

MHAU080011992026



R.C.S./114/2026

Fakirba Namdeo Tatde Vs. Prakash Shamrao Taral

ORDER BELOW EXH. 10

This is an application under Order 39 Rule 7 of C.P.C. for appointment of Court Commissioner to inspect existing position of possession of the suit property, by defendants.

02. It is submitted that, the plaintiff has filed suit for perpetual injunction along with T.I. application contending that, he is owner and possessor of the suit property on the basis of registered sale-deed dated 16/03/2012 and he prayed for restraining defendants from disturbing his possession over suit property i.e. Gut No. 218 admeasuring 1 H 20 R situated at Natvi, Tq. Sillod. T.I. application is pending.

Defendants appeared in the suit and prior decision on T.I. application, they have filed present application on following facts :-

03. The suit property is agricultural land. In the year 2012, father of defendant No. 1 was in need of money and he took ₹ 2,00,000/- from plaintiff on interest @ 3%. Accordingly, plaintiff's father namely Shamrao Balaji Taral got executed sale-deed on 16/03/2012 of the suit property in favour of plaintiff and security for loan amount. But, the possession of the suit property was not handed over to the plaintiff, as the sale-deed was executed only for the purpose of security of money. That sale-deed is sham

document. The father of defendant No. 1 paid regular interest to the plaintiff in his life time. The father of plaintiff demised away on 09/05/2014. Thereafter, defendant No. 1 has paid the entire amount with interest to the extent of ₹ 10,64,000/- till December 2024.

04. After repayment of the entire loan amount with interest, defendant No. 1 requested plaintiff several times for re-conveyancing sale-deed of the suit property. But, plaintiff was asking for ₹ 3,00,000/- more. The defendants are in possession of suit property, as possession of the suit property was not handed over to plaintiff at any point of time.

05. The plaintiff is doing illegal money lending business. On 09/07/2025, defendant No. 1 made complaint in writing to the Assistant Registrar (money lending) Co.Op. Society, Sillod, Tq. Sillod requesting that, the sale-deed is executed as security of loan amount and entire loan amount is paid to the plaintiff, still plaintiff is asking ₹ 3,00,000/- more and he is not ready to reconvey the sale-deed. The copy of the said complaint is enclosed herewith.

06. On the basis of complaint of defendant No. 1, said authority has given directions to the Talathi Saja to make spot panchanama on the suit property. The copy of communication letter dated 04/08/2025 is enclosed herewith for kind perusal of this Court.

07. In spite of direction panchanama was not carry out of the suit property. As such, defendant No. 1 requested to Tehsildar Sillod to make panchanama of the suit property. The copy of request letter dated 07/11/2025 is enclosed herewith. As per the request of defendant No. 1, Tehsildar Sillod

directed circle officer Shivna and village revenue officer to make inspection of the suit property. The copy of communication letter dated 8/12/2025 is enclosed herewith. In view of directions given by Tehsildar, Sillod dated 08/12/2025, revenue officer, Natvi issue notices to plaintiff, defendant, Sarpanch, Police Patil and revenue servant to remain present in Gut No. 218 on 16/02/2025.

08. The plaintiff, defendants and adjacent neighbors were present in Gut No. 218. Accordingly, in the presence of panch Anil Hiwale, Police Patil Natwi, Ramesh Ramchandra Jadhav Sarpanch, Kashinath Bapurao Jadhav, Samadhan Waluba Jadhav, Sheshrao Dhondiba Gund, Shamrao Banaji Taral, Raju Lalgir Giri and Dilip Rangnath Kale, panchanama of suit property was prepared by revenue authority.

09. One of the panch namely Rameshwar Sampat Kakde stated that, agricultural land Gut No. 217 is in the name of his father and he is neighbor of Gut No. 218. One Thansing Jalansing Sananse, the owner of Gut No. 221 stated that, Prakash Shamrao Taral is cultivating suit property. Shamrao Banaji Taral also stated that, he is having agricultural land Gut No. 218 and same is being cultivated by Prakash Shamrao Taral. The copy of panchanama dated 16/02/2026 is enclosed herewith.

