre in case of irrigated. As per the said provision of act and its rule framed and govt. resolution there under except the plaintiff who is both into the gut number of suit property and also holder of adjoining land of suit property, no one third party including Jayaji has right to purchase fragment out of suit land of defendant no.1 when the plaintiff is ready to purchase the fragment as per the prevailing market price. In view of provision of that act the defendant no.1 is not entitle to alienate fragment even the defendant no.2 is also not entitled to register the alienation of fragment of suit property without prior permission of defendant no.3 in writing.

3] The plaintiff further submitted that the defendant no.1 and 2 in the 2nd week of November 2015 either to the third party of gut number of suit property or Jayaji Ramchandra Thakare and accordingly talk is also took place in between defendant no.1 and 2 regarding registration of alienation of fragment in violation of prevention of fragmentation and consolidation act and its rule. As

soon as the talk in between defendant no.1 and 2 is come to the knowledge at that time the plaintiff approached before the defendant no 2 and 3 by way of written application dated 14.12.2015 praying therein defendant no.2 not to register the sale deed of fragment out of suit property either in favour of third party of gut number 113 or Jayaji Ramchandra Thakare who are not holder of gut number 113. But the defendant no.32 orally told to the plaintiff that unless and until he brings stay from Court he will not hear the grievance of plaintiff and later on refuse to accept the complaint hence the plaintiff sent the same by way of R.P.A.D. by the way one written application is also handed over to defendant no.3 by praying to direct to defendant no.2 not to registered the alienation of fragment of suit property without his permission on same day but defendant no.3 did not take any quick action upon the complaint.

4] The plaintiff submitted that therefore, the plaintiff is in apprehension that the defendant no.1 may at any time alienate the fragment out of suit property and defendant no.2 also register same alienation without permission of defendant no.3 by violating the provision of prevention of fragmentation and consolidation act and its rules. The plaintiff has every right to object the alienation of fragment of suit property as per law. Hence, the plaintiff has no any alternative way except to file the present suit so as to prevent the interest of plaintiff. It is also submitted that during the pending of the suit the defendant Nos.1 to 4 executed the sale deed on 16/09/2016 in violation of Bombay prevention and fragmentation act and without permission of defendant No.3 to the extent of 0.10 R of land.

Therefore, the sale deed which is prohibited by fragmentation law. Hence, same is unlawful and void ab-initio in the eyes of law and not binding upon the plaintiff. Hence, sought the relief of declaration in that regard and prays to decree the suit.

5] The defendant No.1 filed his written statement at Exh.18 and denied all the adverse contention. It is denied that in the second week of December 2015 this defendant was about to sold the fragment out of suit land to third party like Jayaji Thakare. It is denied by the defendant No.1 that the plaintiff is ready to purchase the fragment as alleged. It is also denied that prior permission of defendant No.3 in writing is necessary to alienate the fragment. It is submitted by the defendant No.1 that he owned and possessed 0-60R. of land in Gat no.113 at village Kharola, Tq.& Dist. Washim. To the eastern side of the field of this defendant, there is field of one Jayaji Ramchandra Thakare in Gat no.125 which is just adjacent to the field of this defendant. Like this, there is another field of said Jayaji Ramchandra Thakre on western side of the field of this defendant in Gat no.76. The said Jayaji Ramchandra Thakare required to go with agricultural implements from his field situated in Gat no.125 to his field Gat no.76, through the field of this defendant Gat no.113. Under the circumstances, this defendant requires to sale 0-10R. land of northern side of Gat no.113 out of 0-60R. land of this defendant, to the said Jayaji Thakare.

6] The defendant No.1 further submitted that accordingly on 22/12/2015 the defendant No.1 alongwith defendant No.4 i.e.

