

MHPA010023752022



Received on : 01-09-2022

Registered on : 01-09-2022

Decided on : 08-05-2026

Duration : 3Y 8M 7D

Exh.49**IN THE DISTRICT COURT-2, PARBHANI.**

(Presided over by N.P. Tribhuwan, District Judge-2)

Reg. Civil Appeal No.79/2022

Appellant : 1 Shrinivas Ambadas More,
(Ori. Def. No.5 & 6) Age 28 years, Occu. Agriculture,
2 Avinash Ambadas More,
Age 27 years, Occu. Agriculture,
Both R/o Bhogaon (Devi),
Tq. Jintur, Dist. Parbhani.

VERSUS

Respondents : 1 Pandurang Shrirangrao Deshmukh
(Orig. plaintiff) (More),
Age 62 years, Occu. Agriculture
(Ori.Def. No.1 to 4) 2 Vishnu Shrirang More,
Age 52 years, Occu. Agriculture,
3 Shivaji Shrirang More,
Age 60 years, Occu. Agriculture,
4 Amol Shivaji More,
Age 29 years, Occu. Agriculture,
5 Parmeshwar Shivaji More,
Age 28 years, Occu. Agriculture,
All R/o Bhogaon (Devi), Tq. Jintur,
Dist. Parbhani.

Appeal under Order 41 r/w section 96 of the Civil Procedure Code, 1908

Mr. S. A. Deshpande, Learned Advocate for Appellants.
Mr. M. P. Kulkarni, Learned Advocate for Respondent No.1.
Mr. G. B. Deshpande, Learned Advocate for Respt. No.2.
Ex-parte:- Respondent No.3, 4, 5.

JUDGEMENT

(Delivered on 08.05.2026)

Appellants who were defendant No.5 and 6 before learned trial court have filed this appeal under Order 41 r/w section 96 of the Code of Civil Procedure, challenging impugned judgment and decree dated 2/8/2022 passed by learned Civil Judge Junior Division, Jintur in RCS No.128/2015. For the sake of convenience, parties are referred as per their original nomenclature.

2. Original defendant No.2 (present respondent No.2) has filed cross-appeal at Exh.21 and prayed for setting aside impugned judgment and decree and thereby supported contention of appellants/defendant No.5, 6.

3. This is suit for perpetual injunction restraining the defendants from obstructing and interfering in peaceful possession of plaintiff over suit land Gut No.212 adm. 1 H. 69 R. situated at Bhogaon Devi, Tq. Jintur. According to plaintiff, he is owner and possessor of suit land. Defendants are relative of plaintiff. They have their land in the same Gut number of plaintiff. As the suit land is situated beside Jintur-Aundha-Nanded highway, its value has been increased. Therefore, defendants are trying to interfere in peaceful possession of plaintiff over suit land. On 9/6/2015 at about 9.00 am, all the defendants came in suit land. Defendants abused the son of plaintiff namely Ashok in filthy words. They also inflicted him injuries by means of stick and axe and

forcibly taken away agricultural equipments, tin sheets and other material from the suit land. Accordingly, plaintiff and his son have lodged report in Jintur Police Station. But police have not taken any action. Hence, plaintiff has filed application u/s 156(3) of Cr.P.C. before learned JMFC Jintur. Even on 29/11/2015, the defendants have restrained the plaintiff and his son from cultivating suit land. Defendant No.1 and 2 given slap to the plaintiff. Defendant No.3 to 6 prohibited the plaintiff from cultivating suit land.

4. The defendants were served with the summons. They appeared before learned trial court but failed to file written statement. Therefore, learned trial court has proceeded without their written statement as per order dated 30/3/2016.

5. Learned trial court has decreed the suit as per impugned judgment and order. Defendant No.5 and 6 have challenged the said judgment and decree in this appeal. The defendant No.2 has supported defendant No.5, 6 by way of cross appeal/objection (Exh.21). According to appellants and respondent No.2, the plaintiff has given no reason why the defendants are interfering in his peaceful possession over suit land. Learned trial court has dismissed application (Exh.32) which was filed for setting aside "No Written Statement Order". Therefore, the said order is liable to be set aside and the matter is required to be remained for deciding afresh.

6. Appellants further contended that on 30/3/2022, advocate of defendants has filed pursis contending that the parties are not in contact. Therefore, he is withdrawing his Vakilpatra/Wakalatnama. The so called postal notice sent by the advocate was not received to the

appellants on 18/6/2022. No opportunity was given to the defendants for final hearing. Thus, learned trial court has committed grave error in decreeing the suit.

7. Following points arise for determination of this court and findings thereon recorded for the reasons as follows;

<u>POINTS</u>	<u>FINDINGS</u>
1. Does plaintiff prove that he is owner and possessor of suit land ?	... Yes
2. Does plaintiff prove that defendants are obstructing and interfering in his peaceful possession over suit land ?	... Yes
3. Whether learned trial court has not given opportunity to defendants to file W.S. and contest the suit ?	... No
4. Whether impugned Judgment and decree deserves to be interfered ?	... No
5. What order ?	As per final order.

REASONS

As to Point No.1 :-

8. Heard learned counsel of both parties. Perused written notes of argument filed by advocate of respondent No.1/plaintiff.

9. In order to prove his case, the plaintiff has examined himself and one witness Bhaskar Manikrao More. He has filed copy of 7/12 extract of suit land at Exh.28, certified copy of Cri. Application No.143/2015 at Exh.29 and Namuna No.8 of suit land at Exh.30. The plaintiff has reproduced all contents of plaint in his chief-examination.