10. The above cited panchanama shows that, defendants are in possession of suit property. Plaintiff was present at the time of panchanama dated 16/02/2026 in agricultural land Gut No. 218. In spite of having knowledge of that panchanama, plaintiffs suppressed material facts from the Court and file false injunction suit against the defendants on the basis of sale-deed. The plaintiff is not in possession of suit property. Hence, for

ascertaining true facts of existing position of the possession of suit property it is just to appoint Court Commissioner for inspection of the suit property.

11. Defendants are in possession of suit property and defendant No. 1 is cultivating suit property during the life time of his father Shamrao Banaji Taral. Total pice of agricultural land admeasuring 4 Acre 20 gunthe is in possession of defendants and there is no boundary in between the very land mentioned in the sale-deed and remaining land of defendants. Towards the south side of entire land of 4 Acre 20 gunthe, there is land of agricultural land of Bhimrao Banaji Taral and thereafter, there is one neem tree between boundary of Bhimrao Banaji Taral and the suit property. Further, in the middle portion of the suit property, there in one Mahua tree. To the west side of the boundary of suit property, there is tree of Anjan. Even there is pipeline from Gut No. 211 to 218. To the east side of suit property, there is agricultural land of Nandkishor Pandurang Barote and the same is existing to the suit property.

12. Considering all the above facts and circumstances, it is just necessary before passing an order of T.I. application to ascertain existing position of the possession of the suit property and for that purpose to appoint Court Commissioner. The defendants are ready to deposit the charges of Court Commissioner. An affidavit to support the contention of the application is filed. Hence, it is prayed for granting the very application.

13. Plaintiff filed his say to the present application vide Exh. 11 and opposed the application contending that, plaintiff has filed suit for perpetual injunction along with T.I. application as to suit property. The said suit is pending. After service of suit summons and notice, defendants appeared in

the suit through their Counsel and they have not filed their written statement yet.

14. Defendants have filed false, fabricated application vide Exh. 10 contending imaginary facts. The content in para No. 1 of the very application is correct one. But, the content in para No. 2 to 9 with prayer clause are false, bogus and imaginary. The application filed by defendants under Order 39 Rule 7 is not just and tenable. The suit of plaintiff is for seeking relief of perpetual injunction and in injunction suit, evidence can not be collected appointing Court Commissioner and the same is settled position of law. But, defendants are asking for appointment of Court Commissioner to enquire as to possession of the suit property by filing application under Order 39 Rule 7 of C.P.C. The said application is filed only for collecting evidence. But, there is no provision in the law for appointment of Court Commissioner to collect the evidence.

15. The suit property was purchased by plaintiff's father namely Shamrao Banaji Taral by registered sale-deed No. 995/2012 dated 16/03/2012. Accordingly, mutation entry No. 1722 is sanctioned. Since then, plaintiff is in ownership and possession of the suit property on the basis of very registered sale-deed. Defendant No. 1 is the witness on the very sale-deed No. 995/2012 and it is registered in his presence and possession is also handed over to plaintiff. In spite of this position, defendants are harassing plaintiff. Hence, he constrained to file present suit. Defendants filed present false and bogus application instead of filing the written statement.

16. No way, plaintiff is carrying out illegal money lending business. As father of defendant No. 1 namely, Shamrao Banaji Taral was in need of

money, he sold out suit property by registered sale-deed No. 995/2012 in the presence of defendant No. 1 as witness. The very sale-deed is registered prior 14 years and the same is not objected by anyone till today. But, only because of surge in the consideration of agricultural land, the morale of defendants deteriorated and they are harassing plaintiff.

17. False and bogus applications filed by defendants to the revenue office are disposed off by the Tehsildar, Sillod passing order bearing o/w No. २०२६/जमा-२-कवि-३४७५, दि. ०६/०३/२०२६ in view of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971, the same copy is enclosed herewith.

