

MHNS020018932013



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Duration : Y. M. Ds.
12 10 19

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION,
NASHIK.

(Presided over by Shailesh A. Bafna)

Regular Civil Suit No. 561/2013

Exh. No.127/A.

1. **Purushottam Madhav Jadhav**
Age 47 years, Occ. Agriculturist,
2. **Prakash Madhav Jadhav**
Age 35 years, Occ. Agriculturist,
3. **Sau. Shobha Hiranman Pandit**
Age 49 years, Occ. Agriculturist, ... **Plaintiffs.**
4. **Sau. Durga Sunil Nikam**
Age 44 years, Occ. Agriculturist,
5. **Sau. Sangita Sunil Nikam**
Age 47 years, Occ. Agriculturist,
All R/o. Aadgaon, Tal. Dist. Nashik
At present : Mathoshri, New Bhaji Market,
Upnagar, Nashik Road, Tal.Dist. Nashik

//Versus//

1. **Shakira Nijamoddin Choudhary (Died)**
2. **Taj Nijamoddin Choudhary**
Age 28 years, Occ. Agri. & Business
R/o. Flat No.16, near Gaikwad Hall,
Bhabha Nagar, Nashik, Dist. Nashik.
3. **Smt. Yashoda Madhav Jadhav**
Age 67 years, Occ. Agriculturist,
4. **Vijay Madhav Jadhav**
Age 40 years, Occ. Agriculturist,
Both R/o. Aadgaon, Tal.Dist. Nashik ... **Defendants.**

at Present : Matoshri, New Bhaji Market,
Upnagar, Nashik Road, Tal. Dist. Nashik.

5. **Sahabuddin Nizamoddin Choudhary**

Age 38 years, Occ. Business

6. **Salimuddin Nizamoddin Choudhary**

Age 36 years, Occ. Business

Both R/o Shakira Bungalow, Hirve Nagar,
Bhabha Nagar, Nashik, Tal. Dist. Nashik.

CLAIM : Suit for declaration,
preferential right and
perpetual injunction.

Advocates Appeared -

Shri. D.V. Ponkshe.

Advocate for plaintiffs.

Shri. S.M. Thakre.

Advocate for defendant no.1, 2, 5 & 6

Shri. Kachole.

Advocate for defendant no.3 and 4

J U D G M E N T

(Delivered on 30th July, 2026)

Plaintiffs have sued defendants for declaration of the sale-deed, for exercising their preferential right with ancillary relief of injunction.

2. As the threshold, it is advantageous to note certain admitted facts. It is admitted fact that the dispute is about land Gat no.2059 total area 1H 64R out of it excluding 0.H 18R towards northern side, the remaining property is subject matter of dispute (Hereinafter referred as “suit land”), situated at Aadgaon, Tal. Dist. Nashik. The relationship of parties is admitted i.e., plaintiff no.1 and 2, defendant no.4 are sons, plaintiff no.3 to 5 are daughters of defendant no.3 (mother) and deceased Madhav.

3. The plaintiff's case shorn of superfluities is as follows:

The suit land is ancestral property of deceased Madhav. Madhav died in year 1991. There is no partition by metes and bounds. Hence, there is no separate demarcation of share of any of legal representatives of Madhav. Despite it, defendant no.1 and 2 by taking disadvantage of old age of defendant no.3 and naivety of defendant no.4 got executed registered sale-deeds bearing registration no.3583/2013 dated 02.04.2013 and 4702/2013 dated 17.04.2013. Both sale deed has been executed without any consideration. So also, possession has not been transferred. On 07.09.2013 defendant no.1 and 2 tried to take possession of suit land. They were also trying to mutate their names in revenue record. Hence, plaintiffs were constrained to file the present suit for purchasing the suit land by preferential right, for declaration that both sale-deed illegal and not binding on them along with ancillary relief of perpetual injunction.

