

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.168 OF 2024
WITH
INTERIM APPLICATION NO.6526 OF 2024
IN
SECOND APPEAL NO.168 OF 2024**

1. Shri. Baburao Namdev Magdum
Age 50, Occu.: Agriculture
At Post Salashi Tal Shahuwadi,
Dist. Kolhapur.

2. Shri. Krishna Namdev Magdum
Age: 44, Occu.: Service

3. Shri. Rajaram Namdev Magdum,
Age: 42, Occu.: Service

Appellant no.2 and 3 R/o. E-2,
Room No.3, Shantiniketan Co-operative
H.G. Soak Yugantak Colony
Sukapur, New Panvel,
At Post Panvel, Dist Raigad.

4. Sou. Balabai Namdev Magdum
Age 65, Occ.: Household,
R/o. Post Salashi, Tal. Shahuwadi
Dist. Kolhapur.

5. Sou. Nandatai Baburao magdum
Age 45, Occ.: Household,

6. Namdev Tukaram Magdum
Age 75, Occ.: Agriculture,
Appellant no.5 and 6 R/o. Salashi,
Taluka Shahuwadi, District Kolhapur.

..Appellants.
(Original Defendants)

Versus

Shri Nathuram Keshav Magdum
Age: 42, Occu.: Agriculture,
R/o. At Post Salashi,

(2)

Taluka Shahuwadi, District Kolhapur.

..Respondent
(Original Plaintiffs)

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Mr. Bhooshan R. Mandlik, Advocate for Appellants.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 11th NOVEMBER, 2025.**FINAL ORDER:-**

1. The appellants/original defendants impugn judgment and decree dated 26.10.2023 passed by District Judge, Kolhapur in Regular Appeal No.151/2019, thereby upholding judgment and decree dated 23.03.2019 passed by Civil Judge Junior Division, Malkapur-Shahuwadi in Regular Civil Suit No.115/2014. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent/plaintiff instituted suit seeking relief of perpetual injunction against appellants/defendants in respect of land in Block No.2039 situated at village Salashi, more particularly described in plaint. According to plaintiff, suit property is his ancestral property. The plaintiff and his father were cultivating the same. On 19.08.2014, defendants obstructed plaintiff's possession and enjoyment of property. The defendants appeared in suit and refuted plaintiff's claim contending that suit property was joint family property of Keshav Daulu Magdum and his brother. Keshav had 1/3rd share. He executed agreement to sale dated 23.02.1980 in favour of

defendants. They were put into possession of 1/3rd share in Block No.2039. Since then, they are cultivating suit property.

3. The Trial Court framed issues based on pleading of parties, recorded evidence and concluded that plaintiff is in lawful possession of suit property and defendants without any authority obstructed his possession. Accordingly, decreed suit. Aggrieved defendants filed Regular Civil Appeal before learned District Judge. However, learned District Judge dismissed Appeal upholding judgment and decree of Trial Court. Hence, this Second Appeal.

4. Mr. Bhooshan Mandlik, learned Advocate appearing for appellants submits that Namdev Tukaram Magdum was put in possession of suit property in pursuant to agreement to sale dated 23.02.1980. The plaintiff filed present suit suppressing aforesaid fact. Both the Courts failed to appreciate contents of agreement to sale, which depicts delivery of possession. The plaintiff could not establish his title and possession over suit property. In this background, Courts below could not have passed decree of perpetual injunction against appellants/defendants.

5. Having considered submissions advanced, it can be observed that respondent/plaintiff instituted suit simplicitor for decree of perpetual injunction. The factum of actual possession of suit property needs to be examined in such cases. The Trial Court has rightly

framed Issue No.1 on this point. The defendants are claiming their possession on the basis of agreement to sale dated 23.02.1980. The defendant no.1-Baburao examined himself and stated that Namdev Tukaram Magdum is in possession of suit property from date of agreement to sale of 1980. However, during cross-examination he specifically admitted that plaintiff is in possession of 1/4th share from Block No.2039. Pertinently, except so called agreement to sale, there is nothing on record to indicate that defendants were put into possession of suit property.

6. The Trial Court as well as Appellate Court observed that although defendants claim rights on the basis of agreement to sale dated 23.02.1980, they did not take further steps seeking specific performance of agreement for more than 35 years. Both Courts have rightly observed that possession of defendants never reflected in record of rights or any other documents. On other hand, revenue record consistently depicts possession of plaintiff over suit property. It is pertinent to note here that consistent revenue entries raises presumption of correctness under Section 157 of Maharashtra Land Revenue Code. No evidence is brought on record to rebut presumption of possession in favour of plaintiff.

7. In that view of matter, concurrent findings of fact recorded by Courts below holding plaintiff's possession over suit property needs no interference in Second Appeal.

8. In result, Second Appeal sans merit. Hence, stands dismissed.
9. In view of dismissal of Second Appeal, pending Interim Application also stands disposed of.

(S.G. CHAPALGAONKAR, J.)