His evidence remained unchallenged, as the defendants failed to take his cross-examination. The 7/12 extract, Gao Namuna No.8-A shows that the suit land Gut No.212 to the extent of 1 H. 69 R. is in the name of plaintiff. It also shows that plaintiff is in possession of the suit land. Moreover, the Mutation Entry No.1132 which was filed by defendant shows that original owner viz. Shrirang Narayan has partitioned the land Survey No.150 among his four sons. In the said partition, portion adm. 1 H. 46 R. each given to his four sons. Mutation Entry No.1548 also shows that original owner Shivaji Shrirang has corrected the partition and allotted 1 H. 71 R. to Pandurang/plaintiff and other sons to the extent of 1 H. 71 R. each. Witness of plaintiff namely Bhaskar Manikrao More has supported the contention of plaintiff. Thus, considering the unchallenged oral evidence of plaintiff, his witness coupled with documentary evidence, it becomes clear that plaintiff is owner and possessor of the suit land. Hence, I answer Point No.1 in affirmative.

As to Point No.2 :-

10. Evidence of plaintiff makes it clear that on 9/6/2015 at about 9.00 am and on 29/11/2015, defendants have obstructed in his peaceful possession over suit land. They prohibited the son of plaintiff from cultivating the suit land. They inflicted injuries to the son of plaintiff. In this regard, they given complaint to police but in-vain and therefore, they filed application u/s 156(3) bearing Cri. M.A. No.143/2015 before learned JMFC. The learned JMFC has passed order on 6/7/2015 u/s 156(3) of Cr.P.C.. All these facts and evidence established that the defendants have interfered and obstructed in peaceful possession of plaintiff over suit land. Therefore, I answer Point

No.2 in affirmative.

As to Point No.3 :-

11. Defendant No.5, 6 and 2 have filed this appeal mainly on the ground that learned trial court has not given them opportunity to file written statement and contest the suit. On this aspect, the record and proceeding of learned trial court shows that defendants appeared before learned trial court in pursuance of suit summons. However, they have not filed written statement. Thus, learned trial court has passed order on 30/3/2016 and thereby proceeded without written statement of defendants. Record further shows that the defendants have filed application (Exh.32) for setting aside No Written Statement Order. The said application came to be rejected. While rejecting the said application, learned trial court observed that lastly on 30/3/2016 application filed by defendants at Exh.19 was rejected because prescribed period of 90 days for filing written statement was over. Thereafter, defendant has filed application (Exh.32) on 6/12/2018 i.e. **after 2 years 8 months 6 days**. In the said application, the defendants have given reason that they attended marriage of their nephew at Nanded and therefore, failed to file written statement on 30/3/2016. Pertinent to mention here that the marriage ceremony was not going for a period of 2 years 8 months 6 days and therefore, it is not reasonable and justifiable ground for non-filing of the written statement.

12. Moreover, the defendants have suppressed the fact that they have filed Writ Petition No.5931/2020 before Hon'ble High Court being aggrieved by the No W.S. order of the learned trial court. The plaintiff has filed copy of the order dated 22/8/2022 passed in the said

Writ Petition which is reproduced as under:-

Learned counsel Smt. Sawari Patil h/f Shri Miling Patil has filed a communication from the petitioners. By this communication, petitioners do not want to proceed with the petition. Communication is taken on record.

In view of the above, petition is disposed of as withdrawn. Pending applications, if any, also stand disposed of.

13. Learned counsel for appellants relied on the order dated 17/11/2014 passed by Hon'ble Bombay High Court in Writ Petition No.8132/2014, wherein Hon'ble High Court observed that it is well settled by the judgment of Apex Court that in matters of condonation of delay, a highly technical approach should be avoided and an approach which furthers the cause of substantial justice should be adopted. In so far as order 8 Rule 1 of CPC is concerned, which is the relevant provision governing the filing of the written statement. The Apex Court has held that the said provision is directory and not mandatory and for good and sufficient reasons, the time to file written statement can be extended.

14. In the present case, the appellants have suppressed the aforementioned material fact of filing of Writ Petition and its withdrawal, as they do not want to proceed with the petition. Thus, it becomes clear that defendants are not bonafide and they want to prolong the matter by hook or crook. In view of the above facts and circumstances, it becomes clear that in-spite of ample opportunities, defendants failed to file the written statement. There is no just and reasonable ground for non-filing of the written statement. As per above cited case law for good and sufficient reasons, the time to file written

statement can be extended. However, in this case there is no good and sufficient reason shown by the defendants. Thus, I answer Point No.3 in negative.

As to Point No.4 :-

15. In view of above entire discussion and evidence, the impugned Judgment and decree cannot be interfered with. Therefore, I answer Point No.4 as above. In view of peculiar facts of this case, it is desirable that both parties shall bear their own costs. Thus, I proceed to pass following order.

ORDER

1. Regular Civil Appeal No.79/2022 along with cross appeal of defendant No.2 is dismissed.
2. Both parties shall bear their own costs.
3. Decree be drawn up accordingly.
4. R & P be sent to learned trial court.

Date : 08.05.2026



(N. P. Tribhuwan)
District Judge-2, Parbhani.

Arguments heard on	17.02.2026 and 05.05.2026
Judgment/order delivered on	08.05.2026
Dictated on	08.05.2026
Typed on	08.05.2026
Checked on	08.05.2026
Signed on	08.05.2026

CERTIFICATE

I affirm that the contents of this PDF file Judgment / order is same and as per the original Judgment/order.

Name of Stenographer : Ramesh Annasaheb Kagbatte
Name of the Court : District Court-2, Parbhani
Date of Judgment/order : 08.05.2026
Judgment/order signed on : 08.05.2026
Presiding Officer : N.P. Tribhuwan
Judgment/order uploaded on : 08.05.2026