4. Defendant no.5 and 6 are legal representatives of defendant no.2. Defendants no.1, 2, 5 and 6 have contested the suit by filing their written statement (Exh.24, 103 and 111). So also, defendant no.2 has also filed additional written statement (Exh.101). They have traversed the suit contentions and *inter-alia* contended that, plaintiffs have not paid proper court fees. Partition amongst plaintiffs and defendant no.3 and 4 have been effected. Plaintiffs wanted to sale their share in suit land. But defendant no.1 and 2 showed inability to purchase it. They are in

possession of suit land (as per the map annexed to their sale deeds). The description of suit land was not proper. Without taking any permission of the Court, relinquishment deed and sale deed have been executed by plaintiffs. On its basis mutation entries also have been effected. Sale deeds executed by plaintiffs, specific demarcate of defendant's land (suit land). Hence, on all these counts, they prayed to dismiss the suit.

5. Defendant no.3 and 4 filed *vide* their written statement (Exh.34) have ***admitted*** the suit claim. They additionally contended that defendant no.4 wanted to purchase Tata Ace Car for his livelihood. He knew Jyoti Tayade who pretended to be a financier providing loan for car. She introduced him to Najim Chand Khan who also assured to help for loan. For it, they both collected pan card, ration card, light bill, Adhar card, bank passbook and other documents from them. They asked him for developing their land. But he denied. Then they asked him to mortgage the suit land for borrowing loan. They asked him to update pass book and to show some transaction in it. Thereafter defendant no.4 gave three bearer cheques to said person. Accordingly, under pretext of it, they got executed Power of Attorney and sale-deeds without paying any consideration. Thus, they cheated him. When defendant no.1 and 2 were going to construct compound wall, plaintiffs and defendants objected. There they learnt about sale-deeds. So, on 6.10.2014 defendant no.4 filed complaint to Aadgaon Police Station. Lastly, they prayed to decree the suit.

6. Heard learned Counsel for plaintiffs and defendant no.1, 2, 5 and 6. Despite giving ample opportunities to defendant no.3 and 4 they failed to work out the matter. Hence, on the basis of record the suit is taken for judgment. On the aforesaid rival pleadings of the parties, my learned predecessor was pleased to frame issues and additional issues (Exh.27). They being not in sequence, after rearranging them I reproduced them below along with my findings and reasons thereof :-

<u>S.N.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether defendant nos.1 and 2 prove that, partition of suit properties has taken place in between plaintiffs and defendant no.3 and 4 ?	: In negative.
2.	Whether plaintiffs have pre-emption right to purchase the suit land ?	: In negative.
3.	Whether defendant no.1 and 2 prove that they are the bonafide purchaser and possessor of the suit property as per sale deed ?	: In negative.
4.	Whether sale-deeds bearing no. 3583/2013 dated 02.04.2013 and 4702/2013 dated 17.04.2013 of the suit land executed in favour of the defendant no.1 and 2 are sham and bogus ?	: In negative.
5.	Whether sale-deeds of the suit land are not binding upon plaintiffs ?	: In negative.
6.	Whether plaintiffs are possessor of the suit land ?	: In negative.
7.	Whether the suit is under valued ?	: In negative.
8.	Whether the suit is not maintainable	: In negative.

due to improper description of the suit property ?

9. Whether plaintiffs are entitled to declare that, sale deed of the suit land are not binding upon them ? : **In negative.**
10. Whether plaintiffs are entitled for perpetual injunction as prayed ? : **In negative.**
11. What order and decree : **As per final order.**

REASONS

7. Plaintiffs have examined Pw1 Prakash Madhav Jadhav (Exh.36) and got certain documents in order to buttress their case.

8. On behalf of defendant no.1 and 2, Dw1 Taj Nijamoddin Choudhary (Exh.71) has been examined and got certain documents in order to debunk plaintiffs claim.

9. *Per-contra*, defendant no.3 and 4 examined Dw2 Vijay Madhav Jadhav (Exh.47) and taken support of certain documents to give support to his case of plaintiff.

