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IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, PATODA,

DISTRICT- BEED.

(Presided over by M. A. Shinde.)

REGULAR CIVIL SUIT NO.19/2009

EXH.NO. 166

- 1) Shaikh Burakhabi Shaikh Isak, }
Age - 65 years, Occu.-Household and Agriculture, } ... Plaintiff
R/o.Patoda, Tal.Patoda Dist.Beed }
- VERSUS**
- 1) Bhausahab Sarjerao Jadhav, }
Age - 45 years , Occu.-Agriculture }
- 2) Kashinath Sarjerao Jadhav, (died) }
- 2A) Rukminbai Sarjerao Jadhav, }
Age – 80 years Occu.- Household }
- 2B) Latabai Kashinath Jadhav, }
Age – 52 years Occu.- Household } ... Defendant
- 2C) Manda Jayaram Maske, }
Age - 27 years , Occu.-Household, }
- 3) Sarjerao Laxman Jadhav, (died) }

- 3A) Tolabai Mahadev Gaikwad, }
 Age - 64 years , Occu.- Household, }
- 3B) Vachhala Ramdas Maske, }
 Age - 59 years , Occu.-Household, }
- 4) Vishnu Mahada Jadhav, }
 Age - 40 years, Occu.- Agriculture }
 Above all are R/o.Patoda, Tal.Patoda Dist.Beed }
- 5) Laximibai Sadashiv Jadhav, }
 Age – 40 years, Occu.- Household }
 R/o.Patoda, Tal.Patoda Dist.Beed }
 Currently R/o. Valiya, Tal.Valiya }
 Dist.Bharoch, State - Gujrat. }

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Appearances :

Learned Advocate A. S. Vaidya for the plaintiff.

Learned Advocate N. G. Jadhav for defendants

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JUDGMENT

(Delivered on 10/04/2026)

The suit is instituted for the relief of perpetual injunction.

02. Description of disputed properties :-

Sr. No.	Survey No.	Total area	Disputed area
1	33/2	01.00 A.G.	00.10.56 A.G.
2	33/3/A	00.15 A.G.	00.15 A.G.

The boundaries of the properties are as follows -

East – Property sold by the plaintiff to Shahadev Bangar out of total area of Survey No. 33/2 and Survey No. 33/3/A

West – Patoda-Tambarajuri Road.

South – Area 00.19 H.R out of total area of Survey No. 33/2.

North – Patoda - Manjarsumba State Highway.

(hereinafter, the disputed properties are referred to as “**the suit properties**” for the convenience). The plaintiff annexed rough map along with the plaint to show the location of the suit properties.

The facts of the case in a nutshell are as follows:-

03. The plaintiff pleaded that, the suit properties are previously owned by Parasaram Ganapati Jadhav. The plaintiff has purchased half share in Survey No. 33/2 and whole Survey No. 33/3/A by registered sale deed dt. 31.01.1984 for a consideration amount of Rs. 3,000/-. Accordingly, the name of plaintiff is incorporated on 7/12 extracts of suit properties. The suit properties are in possession of the plaintiff. Both suit properties are adjacent to each other. The suit properties on the southern side of Patoda-Manjarsumba State Highway. Survey No. 33/2 is on the Southern side of Survey No. 33/3/A. Both the suit properties are in the east-west direction.

04. The plaintiff also pleaded the boundaries of suit properties as per the sale deed as follows:-

East - River
West - Road
North - Road
South - Property of Shripati Maruti Jadhav

After purchasing the suit properties, the plaintiff sold area of 00.05 A.G. of Eastern side of Survey No. 33/2 to Jamin Maynuddin. In that area, the plaintiff and Jamin Maynuddin dug and constructed a well. The plaintiff also sold out 00.03 and half A.G. area out of Survey No. 33/2 to Sambhaji Punja Gore, Ganapati Punja Gore and Sulochanabai Nivrutti Palakar. Thereafter, Sambhaji Punja Gore has sold his property to Shahadev Bangar and others. He further sold 00.00.93 H.R. area to Sunil Ghanshyam Jadhav.

