

1 **Reg. Civil Suit No. 13/2011 (Judgment)**

Received on : 02.02.2011

Registered on : 02.02.2011

Decided on : 31.01.2019

Duration : 07 Y 11 M 29D

CNR-MHWS080000962011

**IN THE COURT OF JT. CIVIL JUDGE (J.D.) AT RISOD,
DISTRICT-WASHIM.**

(Presided over by Mr. Ashish D. Suryawanshi)

REGULAR CIVIL SUIT NO. 13/2011

EXH. NO. 56

Sk. Salim Sk. Mohamad
Age-40 Years, Occ- Agri
R/o-Goundhala, Tq-Risod, Dist-Washim.

...PLAINTIFF

-

Versus

01. Sk. Shubhan Sk. Ibrahim
Age- 27 Years, Occ- Labour.
02. Sk. Bhikkan Sk. Ibrahim
Age-40 Years, Occ- Labour
Both are R/o Goundhala,
Tq-Risod Dist-Washim.
03. Sk. Suleman Sk. Mohamad (Deceased)
Through Legal Representatives

3-A Ladobi Sk. Suleman
Age- 65 Years, Occ- Labour
R/o Tq- Shegaon Dist-Buldhana.

3-B Sk. Taslim Sk. Suleman
Age-39 Years, Occ- Labour
R/o Tq- Shegaon Dist- Buldhana.

04. Kulsamabi Sk. Mohamad
Age- 81 Years, Occ- Nil
R/o Jalna Tq- Jalna Dist- Jalna.
05. Shanurbi J. Abdul Rajjak
Age- 55 Years, Occ- Household
R/o Jalna ,Tq-Jalna, Dist- Jalna.
06. Jarinabi Sk. Mohamad
Age- 43 years , Occ- Household
R/o Jalna Tq- Jalna Dist- Jalna
07. Hashnoorbi Sk. Salim
Age-35 Years, Occ- Household
R/o Jalna Tq- Jalna Dist- Jalna.

...DEFENDANTS

CLAIM- SUIT FOR POSSESSION.

Mr. P.S. Deshmukh Advocate for the plaintiff.
Mr. R.M. Davhale Advocate for defendants no. 01 and 02 .
Mr. S.W. Shegokar Advocate for defendants no. 03 to 07.

JUDGMENT

(Delivered on 31st January, 2019)

This is a suit for possession. The case of the plaintiff in short is as under.

02 The plaintiff and defendants are having landed property situated at village Goundhala Tq- Risod, Dist- Washim in Gut no. 249 admeasuring 2 H 42 R. Discription of he property is as follows.

03 From the East side agricultural land of the Daulat Yanshwantrao Tayde and Rambhau Gurde, from the Western side agricultural land belonging to defendant no.04, from the Northern side agricultural land of the Pandhre and from southern side agricultural land of Yewale. (This property herein after referred to as the suit property)

04 Originally the suit property was owned and possessed by Sk. Mohamad Shah Mohamad. He was the father of the plaintiff and defendant no. 03 and 05 to 07. He died in the year 1987. Defendant no. 04 is the mother of the plaintiff and defendant no. 03 and 05 to 07. The father of the plaintiff deceased Sk. Mohamad and defendant no. 04 were having two another sons namely Sk. Gani and Sk. Amin. However, they both are died. After the death of the father of the plaintiff suit property was registered in revenue record in the name of plaintiff and defendant no. 03 to 07 jointly and they were possessing the same defendant no. 05 to 07 are the sisters of the plaintiff and defendant no. 03. They relinquished their right in favour of the plaintiff and his brother and mother in the year 1995 before Panchas. After death of father of the plaintiff one deceased brother of the plaintiff namely Sk. Gani and the plaintiff were cultivating the agricultural land jointly. The plaintiff went to reside at Jalna in the year 2004. While brother of the plaintiff defendant no. 03 also went to reside at the Shegaon. No one is now residing at village Goundhala. Therefore, by taking undue advantage of the

same illegally took possession of the suit property. They are in illegal possession from the May 2005. Further, defendant no. 01 and 02 by dividing the suit property amongst them recorded their name in revenue record as the owner of the suit property to extent of 1 H 21 R each. Plaintiff demanded possession of the suit property to the defendant no. 01 and 02 before Panchas on 16.04.2010 at village Goundhala. However, they denied to give possession. The plaintiff even sent legal notice to the defendant no.01 and 02 and demanded the possession of the suit property on 19.04.2010. However, inspite of service of notice defendant no.01 and 02 failed to answer the notice and to give the possession of the suit property to the plaintiff. The plaintiff is entitled for possession of the suit property as he is owner of the same along with defendant no. 03 to 07. Defendant no.01 and 02 have denied to deliver possession of the suit property the plaintiff. The plaintiff is constraint to filed this suit. He prayed for possession of the suit property with ancillary relief of mesne profit.