10. Lastly, defendant no.5 and 6 were given ample opportunities to adduce evidence. But they failed to avail.

11. Learned counsel Shri.Ponkshe have vehemently submitted that from the evidence on record, it is manifest that the suit land was not partitioned by metes and bounds.

Therefore, in view of admitted relationship, plaintiffs have the preferential right to acquire the suit land under Section 22 of the Hindu Succession Act, 1956. They being co-owners, the provision of Section 44 of the Transfer of the Property Act, 1882 is applicable here. Therefore, the subject sale deeds were illegal. Hence, their suit deserves to be decreed.

12. Per contra, learned counsel Shri.Thakare submitted that there was partition amongst heirs of Madhav. The suit land was separate property of defendant no.3 and 4. So, they have every right to sell it to defendant no.1 and 2. Plaintiffs failed to raise objection when notice was issued. This shows that they had no intention to purchase or exercise their preferential right. As such, provisions of the Section 22 of the Hindu Succession Act, and Section 44 of the Transfer of Property Act will not come to help. Hence, the suit was liable to be dismissed with costs.

AS TO ISSUE NO.1 :-

13. Pw1 Prakash (Exh.36) reiterated that there was no partition amongst them and defendant no.3 and 4. The said theory has been supported Dw2 Vijay (Exh.47). Law does not contemplate adducing negative evidence about non-existence of thing i.e., no partition as in this case.

14. Per-contra, Dw1 Taj (Exh.71) maintained his stand as per his written statement and deposed that the suit land had already been partitioned amongst plaintiffs and defendant no.3

and 4. However in his cross-examination Dw1 Taj in *lucent* terms admitted that suit land is ancestral property. He had not inquired about partition with co-sharer. He had not verified documents about partition with revenue authorities. He had not seen mutation entry of 6D showing partition about suit land. He was unable to state if any mutation entry about partition was in existence. He had not inquired with Tahsildar, if partition was effected as per Section 85. So also, he had not seen any document with Sub-Registrar showing partition effected amongst plaintiffs and defendant no.3 and 4.

15. The oral evidence of Dw1 Taj goes to show that there is no record nor any inquiry is made by defendant no.1 and 2 about partition was effect amongst plaintiffs and defendant no.3 and 4. Before purchasing the suit land, it was their bounden duty to know the status of the suit land. Admittedly defendant no.1 and 2 have produced any record to show that partition had taken place either metes and bound or by any order or entries of revenue record. So, it cannot be said that the suit land was partition. Thus, defendant no.1 and 2 failed to prove that there was partition amongst plaintiff and defendant no.3 and 4 in suit land. Hence, I answer the *issue no.1* in the *negative*.

AS TO ISSUE NO.2 TO 5 :-

16. These issues being interwoven with each other, they are taken for joint discussion.

17. Law provides for preferential right to a Hindu. So, is the case of plaintiffs. In this behalf, Section 22 of Hindu Succession Act, 1956 needs to be taken into consideration. It says:-

“Section 22 :- Preferential Right to Acquire

Property in Certain Cases :- (1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in

class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.”

18. On bearing reading of the provision it relieves that sub section (1) confers a substantive right on an heir who along with another heir or heirs specified in Class I has acquired as heirs specified in Class I interest in any immovable property or business by virtue of any intestate succession to have a preferential right to acquire the interest proposed to be transferred by the other heir or heirs to strangers. Sub-section (1) confers only a preferential right. Sub-section (2) makes the provision for meeting the contingency where the parties cannot agree to the consideration at which the right to acquire interest is proposed to be transferred. It provides that in such contingency, i.e., where the parties cannot agree on the consideration, the Court may on an application in that behalf determine the consideration.