05. The plaintiff further pleaded that, she dug one well on the Eastern side of the suit property in Survey No. 33/2 next to the river flowing on the North side, as shown on the map. The plaintiff has taken electricity supply from the Maharashtra State Electricity Corporation for electric pump and laid a water pipeline in suit properties for irrigation. The plaintiff is cultivating the suit properties and enjoying the suit properties. She is an old women. Her husband is also an old person. Therefore, she is cultivating suit properties with the help of her children.

06. According to the plaintiff, defendants do not have any right or interest in the suit properties. They are not concerned with the suit properties. Survey No. 34/1/A, 34/1/AA and 34/1/E are acquired by the State Government for the Patoda-Manjarsumba State

Highway. The State Government made an acquisition of the properties of defendants. Therefore, the property of defendants is not remained in Survey No. 34. The suit properties are adjacent to the Patoda-Manjarsumba State Highway. In that locality, people are settled down. The said area is developing. Due to that from last 6 to 10 years, the price of the land is on hike. It gives commercial importance to the suit properties. Therefore, defendants illegally claiming their rights on the suit properties and as a part of it, on 19.02.2009, defendants illegally entered into the suit properties. At that time, the plaintiff was inspecting the suit properties before ploughing. Defendants also threatened that, they have filed claim against her and they forced the plaintiff for a removal of pipeline and the electric water pump. In this way, they obstructed peaceful possession of the plaintiff over suit properties. So, the plaintiff instituted the present suit for a relief of perpetual injunction against defendants.

07. Defendants filed their written statement (Exh. 48) and denied the contentions of the plaintiff. According to defendants, defendants No. 3 and 5 have land of an area 00.10 H.R. in survey No. 34/E/1. They constructed a cowshed in defendants' property. The defendant also gave the boundaries of their property as follows.

East	-	Property of Gopal Narayan and Umakant Narayan.
West	-	Property of Jitendra Sahebrao Jadhav.
South	-	Survey No. 33
North	-	Patoda-Manjarsumba Road.

(hereinafter, the property of defendants No. 3 and 5 is referred to as “**defendants’ property**”)

08. Defendants contended that, initially, defendants’ property was owned by Defendant No. 3 and the husband of Defendant No. 5 namely Sadashiv Mahada Jadhav. They had acquired the ownership on the basis of an ownership certificate issued by the revenue department. Accordingly, the names of defendant No. 3 and husband of defendant No. 5 were incorporated on the 7/12 extract of survey No. 34/E/1 by mutation entry No. 1407 dt. 30.01.1975. In this way, they were become owner and possessor of defendants’ property.

09. Defendants further contended that, Sadashiv along with his family shifted from Patoda to Valiya, State-Gujrat for his livelihood. He was residing there. He used to come to Patoda one or two times in a year and he used to take care of defendants’ property and other properties. At that time, defendant No. 3 was cultivating defendants’ property with the consent of Sadashiv. In the year 1998, defendant No. 3 had financial crises. He also went to Valiya for his livelihood. Defendant No. 3 gave his property for cultivation to others. However, defendant No. 3 used to come to Patoda to take care of said properties and other properties. In year 2008, defendant No. 3 returned to Patoda with his family and started to reside here. Defendant No. 3 repaired the cowshed.

10. Defendants further contended that, after demise of Sadashiv, defendant No. 5 become co-owner as a legal heir of deceased. Now, defendant No. 3 and defendant No. 5 are having an

undivided half-half share in defendants' property. It is agricultural land and situated on the Southern side of Patoda - Manjarsumba State Highway. On 7.12.2008, while they cultivating, the plaintiff and Ambadas Jadhav entered into defendants' property and they forced to stop their work. They also threatened that they will dispossess them from defendants' property. Therefore, defendant No. 3 instituted R.C.S. No. 16/2009 in the Court. In that suit, application for temporary injunction is allowed in favour of the defendant No. 3. Ambadas Jadhav also instituted false and vexatious suit bearing R.C.S. No. 21/2009 against defendants only with intent to dispossess the defendant No. 3 and 5 from defendants' property.