05 Defendant no. 01 and 02 filed their Written Statement and contested the suit. It is admitted that, the suit property was owned and possessed by the Sk. Mohamad Shah Mohamad originally. Further, it is also admitted that said Sk. Mohamad was the father of the plaintiff and defendant no. 03 and 05 to 07. Defendant no. 01 and 02 even admitted that the father of the plaintiff is died in the year 1987. However, they denied that after death of father of the plaintiff the plaintiff and his another deceased

brother Sk. Gani were cultivating the suit property. Further, they denied that, they become successful in mutating the suit property in their names to the extent of 1 H 21 R each falsely. They also denied that, the plaintiff has demanded possession of the suit property on 16.04.2010. They admitted that, the plaintiff has issued them a demand notice on 19.04.2010 by post. However, they contended that, it was a false notice with false contents therefore they denied contents of the notice.

06 Further, they submitted that the brother of the plaintiff namely Sk. Gani Sk.Mohamad and their brother were given their shares by thier deceased father Sk. Mohamad in the year 1985 before his death. Since the oral partition made by the deceased Sk. Gani and his brother were cultivating the respective shares of the land allotted to them. However, the suit property was remained in the name of the deceased Sk. Mohamad in the revenue record and therefore, after the death of Sk. Mohamad the entries were taken in the name of the plaintiff and defendant no. 03 to 07 jointly. Brother of the deceased Sk. Gani already have sold their respectives shares in the suit property. The suit property was in the ownership and possessionship of the Sk. Gani Sk.Mohamad since 1985. His cousin brother Sk. Ibrahim Sk. Baban was taking care of him since 1990 and thereafter out of love of affection Sk. Gani Sk. Mohamad prepared a will before his death on stamp paper dated 08.04.1994 and give the suit property 2 H 42 R to the two sons of the Sk. Ibrahim Sk. Baban i.e. defendant no. 01 and 02 in the year 1994.

Since that date defendant no. 01 and 02 are having suit property in their possession as owner. After 04 years of the death of Sk. Gani Sk. Mohamad on 01.06.1995 defendant no. 01 and 02 divided the suit property between themselves and are in possession of 01 H 21R each. The plaintiff and his brother defendant no. 03 have left village since 40-50 years. Further it is also submitted that, defendant no. 01 and 02 failed to get mutata the suit property in their names and therefore by taking undue benefit of this fact the plaintiff has brought this suit. Hence they prayed for dismissal of the suit with compensatory cost.

07 Defendant no. 03 to 07 filed there Written Statement vide Exh.19 and admitted claim of the plaintiff. They submitted that they all are legal heirs of the deceased Sk. Mohamad Shah Mohamad. Hence, in short defendant no. 03 to 07 by way of their Written Statement admitted the claim of the plaintiff.

08 During pendency of the suit defendant no. 03 Sk. Suleman died and therefore the plaintiff brought on record defendant no. 03-A Lodobi Sk. Sulelman and defendant no. 03-B Sk. Tasleem Sk. Suleman as legal representative. However, in spite of service of summons they failed to appear and answer the claim of the plaintiff hence suit proceeded further ex-parte against them.

09 Perused the evidence on record. Heard advocate for the plaintiff. As the defendants and their advocate remained absent

matter is taken for judgment without hearing them. Upon rival pleadings of the party following issues were framed by my predecessor at Exh. 27 to which I have recorded my findings along with reasons as follows.

Sr. NO.	ISSUES	FINDINGS
01	Does the plaintiff prove that defendants no. 05 to 07 relinquished their right in respect of suit property in favour of plaintiff?	No.
02	Does the plaintiff prove that, defendants no. 01 and 02 are illegally possessing the suit property?	Yes.
03	Whether the plaintiff is entitle to possession of suit property?	Yes.
04	Whether plaintiffs are entitle to mense profit?	Yes.
05	What order and decree?	As per final order.

REASONS

10 The plaintiff (PW-1) in order to prove his case filed his affidavit evidence vide Exh.28 and one another witness namely Gulab Namdeo Pandhare (PW-2) vide Exh. 29 and relied on certified copy of 9/3 9/4 at Exh. 34, 07/12 extract at Exh.35, Counter foile of notice at Exh. 36, Postal receipts at Exh. 37, Receipt of post of notice at Exh. 38,39, in order to disprove the case of the plaintiff defendant no. 01 and 02 did not adduce any documentary or oral evidence. Hence, suit proceeded further

without evidence of the defendants.

ISSUE NO. 01,02,03 AND 04:

11 The plaintiff(PW-01) filed his affidavit of evidence in lieu of examination in chief and deposed in line with that of the contents of plaint. In other words he simply reiterated the story as stated by him in the plaint. In order to strengthen his assertion he filed on record affidavit of one another witness namely Gulab Namdeo Pandhare (PW-2) He deposed that, the plaintiff and defendants are acquainted with him. The suit property is also within his knowledge. Originally the suit property was owned by Sk. Mohamad. However, after his demise the plaintiff and defendant no. 03 to 07 became owner of the suit property jointly. He again deposed that, in the year 1995 defendant no. 05 to 07 being the sister of the plaintiff relinquished their share in favour of the plaintiff, his brother and Mother. Defendant no. 01 and 02 have taken the disadvantage of the absence of the plaintiff and have made illegal possession over the suit property since May 2005 without any right. He further deposed that the plaintiff on 16.04.2010 demanded possession of the suit property to defendant no. 01 and 02 in his presence at village Gaundhala but they refuse to deliver the possession of the suit property.