19. A bare perusal of the above-mentioned Section reveals its following ingredients:

- (a) This right exists between co-heirs of an intestate succession;
- (b) It gives a right to one heir, preferential in nature, over the property of other co-heirs in case of alienation to a third party;

(c) The Section itself provides for the intervention of the Court to enable the co-heir holding the preferential right to seek enforcement thereof, not through a specially laid out procedure, but only through the general procedure for enforcement of a civil right;

(d) The right of pre-emption is to be asserted at a point in time prior to completion of a transaction, by which it is alleged that such a right would be offended;

20. The principles can be further summarized for the application of the right of pre-emption i.e., :

(1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right.

(2) The pre-emptor has a secondary right or a remedial right to follow the thing sold.

(3) It is a right of substitution but not of re-purchase i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee.

(4) It is a right to acquire the whole of the property sold and not a share of the property sold.

(5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place.

(6) The right being a very weak right, it can be

defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.

21. It is no more *res-integra* that the co-sharer has a right to purchase the land which was and is of their family. The preferential right to acquire property under this section is confined only to cases of devolution of property upon specified class-I of the schedule. But it is weak primary right.

22. Admittedly, plaintiff, defendant no.3 and 4 are heirs specified in Class-I. Hence, they have preferential right granted by law. Now it needs to be scanned if the said preferential weak right has been invoked by them or not. So, also their conduct would show if they are entitled to claim it or so.

23. Pw1 Prakash (Exh.36) in luminous words admitted in his cross-examination that, defendant no.3 and 4 had issued paper publication notice before sale of the suit land, calling objection. So, this was right mandatory stage for plaintiffs to exercise their preferential right. A paper publication is issued with intention that the notice is to entire world about calling objection of the proposed transaction.

24. But Pw1 Prakash (Exh.36) further admitted that they had not raised any objection. This admission destroys the entire case of plaintiffs making entire suit to fail like playing cards. Despite availability of opportunity at right stage, plaintiffs

without any sufficient and cogent reason fail to invoke their preferential right to be exercised. Maintaining silence and let sale-deeds be executed, goes to show that plaintiffs had waived their preferential right to purchase the suit lands.

25. Had it been a case, that plaintiffs had exercised their right of purchase, and dispute about consideration would have arisen, then they were and are at liberty to approach court. But despite knowledge about alleged proposed transaction of sale, plaintiffs not waiving their preferential right lends to draw an adverse inference against them to have given up or waived their preferential right. No other inference appears to be drawn for their conduct. In such scenario, the court cannot come to rescue plaintiffs for sleeping over their right. The court will come to aid to only those who are diligent and vigilant about their right.

26. The issuance of notice by defendant no.3 and 4 itself indicate that, before entering into transaction they had taken all the care expected from a prudent man would have taken. Hence, this proves their *bonafide* care taken by them before purchase of the suit land. Not raising alarm or disputes even after execution of first sale-deed by defendant no.3 and 4 or plaintiff and further going to execute second sale-deed by defendant no.3 and 4 goes to show that despite knowledge, they permitted defendant no.1 and 2 to do their act. It would be mockery to say that without receipt of consideration a prudent men would execute second sale deed that too after span of fifteen days. Had they been really

cheated they could have raised grievance with said span of time. Raising alarm after others raising objection shows that the act of defendant no.3 and 4 are afterthought. Said acts of defendant no.1 and 2 thus are clear *bonafide* act of prudent purchaser before getting execute the sale-deed. In such scenario, it cannot be termed that sale-deeds are sham and bogus but act done by defendant no.1 and 2 are *bonafide* purchasers act.

27. Looking from the other angle to the matter defendant no.3 and 4 at one hand have admitted the suit claim. Further they have come up with the case that by cheating them, sale-deeds have been got executed by defendant no.1 and 2. Dw2 Vijay (Exh.47) admitted that they have not filed suit or counter-claim to declare sale-deeds as null and void. So also, he had not filed any criminal complaint against defendant no.1 and 2 about cheating them. Police had disposed of his complaint. This goes to show that only for sake of objection the theory of cheating has been raised. Had defendant no.3 and 4 been really cheated, as a prudent man they ought to challenged sale deeds and also initiate criminal prosecution. But none of this is done by defendants, which lends to draw an adverse inference against them.