18. The plaintiff has filed suit for seeking relief of perpetual injunction, wherein possession is to be proved on the basis of documentary evidence. As such, defendants are required to prove their defence basing upon documentary evidence. Plaintiff has become owner and possessor of suit property by registered sale-deed No. 995/2012 and in order to prove the very fact, he is having registered sale-deed, mutation entry and 7/12 extract. Hence, it is prayed for rejecting the very application.

19. Here, it is evident that, plaintiff Fakirba Namdeo Tatade filed present suit against defendants namely Prakash Shamrao Taral, Sharda Prakash Taral and Tejas Prakash Taral for seeking relief of perpetual injunction with prayer of temporary injunction. In the very suit, defendants caused their appearance and filed their written statement and say to Exh. 05. Also, they have filed present application under Order 39 Rule 7 of C.P.C. for appointment of Court Commissioner to ascertain the facts of possession of the suit property.

20. The suit of plaintiff is based on the registered sale-deed No. 995/2012 dated 16/03/2012 which is executed by the father of defendant No. 1 namely Fakirba Namdeo Tatade in favour of father of plaintiff namely Shamrao Banaji Taral for consideration of ₹ 2,05,000/-. Here, it is noteworthy that, defendant No. 1 namely Prakash Shamrao Taral is the very witness to the very sale-deed.

21. The case of the defendants is that, in the year 2012, father of defendant No. 1 was in need of money and as such he took ₹ 2,00,000/- from the father of plaintiff @ 3% interest and as a security to that loan amount, he executed sale-deed in favour of plaintiff's father. It was condition that, after repayment of the whole loan amount, sale-deed shall be re-conveyed in favour of defendant No. 1. But, instead of repayment of whole amount of ₹ 10,64,000/- is paid by defendant No. 1 and his father, plaintiff did not re-conveyed the very sale-deed.

22. On perusal of the very sale-deed, no where it is cited that, the very sale-deed is executed as a security for the loan amount. Had the very sale-deed been executed as security for loan amount, father of defendant No. 1 or defendant No. 1 would have filed appropriate suit to that effect within limitation period. But, till today no any suit is brought by defendants as regards the very sale-deed which is executed by the father of defendant No. 1 in favour of father of plaintiff.

23. It is also contention of the defendants that, they have filed complaint against the plaintiff towards the registrar of Co-operative Society, Sillod as to carrying out illegal money lending business and on the basis of very complaint, enquiry is conducted by the registrar and revenue department. It is also contended that, during the course of very enquiry on

dated 16/02/2026, revenue officer prepared memorandum in the presence of panch, police patil, sarpanch, plaintiff and defendants, wherein it is stated by adjacent land owners to Gut No. 218 that, neither father of plaintiff nor plaintiff was and is in possession of the suit property and prior father of defendant No. 1 and now defendant No. 1 is in possession of the suit property. Hence, defendants filed this application to inspect the fact of possession of the suit property by appointing the Court Commissioner.

24. On perusal of the very memorandum dated 16/02/2026, it appears that, the said memorandum is prepared by village revenue authority, Natwi in presence of number of panchas along with defendant No. 1 Prakash Shamrao Taral and plaintiff Fakirba Namdeo Tatade. Further it appears that, both plaintiff and defendant No. 1 claimed possession of the suit property but panchas stated that, suit property is in possession of defendant No. 1. Here, an application under Order 39 Rule 7 is being decided. Hence, the said memorandum is not to be given more weightage.

25. The question before this Court is that, whether in the simpliciter injunction suit with T.I. application, defendants are entitled for issuance of writ of Court Commissioner under Order 39 Rule 7 to ascertain the fact of possession of the suit property ?