11. According to defendants, defendants' property is never acquired by the State Government for Patoda-Manjarsumba State Highway. The plaintiff wrongly mentioned the boundaries of suit properties and prepared the false map. The plaintiff mentioned the boundaries of the suit properties including defendants' property with intent to grab that property. The price of said property is on hike. Therefore, the plaintiff wants to take possession of defendants' property. Therefore, the plaintiff with the help of Ambadas Jadhav instituted false and vexatious present suit to grab the property of defendants No. 3 and 5. The present suit is instituted without any cause of action. Defendants claim the compensatory costs of Rs. 20,000/- from the plaintiff. Defendants also produced rough map along with written statement to show the location of their property. Hence, it is prayed to dismiss the suit.

<u>SR.NO.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1)	Does the plaintiff prove her lawful possession over the suit property ?	Yes.
2)	Does the plaintiff alleged obstruction at the hands of defendants to her possession in the suit property ?	Yes.
3)	Whether the plaintiff is entitled for perpetual injunction as prayed ?	Yes.
4)	Do defendants prove that suit is false and vexatious and they are entitled for compensatory costs as prayed ?	No.
5)	What order and decree ?	The suit is decreed with costs.

REASONS

12. In support of the claim, the plaintiff led her evidence by power of attorney holder namely shaikh ganni shaikh isak. He examined himself by filing affidavit in-lieu-of examination-in-chief (Exh. 70). During the pendency of the suit, the plaintiff sold some portion of the suit property to the Sunil Ghanyashayam Jadhav. Therefore, he amend the plaint and with the prior permission of the Court, he filed additional affidavit of his evidence (Exh.115). The plaintiff also examined Bhaskar Pandurang Javale (PW2). Apart from the oral evidence, the plaintiff also relied on the documentary

evidence as follows:-

Sr.No.	Nature of document	Date	Exhibit
1	7/12 Extract of Survey No. 33/2	17.02.2009	8
2	7/12 Extract of Survey No. 33/3/A	18.02.2009	9
3	Certified copy of Power of Attorney	08/06/2001	72
4	Certified copy of Sale Deed	31/01/1984	76
5	Certified copy of Judgment of RCS No. 16/2009	17/02/2021	113
6	Certified copy of Judgment of RCS No. 119/2016	02/07/2020	114
7	Certified copy of Judgment of RCS No. 37/1992	02/07/2020	115
8	Certified copy of Judgment of RCS No. 21/2009	17/02/2021	116
9	Certified copy of Decree of RCS No. 21/2009	20/02/2021	117
10	Certified copy of Decree of No. 37/1992	02/07/2020	118
11	Certified copy of Decree of RCS No. 16/2009	26/02/2021	119
12	8-A Extract	26/03/2024	124
13	7/12 Extract of Survey No. 33/2	26/03/2024	125
14	7/12 Extract of Survey No. 33/3/A	26/03/2024	126

13. Leading Supra oral and documentary evidence, plaintiffs

have closed their side vide pursis (Exh.77 and 164). On the other hand defendant No. 1 examined himself (DW1) at EXh. 78. Defendants also examined Vijay Sadashiv Jadhav (DW2). In support of their evidence they also relied on the documentary evidence as under :-

Sr.No.	Nature of document	Date	Exhibit
1	8-A Extract of Bhausahab Jadhav	20/03/2024	129
2	8-A Extract of Vishnu Jadhav	20/03/2024	130
3	8-A Extract of Laxmibai Jadhav	26/03/2024	131
4	8-A Extract of Raosaheb Jadhav	26/03/2024	132
5	8-A Extract of Kashinath Jadhav	26/03/2024	133
6	7/12 Extract of Gat No. 34/E/1	20/03/2024	134
7	Mutation Entry No. 6017	20/03/2024	135
8	Mutation Entry No. 1407	20/03/2024	136
9	Mutation Entry No. 16286	26/03/2024	137
10	Mutation Entry No. 18004	26/03/2024	138

14. Heard the Learned Advocate Shri. A. S. Vaidya for plaintiff and Learned Advocate Shri. N. G. Jadhav for defendants. The Ld. Advocate for the plaintiffs argued that, the oral and documentary evidence are sufficient to prove the possession of the plaintiff over the suit properties and obstruction caused by defendants to her possession. The documentary evidence also support the case of plaintiff. Hence, it is prayed to decree the suit.

