

**ORDER BELOW EXH.05**

1. This is an application filed vide Sec.94 read with O.39, R.1 and 2 of Civil Procedure Code for interim injunction.
  
2. As per plaintiff, the Northern part, admeasuring 1.05.7 H.R. land, out of Survey No. 117, Total Area 2.11.4 HR, assessed at Rs.4.49 Ps., situated at Mouza Khambale Tal. Igatpuri, Dist. Nashik , is a joint family property of her. The said Northern portion is herein after referred as '*Suit Property*'. The whole Survey No.117 was actually owned by common ancestral Shankar Dagadu Shingote, who was survive by son Murlidhar, and three other deceased children. The plaintiff is the daughter of one of the daughter of common ancestor Shankar Shingote. The names of all the legal heirs of the said common ancestor including plaintiff was recorded in the revenue record of the suit property and it is in their possession till today. The Southern portion admeasuring 1.05.7 HR was sold out to defendant No.2 on 06-12-1990 by a registered sale deed. They have no concern with the Northern half part. Despite that, now, defendants obstructing their possession over the said portion and hence she filed present suit for declaration and injunction.
  
3. The defendants appeared and filed their written statement and say to the present application, Exh.14. Their main pleading is that, the suit property was also agreed to be sold by the owner of it to them. The plaintiff is not concern with it. She made false claim.

4. Heard both the sides. Their submissions are in tune with their pleadings. Learned Advocate for defendants relied on various documents. Considering rival submissions and other facts and circumstances, following points arrived for my determination, I recorded my findings on each of them, for the reasons discussed below-

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether the plaintiff have made out a strong prima facie case to justify grant of interim injunction ?	.....No.
2.	Whether balance of convenience lies in favour of plaintiff ?	.....No.
3.	Whether any irreparable damage or loss may result to plaintiff if injunction is withheld ?	.....No.
4.	What order ?	..... Appli. is rejected.

### **REASONS**

#### **AS TO POINT NOS.1 TO 3 -**

5. As all these points are inter related, I decided them together. As per plaintiff, the property is devolved upon her by way of succession along with other legal heirs of common ancestor Shankar

Dagadu Shingote. It is in joint possession of her along with the other legal heirs. In support of her claim, she relied mainly upon her affidavit and some revenue record. The copy of 7 x 12 extract of the suit property show that it is standing in her name along with other legal heirs and also in their possession. The mutation entry No.190 show that, their names were recorded in the revenue record. To contradict this documentary evidence the defendants mainly relied upon two documents. First document is the copy of the sale deed of the Southern part of original Survey No.117 and the copy of agreement to sell of the suit property. In the copy of sale deed, a registered sale deed it is specifically mentioned that the suit property is belonged to Murlidhar Shankar Shingote, the maternal uncle of father of the plaintiff, and his legal heirs, the other legal heirs of common ancestor Shankar Dagadu Shingote, including Prabhakar Bhagirath Jagtap, the father of plaintiff and who is also party to that document, have no concerned with it. The said transaction was entered into on 06-12-1990. Later on, on 17-12-1990, the legal heirs of the said Murlidhar Shingote, who is described as a owner of the suit property, executed the agreement to sell in favour defendant No.2, Tukaram. In the said document, it is specifically mentioned that the suit property is allotted to the share of Murlidhar and as his whereabouts are not known, they executed the said document. The possession is handed over by accepting Rs.13,500/-, out of total consideration of Rs.40,000/-. It is further agreed that sale deed will be executed after recording their names in the revenue record and remaining consideration has to be paid at the time of sale deed.

6. If we compared these documents the revenue recored is in-  
confrontation with one of the admission in registered document and  
in a document kept as memorandum of transaction. It is now settled  
that the registered document carries much weight than the revenue  
record. Revenue record is generally prepared mostly for fiscal  
purposes. The copy of sale deed executed between predecessor of the  
plaintiff and the defendant clearly show that her predecessor  
admitted that they had no interest in the suit property and it is a share  
of the legal heirs of Murlidhar. The subsequent transaction, which is  
quit old and entered into, immediately after the sale deed supposed  
this primary conclusion. Had there been any share of the plaintiff  
they might have challenged these documents. Mere recording of  
name in the revenue record cannot be allowed to prevail over the  
documentary of the transactions entered into between the parties.

7. The plaintiff in support of her case filed the affidavit of the one  
of the legal representative of the Murlidhar stating that no such  
transaction was entered into. This affidavit is apparently drafted  
after thought. The said legal representative and other persons who is  
entered into transaction failed in their duty to perform their part of  
contract. Such old document cannot be discarded at behest of such  
notorious such persons who has breached contract. It is also settled  
that one cannot be benefited of its own wrong. The reliance on such  
a documents needs benefiting the person who breach the contract.

8. In view of above discussion, it appears that, plaintiff is not possession of suit property and on the strength of agreement to sale the defendants in its long standing possession. Therefore, she failed to made out strong prima facie case in her favour. Accordingly, I answered the point No.1 in the negative. If this long standing possession is disturbed, the defendants will definitely suffer such loss which cannot be compensated in terms of money as they are farmers for the reasons, balance of convenience also lies in their favour. Therefore, I answered remaining two points as well, in the negative. In view of these findings following order -

**ORDER**

Application is rejected with costs.

**Igatpuri**  
**DATE – 20/04/2015**

**(KOMALSING RAJPUT)**  
**Jt. C.J.J.D., Igatpuri, Distt. Nashik**