

**Order below Exh. 5 in Spl. C. S. No. 228/2021.**  
**(CNR NO.MHST05-000570-2021)**

Ramchandra Salunkeh Vs.Satish Fuke

Plaintiff has filed a suit for declaration and permanent injunction. He has filed application at Exh. 5 alongwith suit, for grant of temporary injunction. According to him Gat No. 417 situated at Mouje Warade, Tal. Karad Dist. Satara admeasuring 1-H 49-R is field property. Out of said field property 0.20-R is disputed property. Four boundaries of the disputed portion is given as under

Towards east – property of Jijaram Maruti Kanse

Towards west – Adjacent property of Rajaram  
Salunkhe,

Towards south – remaining property of the defendant  
and

Towards north – remaining property of the plaintiff.

Hereinafter it will be referred as “suit property”. Plaintiff and defendant both are acquainted to each other since their childhood. They are neighbors of each other. Their is friendly relation between the family of duo. Partition has been taken place of Gat No. 417 on 20.12.2003 in the family of defendant. That time 0.25-R land came at the share of wife of defendant. She transferred her aforesaid share to the plaintiff on 22.12.2003 by way of sale deed on consideration. Thereafter, defendant also transferred 0.15-R land of Gat No. 417 to the plaintiff on 24.01.2007 by way of register sale deed. Since then

plaintiff is in possession of 0.25-R and 0.15-R land of Gat No. 417. Some portion has been transferred by the defendant to brother of the plaintiff. Thus the plaintiff is co-sharer of Gat No. 417. Plaintiff has also helped monitory, to the defendant for releasing his property Gat No. 537 and 538 which were mortgaged by the defendant. Even plaintiff has extended his monitory help to the defendant time to time to solve his family problems. Thus during the year 2012 to 2014 plaintiff has provided him monitory help Rs. 6,34,520/-. Said amount came to be provided by way of either cheque or cash. Defendant also acknowledged said transactions with his signature. One Madhukar Jadhav, R/o- Warade and Nilesh Supanekar R/o- Umbraj were witnesses for said transactions. Then defendant shown his inability to repay the amount on the demand of plaintiff. Looking into the relation between parties both have decided, until the repayment of Rs.6,34,520/-, plaintiff would cultivate the suit property i.e. 20-R of land in Gat No. 417. Defendant has already given possession of the suit property to the plaintiff in December 2014. Since then plaintiff is cultivating the suit property. Though there was good relation between parties however to avoid the disputes in future, defendant executed a deed in that regard on 17.11.2016. Vinod Salunkhe and Shantaram Thorat had appeared as witness to said deed.

Defendant is avoid to repay the amount Rs. 6,34,520/- to the plaintiff. Therefore, one meeting has been taken place between parties in presence of Madhukar Jadhav and Nilesh

Supanekar. Result of said meeting is, defendant has to seek permission from concern office for the transaction of the suit property between the parties within three months. Then transaction between parties will be taken place. Thus plaintiff has already paid entire amount for the suit property. He is in possession of the same also. Now only defendant had to take the permission of concerned department of Government, for official transaction. During said period due to pandemic of Covid-19, entire transactions of public were held up. On resuming routine life, after Covid-19, plaintiff constantly followed up to the defendant for performing the transaction of the suit property however defendant did not respond for the same. On contrary on 11.04.2021 defendant tried to disturb the possession of the plaintiff of suit property and gave him threats for dispossessing him unlawfully from the suit property. Plaintiff issued him a notice on 16.04.2021 as well as reported the matter to Talbid, police station on 16.05.2021. Defendant replied to said notice falsely.

Hence, plaintiff rushed to the Court and prayed for grant of temporary injunction that defendant be restrained from dispossessing him from suit property unlawfully and restraining him creating third party interest in the suit property, till final decision of the suit.

02. Defendant appeared in the suit and filed his reply to Exh.5, at Exh. 21. He denied the contents of application Exh.5.

According to him due to weak financial position of him he claimed amount to the plaintiff, where upon plaintiff got executed one document dated 16.04.2021. Now plaintiff is taking disadvantage of said document. Suit property is never in possession of plaintiff. Plaintiff issued false notices to the defendant. Suit property was in possession of the defendant therefore no question arises to disturb the possession of the plaintiff. There is no reason at all to the plaintiff for the suit as well as application Exh. 5. He prayed for rejection of the application with compensatory cost.

03. In view of aforesaid story following points arise for my determination. I have recorded my findings thereon with reasons given as below.

| <b>Sr.No.</b> | <b>Points</b>                                                                    | <b>Findings</b>            |
|---------------|----------------------------------------------------------------------------------|----------------------------|
| 1.            | Does plaintiff prove that he has prima facie case ?                              | <b>Yes.</b>                |
| 2.            | Is balance of convenience in favour of plaintiff ?                               | <b>Yes.</b>                |
| 3.            | Whether irreparable loss would cause to plaintiff if injunction is not granted ? | <b>Yes.</b>                |
| 4.            | What order ?                                                                     | <b>As per final order.</b> |

### **REASONS**

04. In present matter in support of his claim plaintiff has filed copy of register notice and reply of it as well as Kabje Pavati. On

contrary defendant has filed O.C. of notice reply dt. 27/05/2021 and photographs dated 03/06/2021 with bill memo.