28. Further, there is always a presumption in favour of registered document. A registered document carries a strong legal presumption of validity, genuineness, and correct execution. The key aspects of this legal principle are that registration is a solemn

official act, the burden of proof rests on the challenger, and the presumption can be rebutted. Not doing any act in that behalf to challenge registered document goes to say that the presumption is not rebutted and still hold in favour of defendant no.1 and 2.

29. The objection of defendant no.3 and 4 about non receipt of consideration needs no consideration as they have not filed any counter claim. Still, a cursory look to evidence of Dw2 Vijay (Exh.47) needs to be perused. He has in 'N' number of words admitted that he had not filed any police complaint or case against Jyoti Tayade, Najim Shaikh and Kale to say that, he was cheated. He further admitted that, without his consent nobody could withdraw the amount from his account. He had not raised any complaint till today after issuance of paper notice or till execution of sale-deeds that he has not receive consideration of it. The said three persons had no concerned with suit land or defendant. Since 2013 till today the revenue entries stood in the name of defendant no.1 and 2, which he never challenged. Further, he has gone a step ahead to say that, he had no idea of his evidence affidavit. His brother knew its contents and on say of his brother, he had signed it.

30. Not only oral evidence of Dw2 Vijay (Exh.47) destroy their theory of non-receipt of consideration, but to add to fire, the fuel i.e., statements of account extracts (Exh.75 & 67) of defendant no.1 and 2 shows that consideration has been passed in account of defendant no.4 from time to time. Hence, it is not

proved that defendant no.3 and 4 did not received consideration of sale deeds.

31. In such scenario, the plaintiff as well as defendant no.3 and 4 failed to prove that sale-deeds executed in favour of defendant no. 1 and 2 was sham and bogus. On the contrary, the evidence on record clearly indicates that, plaintiffs despite having knowledge about the transaction of proposed sale in favour of defendant no.1 and 2 failed to exercise the right of preemption/preferential right to purchase the suit land. Hence, after sale deeds they are not entitled to get their right of pre-emption enforced through the court. On the contrary, they waived it and allowed the sale-deed to be executed. Hence, sale-deeds are binding on plaintiffs as well as defendant no.3 and 4. Hence, I answer *issue no.2 to 5* are *negative*.

AS TO ISSUE NO.6 :-

32. In the aforesaid paras it is already held that sale deed executed in favour of defendant no.1 and 2 is valid. Further recitals of registered sale deeds (Exh.38 & 39) makes it *lucent* clear that defendant no.1 and 2 are in possession of the suit land. The registered documents have remained unchallenged.

33. Plaintiffs have been hampering that he is in possession of suit land. However, during the cross-examination Pw1 Prakash (Exh.36) has categorically admitted that except 7/12 extracts he do not have any other document to show that

the suit land is in his possession.

34. Admittedly, defendant no.3 and 4 have sold their share in the property (the suit land) to defendant no.1 and 2. Defendant no.4 Vijay (Exh.47) has in his cross-examination admitted that, since 2013 the revenue record stands in the name of defendant no.1 and 2. He had never challenged the said entries. However, he denied that the possession was with defendant no.1 and 2.

35. There is always a presumption about a registered document in favour of a person in whose favour the document is executed, unless rebutted. Mere words of plaintiff and defendant no.4 would not be sufficient to say that the possession did not pass in favour of defendant no.1 and 2 when the sale-deed was executed. Moreover, the fact that after the sale-deed the entries in revenue record have never been challenged goes to show that defendant no.1 and 2 are in possession of the suit land and not plaintiffs. Hence, I answer the *issue no.6* in the *negative*.

AS TO ISSUE NO.7 :-

36. Dw1 Taj (Exh.71) has raised objection about the suit has been under value by plaintiffs. According to him, the sale-deeds (Exh.38 and 39) are valued for consideration of Rs.50,00,000/- (Fifty lakhs only). The suit ought to have been valued on the said amount. However, this lucid argument and contention cannot be accepted for simple reason that plaintiffs

are aliens to the sale-deed.

