

**: ORDER BELOW EXHIBIT-5 : REGULAR CIVIL SUIT NO. 28/2022**

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- (1) I have heard the learned advocate for the parties. I have gone through the record of this case.
- (2) The learned advocate for the plaintiff has submitted that the plaintiff is the tenant of the disputed property. The plaintiff is having possession of the suit property from the year of 1989. The fact that the plaintiff vacated the suit premises and thereafter again came into possession as tenant of the suit property from the year of 2019 only is not true. The plaintiff has produced sufficient material to show that the plaintiff is having possession of the suit property since long and the plaintiff is tenant of the suit property. The material produced by the plaintiff at Mark 3/1 to 3/72 clearly shows that the plaintiff is having possession of the suit property from years.
- (3) The learned advocate for the defendant has submitted that plaintiff has not produced any evidence to show that the plaintiff has paid the rent. The plaintiff has not paid the rent of the suit property and if injunction as prayed for by the plaintiff shall be granted, in that case, the defendant would not be in the position to file suit for eviction under the Rent Act and thereby irreparable injury will be caused to the plaintiff. The plaintiff has not produced any evidence which can show that defendant has tried to dis-possess the plaintiff forcefully. The defendant had filed proceeding under Land Grabbing Act. Thus, the defendant is following legal proceedings, the defendant has never taken the law in his hands. The plaintiff has not paid the rent and is defaulter. The plaintiff has not deposited any rent even in this Court. The plaintiff is tenant of the suit property but has failed to pay rent that is why, the plaintiff is not entitled to have injunction as prayed for by him.

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(4) I have taken the rival submission into my consideration very seriously and have gone through the record of this case. As per the case of the plaintiff, the plaintiff is the tenant of the suit property since the year of 1989. The plaintiff has produced copy of rent agreement at Mark 3/1. On perusing the Mark 3/1, it appears that the plaintiff was given possession of the suit property in the year of 1989 as tenant. As per the case of the plaintiff, the plaintiff has continued to be tenant of the suit property till today whereas as per the case of the defendant, the plaintiff was given the suit property on rent in the year of 1989 for period of 11 months only and after some time, the plaintiff vacated the suit premises and handed over the possession of the suit property back to the defendant but the name of the plaintiff was not removed from the record of Nagar Palika. As per the case of the defendant, in the year of 2007, the plaintiff was again given the suit premises on rent at the rent of Rs. 5,000/- per month and as the plaintiff was not paying the rent, the defendant asked the plaintiff to vacate the suit premises in the year of 2019. But due to Corona Pandemic, the defendant was not in position to come to the Kheralu and the defendant came to Kheralu in November, 2021 and asked the plaintiff to vacate the suit premises but the plaintiff denied to vacate the suit premises and also denied to pay the rent and threatened the defendant that is why the defendant filed proceeding under Land Grabbing Act on 29th of the June, 2011 and in order to raise defence in the proceeding under Land Grabbing Act, the plaintiff has filed present suit.

(5) Thus, as per the case of the plaintiff, he is tenant of the suit property since the year of 1989 till today whereas, as per the case of the defendant, the plaintiff was tenant of the suit property in the year of 1989 but after some time, the plaintiff vacated the suit premises and the plaintiff was again given the suit property on rent

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in the year of 2007. Thus, it appears that the plaintiff is tenant of the suit premises and is having the possession of the suit premises is not disputed by any of the parties. Thus, the fact that the plaintiff is having possession of the suit premises as tenant is not disputed between the parties.

- (6) As per the case of the plaintiff, he is in possession of the suit premises continuously since 1989 whereas, as per the case of the defendant, the plaintiff vacated the suit premises in short time after 1989. But the defendant has failed to produce any material which shows that the plaintiff vacated suit premises. From the material produced by the plaintiff at Mark 3/1 to 3/72, prima facie appears that the plaintiff is having possession of the suit premises from long time. Thus, it appears that the plaintiff has raised triable issues. The plaintiff has a genuine dispute between the parties which requires adjudication on merits. The fact that the plaintiff is in possession as the tenant is not disputed by any of the parties. The only dispute that has been raised by the defendants during the course of the arguments is that plaintiff has failed to pay any rent and if injunction as prayed for by the plaintiff should be granted, then in that case, the defendant would not be in the position to file suit for eviction under Rent Act. But it is my humble opinion that if this Court will grant an injunction protecting the possession of the plaintiff and prohibiting the defendant from disturbing the possession of the plaintiff without following due process of law, then, such injunction shall protect the interest of both the parties and such injunction will not cause any injury to the defendant and the balance of interest shall also be maintained. So, in the view of all the discussions made above and particularly in the view of the fact that the plaintiff is in possession of the suit property as tenant and particularly in the view of the fact that the defendant has failed to produce any material to show that the plaintiff vacated the said

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premises in the year of 1989, I pass the following final order below this application:

**::ORDER::**

1. The present application is hereby partly allowed.
2. The defendant is hereby ordered that he shall not interfere with the possession of the plaintiff of suit premises without following due process of law till the final disposal of this Suit.
3. The cost of this application shall follow the cost of the suit.

Pronounced in open Court today.

Date:- 14.07.2025

Place: Kheralu, Mahesana

(Rakeshkumar Vasantlal Soni)

Principal Senior Civil Judge, Kheralu.

**Judge Code: GJ01193**