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

05. All points being interlinked I am discussing it simultaneously. Prior to discussing the points, it is to be mentioned here that, what are admitted facts. Admittedly, plaintiff and defendant have friendly relation with each other. Due to weak financial position defendant claimed amount from plaintiff. Plaintiff paid Rs. 6,34,520/- to the defendant between 2012 to 2014. There are other transactions also have been taken place between the family members of plaintiff and defendant.

06. In present matter claiming of amount from plaintiff by defendant is admitted. Amount given by the plaintiff to the defendant is also admitted. Execution of the document on 17.11.2016 is admitted. Now only dispute between parties whether the suit property has physically transferred to the plaintiff by defendant in consideration of said amount or Kabje Pavati is executed only for the sake of transaction between parties. According to the plaintiff, in consideration of amount Rs. 6,34,520/- said document is executed and physical possession of the suit property was given to him. According to the defendant said document is executed just for the sake of the transaction. No suit property was given for cultivation to the plaintiff. It is still in possession of defendant.

07. I have gone through the document dated 17.11.2016 it is called as Kabje Pavati. In para second of said document i.e. Kabje Pavati it is clearly mentioned that physical possession of the suit property is handed over to the plaintiff by the defendant till settling of amount Rs. 6,34,520/-. It is clearly mentioned in it that said property is already handed over to the plaintiff since the year 2014. Witnesses have also signed on said document. Now it is to be mention that defendant is not disputing the execution of said document. In such circumstances, why the defendant has not made it clear that why the portion of handing over the physical possession of the suit property has been mentioned in it. It can not be ignored that as per the story of the plaintiff he has taken the possession of the suit property since the year 2014. Same thing has been mentioned in document Kabje Pavati. If defendant is admitting the execution of Kabje Pavati then he can not take hot and cold blow simultaneously by way of denying the contents of it. For a while, if it assumes that by way of mis-chief or by deceiving the defendant, the plaintiff has get mentioned the favorable contents in Kabje Pavati, even then it can not be ignored that said document is available with both parties since the year 2016. Had it been the fact then the defendant could have agitated prior to this. He could have rushed to the Court first for getting deceived by the plaintiff. But it did not happen. Remaining silent of the defendant constrained me to hold that he was fully aware with the contents of Kabje Pavati.

08. According to the defendant, Kabje Pavati, was executed

for the sake of financial transaction between both of them. For a while if I again believe the version of defendant that Kabje Pavati was executed for the sake of transaction between duo, even then, it can not be lost at sight, that how the defendant was ignoring, for submitting his side before the Court. Defendant appeared in the suit on 27/08/2021. Thereafter he has applied six-seven times, for adjourning the matter with same reasons only to file his say. Lastly the Court rejected his application and passed the order for “without say” then he filed his say on 28/12/2021, after setting aside the order. Thus he took near about 4 months time only to file his say to Exh.5. This fact is necessary to be mentioned here because if plaintiff had wrongly mentioned in his application at Exh.5 about the possession of the suit property with him, then definitely defendant would have agitated and shown his eagerness to file the say at Exh.5. When possession of the suit property was at the stake then no owner will prefer to prolong the matter frequently. Behavior of the defendant for prolonging the matter is, itself one of the grounds to hold that, there is no substance in his submission that the contents of the Kabje Pavati are wrong.

09. Now I have to see on which documents, defendant is relying. He has filed a copy of notice reply and photographs alleging that said photographs are of the suit property. I have gone through the contents of notice reply dtd. 27/05/2021. The gist of reply is only the notice was issued by the plaintiff was false. Even defendant could not given the proper date of execution of Kabje Pavati. He gave the date of execution of Kabje Pavati is

**16/04/2021** in fact date of execution of the Kabje Pavati is **17/11/2016**. It shows how the defendant is careless about the date of execution of the Kabje Pavati itself.

So far as photographs are concerned it is difficult to ascertain the possession of one by way of photographs.

10. The very documents i.e. Kabje Pavati is speaking one. On relying said documents it became clear that prima facie suit property is in possession of the plaintiff.

11. According to the plaintiff his possession was obstructed by the defendant. Approaching of the plaintiff to the police station and reporting the matter with police for giving threats to him it helps to show that his possession was obstructed by the defendant.

12. Document i.e. Kabje Patti shows that defendant has handed over the physical possession of the suit property to the plaintiff since the year 2014. Plaintiff is cultivating said land since the year 2014. In such circumstances it is clear that there is prima facie the case in favour of plaintiff. Defendant has already received the amount Rs. 6,34,520/-, therefore if injunction is not granted then plaintiff would face inconvenience and would suffer irreparable loss. On contrary defendant has already received amount therefore no inconvenience would be caused to him as well as no irreparable loss would be suffered by the defendant.

13. Considering all these three factors I come to the conclusion that application deserves to be allowed. Therefore, I

answer point Nos. 1 to 3 in affirmative.

**As to point No.4:-**

14. In view of my above discussion I came to the conclusion that application deserves to be allowed and I proceed to pass following order.

**ORDER**

- 1 Application is allowed.
2. Defendant or any other person on his behalf, is hereby restrained from obstructing the possession of the plaintiff on the suit property, till final decision of the suit.
3. Defendant or any other person on his behalf, is hereby restrained from unlawfully dispossessing the plaintiff from the suit property, till final decision of the suit.
4. Defendant or any person on his behalf, is hereby restrained from creating third party interest in the suit property, till final decision of the suit.
5. Cost in cause.

Place: Karad.  
Date: 18.02.2022.

(Jayshree Punawala)  
3<sup>rd</sup> Jt. Civil Judge, S. D. Karad.