Kamalabai w/o. Laxman Raut agreed to sale 0-10R. of land out of 0-60R. land situated in Gat no.113 to Jayaji Thakare for the consideration of Rs.4,00,000/-. On 22/12/2015 this defendant and defendant No.4 received the earnest amount of Rs.2,50,000/-out of sale price of Rs.4,00,000/- from Jayaji Thakare and executed the document of Isar chitthi in his favour and delivered the possession of said 0-10R. of land runs in east west direction of northern side which is situated just adjacent to the field Gat no.112 i.e. on southern side of Gat no.112. After delivering the possession of 0-10R. Jayaji Thakare prepared the road/ cart road through the field Gat no.113 which is agreed to be sold by this defendant and said Kamalabai Raut as stated above. At present the said 0-10R. of land is in possession of said Jayaji Ramchandra Thakare and he used the said 10R. of land as road (personal) for going to his field Gut no.125 and 76 which are situated on east and west side and the said land of Jayaji Thakare is just adjacent to the land of this defendant situated in Gat no.113.

7] It is also submitted by the defendant No.1 that as per section 5 of Bombay Prevention of fragmentation and Consolidation of Holdings Act, no notice of Govt. is published in respect of any fragment as required under law and no fragment is recorded in Record Rights in respect of the land of this defendant situated in Gut no.113 of village Kharola. Moreover, the land of said Jayaji Ramchandra Thakare situated in Gat no.125 and 76 which are just adjacent to the land of the defendant and hence the provisions of section 7 and 8 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act are not applicable in the present case and there is no need of

permission of State Govt. for alienating the land of this defendant to the adjacent owner of the land Get no.113. Moreover, section 22 of Hindu Succession Act about preferential rights is not applicable in the present suit. It is also submitted that under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act the Court is having no jurisdiction to try the suit. It is also submitted that the suit is not tenable. Hence, prays to dismissed the suit with costs.

8] The defendant No.2 and 3 filed their written statement-cum-reply at Exh.20. It is denied that the defendant No.1 is about to sale the fragment out of the suit property in collusion with defendant No.2 in 2nd week of November 2015. The plaintiff has leveled false allegations against these defendants. It is submitted that the defendant No.2 is the document registering and revenue collecting authority and if any document is brought before this defendant and if the said document complies with the legal obligations then only the document can be registered. In the present matter the document is not brought before this defendant and mere on assumptions and presumptions the plaintiff has filed false the suit. The defendant No.3 is indulged in the present matter deliberately and this defendant has not passed any order relating to the suit property. The present suit is nothing but abuse of process of law. The plaintiff has not filed the present suit as per the prescribed form and therefore, for the misjoinder and non-joinder of necessary party the suit of plaintiff is liable to be dismissed with cost.

9] The defendant No.4 filed pursis at Exh.50 and she has

adopted written statement of defendant No.1 and 5.

10] The defendant No.5 filed his written statement at Exh.42. This defendant has denied all the contents of plaintiff. It is submitted that the plaintiff Keshao filed the present suit for the relief of mandatory injunction in respect of field gut no. 113, 1 H 3 R land as prayed in plaint. On 22/12/2015 prior to appearance of defendant no.1 Datta in present suit, the defendant no.1 Datta on 22/12/2015 agree to sale 0.10 R land out of field gut no.113, owned by him with the brother of this plaintiff by name Jayaji Ramchandra. Tthe brother this plaintiff got executed the issarchitti of 0.10 R land out of 0.60 R land in gut no.113 of village Kharola Tq. Dist Washim from the said defendant No.1 Datta and his sister Kamalabai. The said 0.10 R land was agreed to be purchased by the brother of this defendant Jayaji from defendant no.1 Datta and his sister for road for going into the field gut no.125 which is owned by this defendant and Jayaji Thakare. Accordingly, a pursis in the present suit is filed by the defendant no. 1 Datta on 20/04/2016 and the xerox copy of the said issarchitti date 22/12/2015 is also filed on record.

11] The defendant No.5 further submitted that thereafter the defendant no.1 Datta filed an application before S.D.O. Washim vide revenue case no.MRC-81/Kharola/26/2015-16 decided on 30/07/2016 for the permission for selling the land for road purpose as alleged in issarchitti dated 22/12/2015 and the S.D.O. Washim granted the permission on 30/07/2016 to the defendant no.1 Datta for selling the said land to said Jayaji Thakare. Jayaji Thakare and this

defendants Parashram are real brother and both of them hold the land in field gut no.125 of village which Kharola tq. Dist Washim, for which cultivation the defendant no.1 agreed to of sale the land to Jayaji Thakare for road purpose. Not only this but this defendant and said Jayaji also hold land in gut no.76 and for cultivation the said land situated in gut no.76, the defendant no.1 Datta agreed to sale the said 0.10 R land for road purpose for cultivation of land situated in gut no. 76 also. The defendant no.1 Datta obtained the permission of S.D.O. Washim on 30/07/2016 to sale the land 0.10 R land to brother of this defendant by name Jayaji for road purpose.