15. On the other side, it is submitted that, the boundaries of

the suit properties are wrongly mentioned by the plaintiff with intent to grab the property of defendants. The plaintiff failed to prove her possession over the suit properties. The documentary and oral evidence of defendants are sufficient to disprove the case of the plaintiff. Hence, it is prayed to dismiss the suit.

16. The suit is instituted by the plaintiff herself. However, the plaintiff led the evidence through her power of attorney holder. According to the plaintiff, she is unable to move or travel, therefore, it is not possible to her to present before the Court and lead evidence in person. The plaintiff's power of attorney holder Shaikh Ganni Shaikh isak led evidence by filing affidavit in-lieu-of examination-in-chief below Exh 70. He also produced the certified copy of the power of attorney (Exh.72.). The plaintiff prior to lead secondary evidence, he took permission of the Court to lead secondary evidence vide application Exh. 65. Therefore, the power of attorney may be read in the evidence. On perusal of the power of attorney (Exh.72), it appears that power of attorney holder is empowered to lead evidence on behalf of the plaintiff.

17. A power of attorney holder can lead evidence only regarding transactions he personally entered into or acts he directly performed on behalf the principal. He can also testify for the procedural matters or transactions within his own knowledge, but he cannot depose regarding the facts within the personal knowledge of the principal. With this view, it is necessary to see whether the power of attorney holder of plaintiff is having personal knowledge about subject matter of the suit and dispute between plaintiff and

defendants.

18. According to the plaintiff, the suit properties are owned and possessed by her. However, she is an old age person. Therefore, she cultivates the suit properties with the help of her children. The power of attorney holder is son of the plaintiff. It means the plaintiff is cultivating the suit properties with the help of the power of attorney holder. The said facts shows that, the power of attorney holder of the plaintiff may depose or testify about the suit properties, possession of plaintiff and obstruction caused by defendants as he has a personal knowledge about it.

As to issue No. 1 :-

19. Issue No. 1 is related to possession of the plaintiff over the suit properties. The plaintiff led oral and documentary evidence to prove her possession over the suit properties.

20. The possession of suit properties is the foundational element in the present suit. In a suit of permanent injunction, the plaintiff must prove actual, physical possession on the date of institution of suit.

21. The plaintiff reiterated the pleading in the affidavit of evidence. The plaintiff has produced 7/12 extracts of suit properties below Exh. 8, 9, 125 and 126. The name of the plaintiff shown on the 7/12 extracts of the suit properties. The plaintiff deposed that, the suit properties are purchased from Parasaram Ganapati Jadhav.

The boundaries of the suit properties mentioned in the plaint are similar as a boundaries of the suit properties mentioned in the sale deed. The sale deed is executed on 31.01.1984. The certified copy of the sale deed is also produced on record below Exh. 76. The plaintiff led secondary evidence with the permission of the Court.

22. Further, the plaintiff has examined Bhaskar (PW2) who wrote the sale deed. He deposed that in between year 1981 to 2012 he worked as Draft's Man or Scribe. The sale deed was written by him. He also identified the handwriting of the Sale Deed. Parasaram Ganapati Jadhav dictated the contents of the sale deed. The sale deed is also exhibited in his evidence. During the cross-examination, he admitted that he did not personally know to the purchaser and seller of the suit property. He also admitted that, there is no signature of purchaser on the sale deed. However, he denied that, he did not wrote the sale deed as per the dictation of Parasaram Ganapati Jadhav.

23. On perusal of the sale deed, it appears that, the boundaries of the suit properties in together mentioned as on East-river, West-Road, South-property of Shripatati Maruti, North-Road. The said boundaries are mentioned in the plaint except the boundaries of Southern and Eastern side. According to the plaintiff, now on the Southern side of the suit properties, Ambadas Shripati Jadhav and Govardhan Shripati Jadhav are owned the said property and some portion of Survey No. 33/2 is sold to Sambhaji Gore, Ganapati Gore, Sulochanabai Palakar. Thereafter, they sold some

portion of their property to Shahadev Bangar and Sunil Ghanshyam Jadhav. On the East side of suit properties, the property of Shahadev Bangar is situated. Except that, other boundaries of the suit properties mentioned in the plaint are similar to the sale deed. The plaintiff also mentioned and deposed about how two boundaries of the suit properties are changed.