26. In order to substantiate the prayer, Ld. Adv. K. A. Ingle representing defendants relied upon the case of **Ramkrushna Nayak Vs. Manoj Kumar Behera & Anr.** (2025 SCC Online Ori 2326). In which the claim of plaintiff was that, the suit property is used as paddy land and the contention of defendant was that, the suit land is used for the school and as there is school over the suit land. Meaning that, both plaintiff and defendant were divided over the nature of the suit land. Hence, defendants filed an

application and requested the Court to depute a pleader commissioner for inspection of the suit land before decision of T.I. Application and the same was allowed by the trial Court, which order was confirmed by the Hon'ble Orisa High Court at Cuttack. Here, dispute between parties is not as to the nature of the suit land but both plaintiff as well as defendants are claiming possession over the suit land. Hence, the ratio laid down in the cited case shall not come to the aid of defendants to substantiate the present application.

27. Whereas, as against the very application Ld. Adv. G. V. Dhone representing plaintiff relied upon following cases :-

1. **Mr. Suboth Bhupatrai Mody Vs. Mr. Nandkumar Yeshwant Gupte** (Writ Petition No. 1244 of 2015, by Hon'ble High Court of Bombay),
2. **Harishankar Shrivastava Vs. Brijlal Mishra & Ors.** (Misc. Petition No. 3346 of 2022, by Hon'ble High Court of Madhya Pradesh at Jabalpur),
3. **Kunverben Vs. Punabhai Bhagwandbhai Chauhan** (2011 SCC ONLINE GUJ 5925),
4. **Sanamaj Middey Vs. Ahmed Hossain Koyal & Ors.** (Calcutta High Court, Apr 17, 2017),
5. **Ka Icilda Wallang & Ors. Vs. U. Lokendra Suiam** (1987) AIR (SC) 2047) and
6. **Smt. Jaishri W/o Navneet Kumar Mathur Vs. Shri. Mandir Ganpati & Ors.** (Misc. Petition No. 1664 of 2019 by Hon'ble High Court of Madhya Pradesh at Gwalior).

28. Having gone through the authority cited by the defendants, it appears that, facts in the case cited and facts in the case at hand are different entirely, as such, the ratio laid down wherein is not beneficial to the

defendants. Having gone through the case laws cited by plaintiff at Sr. No. 1 to 5 it appears that, ratio laid down in those authorities is also not beneficial to the plaintiff.

29. But here, having gone through the case law cited as Sr. No. 6 it appears that, the facts in the cited case are that, plaintiff had filed suit for seeking declaration of title and permanent injunction on the ground that, she purchased property Survey No. 928 by registered sale-deed dated 25/06/2016 and in the very survey number, again she purchased area of 336.25 sq.ft. by registered sale-deed dated 09/03/2017 and accordingly mutation entry were recorded in her favour. On 20/09/2018, she went to the spot to raise construction but she was obstructed by defendants. As such, she filed the suit. Defendant No. 1 also filed written statement and admitted plaint. But, defendant No. 2 & 3 to 7 filed their written statement and prayed for dismissal of the suit.

30. During the course of trial, contesting defendants filed an application under Order 39 Rule 7 of C.P.C. prior decision of T.I. application filed by plaintiff. The same application under Order 39 Rule 7 was allowed by trial Court. Hence, the same was assailed by plaintiff filing the very miscellaneous petition. The Hon'ble Madhya Pradesh High Court bench at Gwalior, it is well settled that, Commissioner can not be issued for collection of evidence and no order can be passed in order to ascertain the fact regarding who is in possession of particular property and accordingly the Trial Court order was set aside.

31. Here also, prior decision on T.I. application, defendants filed present application under Order 39 Rule 7 of C.P.C. with prayer of ascertaining the fact of possession of the suit property. It is settled position of

the law that, in the simpliciter injunction suit possession is to be proved by either party on the basis of oral as well as documentary evidence. Only to ascertain the facts of possession, Court Commissioner can not be appointed. Hence, the application filed by defendant is devoid of any merit and same deserves to be rejected. Meaning that, defendants are not entitled for the appointment of Court Commissioner to ascertain the fact of possession of the suit property. Accordingly, I pass following order :-

ORDER

The application vide Exh. 10 is hereby rejected

Date – 16/07/2026

(K. T. Adhayke)
Jt. Civil Judge Jr. Dn.,
Sillod.