12] It is submitted by the defendant No.5 that in the field gut no.125 and 76 as pleaded in W.S. there is land of this defendant Parashram his and brother Jayaji and hence grant of permission for road by the SDO Washim is for public purpose i.e. road is used by this defendant Parashram and his brother Jayaji Ramchandra is legal and valued and hence, the suit of the plaintiff is not tenable and liable to be dismissed. It is also submitted that after getting the permission of S.D.O. Washim the defendant no. 1 Datta executed the registered sale deed of said 0.10 R land out of gut no.113 in the name of this defendant Parashram. This defendant Parashram and his brother Jayaji owned and cultivated the land situated in gut no.125 and 76 of Kharola and village cultivation of said land this defendant got a executed registered sale deed dated 16/09/2016 of said 0.10 R land for road purpose as stated above. Under these circumstances this defendant is having title and interest in said 0.10 R land in the suit field as alleged in para 1 of the plaint and hence the suit of the

plaintiff for the relief of declaration ad mandatory injunction in respect of these said 0.10 R land situated in gut No.113 is not maintainable and is liable to be dismissed with costs.

13] The defendant No.6 filed his written statement at Exh.54. The defendant No.6 submitted that it is not disputed that during the pending of the suit the defendant No.1 and 4 executed the sale deed on 16/09/2016 without permission of defendant No.3. It is submitted that the defendant No.6 is owner and possessor of Gut No.125 and Gut No.76 of village Kharola, Tq. & Dist. Washim but there was no cultivating. Therefore, the defendant No.6 use to boundary of any land and was doing cultivate his agricultural land. Therefore, the defendant No.6 was in need of cultivating way. It is submitted that the defendant No.1 and 4 approached to the defendant No.6 that, we are in need of his daughter, therefore they want to sale 10 R land from their gut No.113 of village Kharola Tq. Dist. Washim their field is adjacent of Kharola to Jambharun village way present defendant No.6 is also need of cultivating way, therefore defendant No.6 agreed to purchase the land of 10 R from gut No.113 of village Kharola Tq. and Dist. Washim.

14] The defendant No.6 further submitted that the defendant No.1 and 4 had filed application before the S.D.O. Washim for grant permission to sale the 10 R land from the Gatha 113 for cultivating purpose and defendant No. 6 is ready to purchase 10 R land for the purpose of cultivating way, therefore S.D.O. Washim granted permission for sale the 10 R land to the defendant No. 1 and 4 in favour defendant No. 6. The defendant No.1 and 4 submitted the

documents of the defendant No.6 in the case of grant permission to sale the land of 10 R. It is submitted that the defendant No. 1 and 4 executed bond of Rs.500/- in favour of defendant No.6 and agreed that, they have got Rs. 2,50,000/- as per earnest money (Issarchitti) and Rs. 1,50,000/- will be paid at the time of registered sale deed but the defendant No.1 and 4 did not so and executed sale deed in favour of another person. The S.D.O. Washim granted permission in favour defendant No.6 and the defendant No.6 gave earnest money of Rs. 2,50,000/- to the defendant No. 1 and 4, but defendant No. 1 and 4 were not ready to execute sale deed in favour of defendant No.6 of 10 R land as well as they were not ready to refund the earnest amount of Rs. 2,50,000/-. It is submitted that the defendant No.5 have no right to purchase the 10 R land of Gut No.113 of village Kharola Tq. & Dist. Washim.