24. The most important admission given by defendant No.3 (DW1) and Vijay (DW2) is that they do not have concern with the suit properties. It means, the title of the suit property is not challenged by the defendants. So, the title of the suit properties is not under the cloud. No doubt the entries of the 7/12 extracts are for fiscal purpose. However, the said document may be used to prove the possession over the suit properties. On the other side, the 7/12 extract of survey No.34/E/1 (Exh.134) shows the names of defendants are incorporated on it. It supports to their version. Therefore, the burden cast on the plaintiff to prove identifiable and actual possession over the suit properties.

25. Now, the question about identifiable, actual possession and location of the suit properties. Order VII Rule 3 of Code of Civil Procedure requires where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. For the convenience, the said Rule is reproduced here.

Order VII Rule 3 :

"3. Where the subject-matter of the suit is immovable property - Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

26. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. Even by plaint map showing the location of the disputed immovable property, it can be described. The plaintiff also produced rough map along with the plaint. The said map is not prepared by T.I.L.R. or authorized department for public purpose. Therefore, it does not carry presumptive value. She described her possession over the suit properties by showing details in map. No doubt, the rough map is conclusive proof about the possession of the plaintiff over the suit properties within the boundaries. However, the rough map corroborates the version of plaintiff. The said map is produced to understand the location of the suit properties.

27. As per defence of defendants, survey No. 34/1/E i.e. property of defendants is situated on the Northern side of survey No. 33. After the property of defendants i.e. survey No. 34/1/E, Patoda-Manjarsumba road is situated. It means, the property of defendants is adjacent to the Patoda-Manjarsumba road and not survey No.33.

The defendants did not state whether the suit properties are adjacent to their property or not. The suit is instituted about the division of survey No. 33 and not for whole survey number. Therefore, the defendant must state the owner of adjacent land of Survey No. 33. The best reason known to the defendants as to why they did not mention name of the owner of Survey No. 33.

28. In such scenario, during cross-examination of the plaintiff, he stated total area of survey No. 33/2. He admitted that, Patoda-Manjarsumba road go through survey No. 34. He specifically denied that, due to that, survey No. 34 is adjacent to both sides of road. He also denied that, he included survey No. 34/1/E in the boundaries of suit properties. He also denied that, the property of defendants adjacent to the Patoda-Manjarsumba Road. However, he again affirmed that survey No. 34 is situated on the Northern side of the Patoda-Manjarsumba Road as per pleading.

29. According to the defendants, due to Patoda-Manjarsumba road go through survey No.34, the said survey number is divided in to two parts, one part is on Southern side of the said road and another part is on Northern side of the road. According to the plaintiff, the property of defendants is not remained after acquisition and whatever remain after acquisition by the State Government is on the Northern side of the road. It means, Patoda-Manjarsumba road is between the suit properties and remaining area of the survey No. 34.

30. Defendant No. 3 in his cross-examination stated

boundaries of his property as East- property of Deshpande, West- property of Jitendra Jadhav, North- Patoda-Manjarsumba Road and South- Property of Ambadas Jadhav. He denied the boundaries of the suit properties. The defendants also relied on the Vijay (DW2). During the cross-examination, he admitted that Sal river is on the Eastern side of the suit properties and Patoda-Manjarsumba Road is on the Northern side of the suit properties. The said admission plays very vital role to affirm and identify the location of the suit properties. According to the defendants, Patoda-Manjarsumba Road is not on the Northern side of suit properties. The property of defendants is on the Northern side of Survey No. 33. The suit properties of plaintiff are a part of survey No. 33. Defendant No. 3 (DW1) and Vijay (DW2) deposed different version about the boundaries of the suit properties.

31. Vijay (DW2) is son of defendant No. 5. In such circumstances, the admission given by Vijay (DW2) shows that, Patoda-Manjarsumba road is on North side of the suit properties. Though the said fact is denied by the defendant No. 3. It is admitted by Vijay (DW2). The said statement is voluntarily given regarding the fact in issue. As per section 58 of the Indian Evidence Act, the admitted facts need not be proved. Therefore, there is no need to lead further evidence regarding the said boundaries of the suit properties. With this, the defendants did not produce any documentary evidence to show that there is a cowshed in Survey No. 34/1/E, they have possession over 34/1/E and the boundaries of the suit properties are incorrect. The sale deed of the suit properties is

executed in the year 1984. Since that day, till today, the sale deed of the suit properties is not challenged by the defendants. Considering the above important admission, the plaintiff succeeded to prove the location, actual and identifiable possession over the suit properties. Hence, issue No. 1 is answered in the affirmative.