37. Their Lordships in case of **Suhrid Singh Vs. Ranveer Singh, AIR 2010 SC 2807** has held that, *“A plaintiff who is not an executant (party) to a sale-deed is not required to sue for cancellation of the deeds. So, he is not required to pay Court fee on the sale consideration mentioned in the sale-deed.”*

38. Perusal of the plaint and the prayer made therein indicates that plaintiffs have sought relief that sale-deeds executed by defendant no.3 and 4 in favour of defendant no.1 and 2 are not binding on him goes to show that they have not sought cancellation of sale-deeds. Hence, they were not required to pay Court fees on the consideration of sale-deeds which they have not executed. Hence, it cannot be said that the suit is under value. Hence, I answer the **issue no. 7** in the **negative**.

AS TO ISSUE NO.8 :-

39. Defendant no.1 and 2 have challenged that the suit land is not identifiable due to improper description of the suit land and hence suit is not maintainable. Per-contra, as per plaintiffs there is no partition of suit land and hence the share of defendant no.3 and 4 who have executed sale-deed in favour of defendant no.1 and 2 is not identifiable.

40. Evidence on record has come that partition by metes and bounds have not taken place of the suit land. So, the share of

defendant no.3 and 4 was not identifiable on the day of filing of the suit. Mere subsequent development that plaintiffs had shown in subsequent sale-deed (Exh.121) executed by them the boundaries mentioned by present defendant no.1 and 2 in their sale-deed cannot be said that plaintiffs have admitted the exact description mentioned by defendant no.1 and 2. So, giving the entire description of the suit land is sufficient. Moreover defendant no.1 and 2 have purchased limited area to extent of 42.48R suit land out of the entire property.

41. The intention of Order VII Rule 3 of Civil Procedure Code is that the property should be sufficient to identify, in case its boundaries or number in record of settlement or survey is mentioned. It is only intention that parties should have knowledge about the exact area for which the dispute is going on. Admittedly, the dispute is about only 42.48R and nothing more. So, it cannot be said that the improper description of suit land is given and hence suit is not maintainable. Hence, I answer the *issue no.8* in the *negative*.

AS TO ISSUE NO.9 AND 10 :-

42. In the aforesaid paragraphs it has been observed and held that, plaintiffs despite having legal right of preferential for purchase, they failed to exercise it. Failure to exercise the said right even after knowledge of the sale-deeds, negated their preferential right. So, sale-deeds executed by defendant no.3 and 4 in favour of defendant no.1 and 2 are binding on plaintiff.

Hence, they are not entitled for the declaration of not binding sale deeds on them.

43. Plaintiffs have sought main relief of declaration about sale deeds and their preferential right to purchase suit lands. While perpetual injunction is their ancillary relief. When the main relief fails, corollary effect is that the ancillary relief about perpetual injunction is also out of question and liable to fail. Hence, I answer *issue no.9 and 10* in *negative*.

AS TO ISSUE NO.11 :-

44. In the light of the aforesaid discussion, the suit is liable to be dismissed with costs. Hence, I proceed to pass the following order :-

ORDER

- 1] The suit is dismissed with costs.
- 2] Decree be drawn accordingly.
- 3] Keeping in the mind the spirit of e-filing and Less Paper or Paperless ecourts, print out of this judgment is not taken. Hence physical hard copy of this judgment with my signature is not kept on Record.
- 4] Digitally Signed Order is available online on Case Information System (CIS) and ecourts Portal. Hence, if certified hard copy of this judgment is asked, it shall be provided by taking print out of the Digitally Signed judgment available on CIS or ecourts Portal by Registry.

- 5] Since there is no provision in Civil Manual in regard Digitally Signed judgment, Registry is at liberty to retain print out of this Digitally Signed judgment on record, if so required.

Nashik.
Date: 30.07.2026

(**Shailesh A. Bafna**)
Civil Judge, Senior Division,
Nashik.