15] The defendant No.6 submitted that the defendant No.1 and 4 illegally alienate the 10 R land and to the defendant No.5 because there is no permission of S.D.O. Washim in favour of defendant No.5, therefore they have breached the condition of Bombay Fragmentation and consolidation act. Hence the alienation, sale deed of 10 R land is prima-facie illegal and against the provision of law. Therefore, sale deed dated 16/09/2016 of Gut No.113 of village Kharola Tq. Dist. Washim kindly be declared null and void in the interest of justice and prays to give the direction to the defendants to execute the sale deed in favour defendant No.6, in alternative refund the earnest amount of Rs. 2,50,000/- along with interest to the defendant No.6.

16] Issues framed by my learned predecessor are at Exh.25, those are reproduced along-with my findings thereon as under -

Sr. No.	<u>Issues</u>	<u>Findings</u>
1]	Does the plaintiff prove, being adjoining owner, he is entitled to purchase the suit property ?	In the Negative.
2]	Does the plaintiff prove that defendant No.1 is intending to dispose of suit property in favour of third person ?	Redundant.
3]	Is the plaintiff entitled for claimed reliefs ?	In the Negative.
4]	Is the suit maintainable in the form it is instituted ?	In the Negative.
5]	Is the suit bad for non-joinder of necessary party ?	In the Negative.
6]	Whether the Court has jurisdiction to decide this suit ?	In the Negative.
7]	What order and decree ?	As per final order
8]	Whether the plaintiff is entitled for the relief of declaration as sought ?	In the Negative.

REASONS

As to Issue No.1 :-

17] The plaintiff has pleaded that he is owner of 0.43 R and of Gut No.113 situated at village Kharola, Tq. and Dist. Washim. The suit property i.e. 10 R land is also situated in the same Gut number. The said land is situated on northern side of plaintiff's land. The plaintiff

deposed that the defendant No.1 and 4 have illegally sold out the said 10 R land to the defendant No.5. The land of defendant No.5 is not situated in Gut No.113 therefore, he is not entitled to purchase the land from the said gut number. Plaintiff also deposed that the defendant No.5 is having another way. Therefore, it is not necessary for him to purchase the suit property as a way to approach his field. In spite of this fact he has purchased the land from the defendant No.1 and 4. It is also deposed that the defendant No.1 has applied for permission with SDO. He has applied for the permission to sale the suit property to the defendant No.6 Jayaji Thakare. SDO has granted the said permission but the defendant No.1 has illegally sold the land to the defendant No.5 Parashram Thakare. Therefore, the said sale deed is illegal.

18] On the other hand it is the contention of defendant Nos.1, 4 and 5 that the defendant No.5 is owner of Gut No.125 which is adjacent to the suit property. He is also owner of Gut No.76. It is necessary for the defendant No.5 to use field gut No.113 to approach his fields. Therefore, he requested the defendant No.1 to sale 10 R land so that it can be used the said land as approach way. He agreed to purchase the property for the consideration of Rs.4,00,000/-. The defendant Nos.1 and 4 agreed to sale the land and accordingly they have executed earnest note in his favour by accepting earnest amount of Rs.2,50,000/-.

19] It appears from the record that during pendency of suit the plaintiff has amended the plaint and he pleaded that the defendant

Nos.1 and 4 have sold the suit property on 16/09/2016. The plaintiff has claimed the relief of declaration that the said sale deed is illegal and not binding on him.

20] So far as the contention of plaintiff that his land is adjacent to the suit property is concerned admittedly the land of plaintiff is situated at the southern side of suit property. There is dispute between the parties in that regard. However, so far as the contention of plaintiff that being adjacent owner he is entitled to purchase the suit property is concerned, it appears that the plaintiff has deposed this fact in his evidence. He deposed that as his land is adjacent to the suit property therefore, it is necessary for the defendant Nos.1 and 4 to sale the 10 R land to him. Because the said 10 R land is prohibited as per the provisions of The Maharashtra Prevention of Fragmentation and Consolidation of Holding Act.

21] Admittedly the suit property i.e. 10 R land was owned by the defendant No.1 and 4 and they have sold the same to the defendant No.5. As per the plaintiff the said sale deed is illegal and not binding on him because the sale deed is contravention of Fragmentation Act. On the other hand it is the contention of defendant that prior to sale of land the defendant No.1 has obtained permission from competent authority i.e. S.D.O. Washim.

