

**Common Order below Exhibit 5 & 20**

**Suit Property :-**

1. The agricultural land bearing Gat No.61, area 1 Hecter 51 R, situated at Bhingare, Tal. Yeola, Dist. Nashik.

**Plaintiff's case :-**

2. Suit is for possession, permanent-injunction and specific performance. Suit-property is ancestral property of defendant. After death of defendant's father, plaintiff has been cultivating suit-property. Agreement-to-sale was executed by defendant in favour of plaintiff on 21/06/1996. Plaintiff has paid consideration of Rs.30,000/-. It was decided that remaining amount of Rs.20,000/- would be paid at the time of execution of sale-deed after deletion of encumbrances over property. Suit-property is adjoining to plaintiff's own land. It was not possible to defendant to cultivate. So, possession is handed over to plaintiff 30 years ago. Defendant has refused to execute sale-deed 8 days prior to filing of the suit. Plaintiff has incurred huge expenses to improve quality of soil. Plaintiff has acquired knowledge that defendant is searching for another customer for sale of suit-property. Hence, it is necessary to restrain defendant from

alienating suit-property and from creating obstruction to plaintiff's possession over suit-property.

**Defendant's case :-**

3. Defendant's reply is vide Exh.18. Counter claim is filed for permanent injunction. Interim injunction is also claimed. Plaintiff's possession over suit-property is totally denied. Execution of agreement in plaintiff's favour is denied. It is contended that defendant has inherited suit property after death of her mother in the year 1991. Defendant has been taking assistance of plaintiff in cultivating suit-property. But, plaintiff does not have possession. Plaintiff's suit is time-barred. Plaintiff has wrongfully obtained order from Nayab-Tahasildar to insert his name in cultivation column of revenue record. On 10/04/2016, plaintiff unlawfully entered into suit-property and threatened to dispossess defendant. So, it is necessary to restrain plaintiff from obstructing defendant's possession.

**Points for determination.**

<b>Sr. No.</b>	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Who has prima-facie case ?	...Defendant
2	In whose favour is balance of convenience ?	...Defendant
3	Whether irreparable loss would cause if injunction is not granted ?	...Yes,

**( 3 ) (Reg. Civil Suit No.225/2015  
Common order below Exh.5 & 20)**

4	What order?	.. As per final order.
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**REASONS**

**As to point no.1 to 3 :-**

4. I have given sufficient opportunity of hearing to the rival counsels. Perused record.

5. Plaintiff has filed following documents....

1. 7x12 extract of Gat No.61
2. The alleged agreement-to-sell edtd.21/6/1996,
3. Copy of notice by Tahasildar, Yeola.
4. *Pik-Pahani* papers,

6. Defendant has filed following documents.

1. Medical certificate of defendant,
2. 7x12 extracts of Gat no.61 of the year 2003 to 2015,
3. 7x12 extract of Gat no.61 of the year 2015-2016
4. *Pik-Pahani* papers,
5. Copy of complaint filed by defendant against plaintiff.
6. Order of Sub-Divisional Officer, Yeola in RTS appeal no.97/2016 which set aside order of Nayab-Tahasildar in *Pik-Pahani* case no.2/2015.

**FINDINGS :-**

7. It is pertinent to note that plaintiff is seeking injunction on the basis of his alleged possession over suit-property, but title of the suit reveals that suit is filed for possession also.

8. Plaintiff has relied upon alleged agreement dtd. 21/06/1996. According to plaintiff, defendant executed agreement to sell suit property in his favour and at the same time possession was handed over to him. Defendant has denied execution of the agreement. The said agreement appears to have been executed on stamp of Rs.20/- only. Agreement is not registered. Although, it is stated in the said agreement that possession of the said property was handed over to plaintiff by defendant, plaintiff's name is nowhere seen in the cultivation column of revenue record neither prior to the date of agreement nor subsequently.

9. Recently, the Sub-divisional officer, Yeola has set-aside order of Nayab-Tahasildar whereby plaintiff's name was recorded in cultivation column. The said order which was passed in favour of plaintiff by Nayab-Tahasildar has been canceled by Sub-Divisional Officer and fresh inquiry has been ordered.

10. Resultantly, plaintiff has nothing to show his possession over suit-property. None of the adjoining land - holders

has filed affidavit in support of plaintiff. Plaintiff has not filed a single document on record to show alleged expenditure incurred by him to improve quality of soil. According to plaintiff, he has been cultivating suit property since 1996. It has been 20 years since then. Plaintiff should have at least some document to show that he purchased seeds, fertilizers for cultivating crops in the suit-property. There is nothing to show that plaintiff has sold the crops in any market or factory. There is no affidavit of field labourer also. Plaintiff has stated that he has executed many schemes in the suit-property, but there is no such document to support his contentions.

11. On the contrary, defendant's name features continuously in the cultivation column of 7x12 extract right from beginning till today. The most recent 7x12 extract pertaining to year 2015-16 also features defendant' name in the possession column. Defendant can be seen in continuous, nu-interrupted possession of suit property.

12. Plaintiff has merely stated that he suggested defendant for execution of sale-deed on several occasions. However, plaintiff has not displayed his ready and willingness in positive steps. There is only vague averment. Specific dates or incidents are not given. When was performance demanded, who were the witnesses, what steps plaintiff took to assist defendant in removing encumbrances is not pleaded and shown on record. It appears that despite alleged refusal to execute sale-deed by

defendant, plaintiff did not bother issuing a legal notice for specific performance. No steps are visible on record by plaintiff which a prudent man would under-take in similar circumstances.

13. Though not conclusive proof, revenue entries have presumptive value. In this case on one side there is unregistered agreement-to-sell which is denied by defendant and on the other hand, there are continuous revenue entries in favour of defendant. The material on record is not sufficient to hold plaintiff's possession. Defendant appears to be having prima-facie case. Until, inquiry report of Nayab-Tahasildar is received, it has to be inferred that balance of convenience is in favour of defendant since, her continuous possession is seen from 2003 to 2015-16. Unless, plaintiff comes with additional substantial material in his favour, defendant's possession over suit property has to be presumed.

14. As regards prayer of plaintiff in respect of injunction as to alienation, there is only vague averment that defendant has been in talks with third party to sell suit-property. Such vague averment is not sufficient to grant injunction. Plaintiff should have come up with a specific name of person with whom defendant has been in talks in respect of alienating suit-property and other particular details of the transaction. Plaintiff has failed to put-up prima-facie case in this regard also.

15. Accordingly, point no.1 to 3 are answered in favour of defendant.

16. The ld. advocate for plaintiff has filed some citations. AIR 2009 SC 1527 is not applicable at this interim stage. Counter claim is filed at the time of filing written-statement and cause of action is before filing of written-statement. Counter claim is valid. So, case law cited in AIR 2000 CAL 17 is not applicable. Plaintiff's possession is not seen. So, case law cited in AIR 1980 KERALA 224(1) is not applicable.

**AS TO POINT NO.4 :-**

17. In view of above findings following order is passed.

**ORDER**

- 1) Application at Exh.5 is hereby rejected.
- 2) Application at Exh.20 is hereby allowed.
- 3) Plaintiff is hereby temporarily restrained from creating obstruction to the defendant's possession over the suit-property.
- 4) Considering the pendency of inquiry by Nayab Tahasildar above order shall be operative only until further order.

Yeola, Dist.Nashik,  
Date : 27/09//2016

( Sau. A.R. Rahane )  
Civil Judge, J.D., Yeola.