12 In spite of opportunity defendant no. 01 and 02 failed to cross- examine the plaintiff and his witness. Therefore, their evidence remained intact without any discrepancy. Further, inspite of opportunity defendants have failed to adduce evidence on their

behalf in order to prove their contentions. Definitely, when any party is absent in any suit during trial then it is the duty of the court to see the case of the plaintiff carefully and go into the details of the case in such way in order to protect the interest of the absent party also.

13 Here, in the case at hand after the presentment of the plaint suit summons were issued by this court to defendants. Accordingly, they appeared and filed their respective written statements also. However, after settlement of issues during evidence of the plaintiff defendants remained absent and hence they did not get opportunity to cross-examine the plaintiff and his witness. The interesting aspect of this case is that, only defendant no. 01 and 02 are the contending party. They have raised the objection to the claim of the plaintiff. These defendants in their written statement averred that, the deceased father of the plaintiff Sk. Mohamad was the owner of the suit property originally. However, in the year 1985 during his life time he partitioned orally his ancestral estate to his all the legal heirs. Being a son Sk. Gani also got his share and became the owner of suit property. He was cultivating the suit property as owner. However, though the suit property came in the share of the Sk. Gani but it was in the name of his deceased father Sk. Mohamad in the revenue record. The father of the defendants Sk. Ibrahim Sk. Baban who was the cousin brother of the Sk. Gani taken his care since the year 1990 therefore out of love and affection on 08-04-1994 Sk. Gani wrote a will on a stamp paper and

gave the suit property to the defendant no. 01 and 02. Since then defendant no. 01 and 02 are cultivating the suit property as a owner. It has been further averred that, Sk. Gani died on 01-06-1995 and after 04 years of his demise the defendant no. 01 and 02 get divided the suit property among them to extent of 1H 21R. The defendant no. 01 and 02 are in the possession of the suit property continuously. However, as they failed to mutate the suit property in their name the plaintiff has taken the undue benefit and has filed this false suit against them.

14 However, in order to prove their contentions they did not adduce any evidence on their behalf inspite of sufficient opportunity. As they remained continuously absent this court had not go except to proceed with the suit without hearing them. As the defendants have filed their written statement and have brought on record the contrary story then it was their duty to prove their contentions also. Therefore, considering their conduct an adverse inference may be drawn against them.

15 So far as the question of avernments made in the written statement filed by the defendant no. 03 to 07 is concerned in my opinion they are also cannot be considered as they remained absent and have not adduced any evidence on their behalf. The plaintiff has come with specific case and has filed on record affidavit on oath. He has also filed affidavit of one another witness. In support of his oral story he has also filed on record documents. However,

the plaintiff has not proved issue no. 01 by giving cogent evidence and there is nothing on record to infer that, defendant no. 03 to 07 have relinquished their right in favour of the plaintiff in the suit property. Hence, issue no. 01 is answered in negative accordingly. Therefore, in my opinion the suit of the plaintiff may be decreed with cost. Accordingly, I answered issues no. 02 ,03 and 04 in affirmative.

ISSUE NO. 05:

16 Having answered issues no. 02 to 04 in affirmative I do not find any reason to not to decree the suit of the plaintiff. The plaintiff has filed this suit and has prayed for ancillary relief of mesne profit which nothing but the consequential relief. The plaintiff has filed this suit and has contested the matter regularly therefore, the cost of the suit may be granted in his favour. However, as the defendant no. 01 and 02 only has contested the suit therefore, only defendant no. 01 and 02 are liable for payment of cost to the plaintiff. Thus accordingly, I proceed to pass following order.

ORDER

01. The suit is decreed in following terms.
02. Defendant no. 01 and 02 are directed to deliver vacant possession of the suit property to the plaintiff within a period of four months from the date of this order.

03. An enquiry under Order 20 rule 12 of the Code of Civil Procedure be held for realisation of mesne profits from the date of suit till the actual realisation.
04. Defendant no.01 and 02 are directed to pay cost of the suit to the plaintiff and shall bear their own.
05. Decree be drawn up accordingly.

Date: 31.01.2019

(Ashish D. Suryawanshi)
Jt. Civil Judge (J.D.) Risod.

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : CHINTAMAN R. GADGE

Name of court : Jt.C.J.J.D.& JMFC, Risod.

Date : 31-01-2019

Judgment/Order signed by the
Presiding Officer : 01-02-2019

Judgment/Order uploaded on : 02-02-2019