22] The defendants have filed copy of order passed by SDO Exh.59 dated 30 July 2016. On perusal of said order it appears that the defendant No.1 has submitted application with the competent authority and sought permission to sale the land. The competent

authority has granted the permission to the defendant No.1 to sale the land. It also appears from the order that the competent authority has granted permission after considering the fact that the land will be used as approach way. Admittedly SDO is competent authority therefore, the said authority can decide the question as to whether there will be fragment or the land is exempted as per section 7 and 8 of Fragmentation Act. Considering these aspects SDO has granted permission. Hence, though the land of plaintiff is situated in the same gut number and plaintiff's land is adjacent to the suit property still it can not be inferred that plaintiff is having right of preemption. Because the suit property was purchased by the defendant No.5 and he is using the same as a approach road. Therefore, certainly the sale deed is legal one.

23] Not only this the another aspect needs to be considered is that the land of defendant No.5 bearing Gut No.125 and 76 is also adjacent to the suit property. No doubt though both these lands are situated in different gut numbers but the fact can not be ignored that these lands are also adjacent to the suit property. Moreover, the defendant No.5 came with case that he has purchased the suit property for creating approach way. Certainly the purpose of sale is taken into consideration then it can be easily gathered that the sale deed in question can not be considered as illegal one or it is hit by the provision of Fragmentation Act. Hence, considering this aspect I came to the conclusion that the plaintiff failed to prove that he is entitled to purchase the suit property. Hence, I answer issue no.1 in the negative.

As to Issue No.2 :-

24] Initially the plaintiff has filed the suit for mandatory injunction only. Later on the plaintiff has amended the plaint and he pleaded that the defendant No.1 has sold out the suit property to the defendant No.5. Therefore, this issue became redundant. Hence, I answer this issue accordingly.

As to Issue Nos.4 to 6 :-

25] The defendants have pleaded that the suit is not tenable. Suit is bad for non-joinder of necessary party so also this Court can not try the suit. So far as the submission of defendants that suit is bad for non-joinder of necessary party is concerned, during pendency of suit Jayaji Thakare was added as defendant No.6. Therefore, certainly suit is tenable. So far as the submission outstare of jurisdiction is concerned, as per the defendants in view of the provision of Fragmentation Act jurisdiction of this court is barred. For this purpose it is necessary to consider section 36A of the 'Act' which is as follows-

“Bar of jurisdiction- (1) No Civil Court or Mamlatdar’s Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

(2) No order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar’s Court.”

26] Certainly the plaintiff has claimed the relief of declaration in respect of the sale deed executed by defendant No.1 and 4 in favour of defendant No.5 dated 16/09/2016. It is the contention of plaintiff that the said sale deed was executed in violation of Bombay Prevention of Fragmentation Act. In view of above referred provision the competent authority can decide issue of legality of sale deed. So also competent authority can decide as to whether there is violation of prevention of Fragmentation Act. Civil Court is not having jurisdiction to decide the said aspects. Therefore, I found substance in the contention of defendants that jurisdiction of this Court is barred. Hence, I came to the conclusion that the suit is not maintainable before this Court. Therefore, I answer issue Nos.4 to 6 accordingly.

As to Issue Nos.3, 7 and 8 :-

27] I have already held that this Court is not having jurisdiction to decide the suit. The plaintiff has claimed relief of declaration to the effect that the sale deed executed by defendant No.1 and 4 in favour of defendant No.5 dated 16/09/2016 was executed in violation of Bombay Prevention of Fragmentation Act and therefore, the sale deed is illegal and not binding on the plaintiff. I have already held that this Court is not contended to decide the issue regarding legality or illegality of sale deed on the count of alleged violation of Prevention of Fragmentation Act. The Act has provided the competent authority which can decide the said issue. Therefore, I came to the conclusion that the plaintiff is not entitled for the relief of declaration as prayed nor he is entitled for other relief as sought. Therefore, I

answer issue Nos.3 and 8 in the negative and in answer to issue No.7
I pass the following order-

ORDER

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

Date:- 28/04/2026.

(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. V. Dere (Stenographer G-II)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 28/04/2026
- 4) Order signed by the presiding officer on :- 28/04/2026
- 5) Order uploaded on :- 28/04/2026