AS TO ISSUE NO.2 AND 3:-

32. Issue No. 2 is related to the obstruction caused by the defendants to possession of the plaintiff upon the suit properties and issue No. 3 is related to entitlement of plaintiff for relief of perpetual injunction against the defendants. Considering the nature of the issues, in order to avoid repetition of facts, evidence and discussion these issues discussed together.

33. The plaintiff deposed that defendants are obstructing her possession, as part of it on dt. 19.02.2009, the defendants entered into the suit properties and they abused and threatened the plaintiff. The defendants threatened that they would dispossess the plaintiff. In this way, defendants obstructed the peaceful possession of plaintiff. During cross-examination of plaintiff, he denied suggestion that such incident was not happened. There is no important admission or inconsistency found in the evidence on the point of present issue.

34. The Ld. advocate for plaintiff argued that there are multiple proceedings between the plaintiff, defendants and Ambadas

Jadhav, etc. The certified copies of the judgment (Exh. 113, 114, 115 and 116) are produced on record. Though the judgments are not fact in issue, these judgments are relevant as previous litigation. The documents are sufficiently shows multiple proceedings between the owners of Survey No. 34 and Survey No. 33. Therefore, the multiplicity of proceeding also supports the version of plaintiff about obstruction caused by the defendants. In such circumstances, the plaintiff by oral and documentary evidence proved that defendants are obstructing peaceful possession over the suit properties.

35. The person who is in possession has a right to enjoy the property. The right of enjoyment of property cannot take away without due procedure of law or by illegal acts. Therefore, the possession of plaintiff over the suit properties needs to be protected, otherwise the plaintiff will be dispossessed. Therefore, the plaintiff is entitled for the relief of perpetual injunction as prayed. Hence, issue No. 2 and 3 are answered in the affirmative.

AS TO ISSUE NO. 4 AND 5 :-

36. These issues are related to false and vexatious suit filed by the plaintiff and entitlement of compensatory costs claimed by defendants. According to defendants, the false and vexatious suit has been instituted to harass them. There is no cause of arisen to institute the suit.

37. The learned Advocate for defendants argued that, the plaintiff failed to prove her case. The conduct of plaintiff shows that

the present suit is instituted only to harass defendants. I have given thoughtful consideration to the submissions.

38. The issues are related to section 35-A of the Code of Civil Procedure. In view of section 35-A of the Code of Civil Procedure, the court may grant compensatory costs in respect of false or vexatious claims or defence. In order to prove these issues defendants must prove that the suit is instituted only to harass or subdue an adversary or based on a false document or claim. The pleadings, evidence, and conduct of the plaintiff do not give rise to the suspicion that the contentions of the plaintiff are a concocted allegation to obtain a perpetual injunction by misleading the Court.

39. The plaintiff instituted suit on the basis of 7/12 extracts, sale deed of the suit properties. They have taken recourse of lawful right by filing suit. Further the plaintiff succeeded to prove her case. In these circumstances, there is no substance in the argument of learned advocate for defendants. Hence, they are not entitled for compensatory costs as prayed. Accordingly, issues No.4 and 5 are answered in the negative.

AS TO ISSUE NO. 6 :-

40. In view of the above discussion and findings of issues No. 1 to 3, the plaintiff succeeded to prove her case. The plaintiff constrained to institute the suit due to the illegal act of the defendants. Hence, the suit deserves to be decreed with costs. In order to answer issue No.7, the following order is passed.

ORDER

1. The Suit is decreed with costs.
2. Defendants or their agents are restrained by decree of Perpetual Injunction from interfering or obstructing the possession of plaintiff over suit properties without due process of law.
3. Decree be drawn up accordingly.

(Dictated and pronounced in open Court)

(M. A. Shinde)

Date: 10/04/2026.

Place: Patoda.

Civil Judge Junior Division,

Patoda.