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IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION,
AT : SHRIRAMPUR, DIST. AHMEDNAGAR.
(Presided over by Ashish B.Marlecha)

RCS No.101/2018

Exh.206

Shri. Nandlal Shivsagar Sharma,
Age-55 Yrs., Occu.Labour,
R/o. Kalaram Temple, Ward No.7,
Shrirampur, Tal.Shrirampur,
Dist.Ahmednagar.

...Plaintiff

VERSUS

1. The Chief Officer,
Shrirampur Municipal Council,
Shrirampur,
Tal.Shrirampur, Dist.Ahmednagar.

...Defendants

2. Shri. Baburam Shivsagar Sharma,
Age:- 48 Yrs., Occu.:- Business,
R/o.Suryapushp Towers,
Opposite to Vyapari Mangle Karyalaya,
Davkhar Road, Shrirampur,
Tal.Shrirampur, Dist.Ahmednagar.

Suit for perpetual and mandatory injunction.

Learned Advocate Shri.A.S.Kale for plaintiff,
Learned Advocate Shri.M.P Gaware for defendant No.1,
Learned Advocate Shri.Dilip D. Autade for defendant No.2.

JUDGMENT

(Delivered on 21/04/2026)

This is a suit for perpetual and mandatory injunction.

The facts narrated in the plaint in short are:-

1. That the property bearing CTS No.49 also having CTS No.1971(A)/1, bearing Municipal house No.3281, area adm. 2 R i.e. 202 Sq.Mtrs., having area 20 x 20 Ft., 37.17 Sq.Mtrs. (hereinafter to be referred as 'suit property') is bounded as under:-

Towards East – Nullah,

Towards South – Property owned by Padmabai Jadhav out of CTS 1971,

Towards West – Property out of CTS No.1971,

Towards North – Three tin shed rooms belonging to defendant No.2 and part of the suit property.

2. That the suit property was owned by the father of plaintiff namely Shivsagar Dallu Sharma, who had purchased it from Gangubai Eknath Pujari along with the construction which was carried out by her as per approved plan. There are three tin shed rooms situated towards northern side of the suit property. That the father of plaintiff Shivsagar Dallu Sharma died on 20/04/2011. That the plaintiff was looking after the entire family as head of the family and during his lifetime Shivsagar Dallu Sharma had given the suit property to plaintiff and defendant No.2 for residence.

3. However, due to differences of opinion, defendant No.2 left the suit property along with his family and since 2006 he

started residing in the property situated at SuryaPushp Towers, Davkhar Road, Shrirampur purchased by Shivsagar Dallu Sharma. Defendant No.2 has no concern with the suit property but still he started making complaints with defendant No.1 regarding unauthorized construction over the suit property thereby causing obstruction to the possession of plaintiff over suit property.

4. In fact, the erstwhile owner of the suit property namely Gangubai Pujari had obtained construction permission in the suit property and accordingly the construction was also carried out. As the family members of plaintiff started facing inconvenience, they carried out necessary repairs in the suit property. Defendant No.1 has also started collecting necessary tax in respect of alleged repairs carried out in the suit property. That the plaintiff is regularly paying municipal tax to defendant No.1 and the plaintiff, and the family members of his deceased brothers namely Anil and Sitaram are residing together in the suit property. That the plaintiff is head of the entire family and defendant No.2 has made several complaints regarding unauthorized construction in the suit property.

5. On account of alleged unauthorized construction the plaintiff and one of his family member namely Sunita Sitaram Sharma have already submitted their explanation that the construction is as per the permission obtained by Gangubai Eknath Pujari. However, defendant No.1 has failed to consider the explanation and issued notice to plaintiff and his family members regarding unauthorized contention over the suit property. Plaintiff has personally and along with documents explained to the officer of

defendant No.1 but on the basis of false complaint made by defendant No.2, the officers of defendant No.1 arrived at the suit property on 31.05.2018 at 12.00 noon along with some police personnel to carry out demolition of the suit property. At that time plaintiff and defendant No.2 decided to compromise their dispute and requested some time from the officers of defendant No.1. However, the officers of defendant No.1 didn't paid any heed and started the demolition of the suit property. The demolition was carried out without verifying that the nature of construction that whether it was or not in accordance with the construction plan approved by defendant No.1.

6. The demolition of the suit property was carried out only on the basis of complaint made by defendant No.2 and his wife Anita Baburam Sharma. That the plaintiff and other family members of deceased brothers have no alternate accommodation other than the suit property. That the plaintiff has not carried out any unauthorized construction in the suit property. Despite this, defendant No.1 carried out demolition of the suit property under political pressure. That defendant No.2 has no concern with the suit property in view of decree passed in RCS No.127/2013 and RCS No.200/2013. In pursuance of the compromise arrived in both the suits, RD No.26/2019 is filed by defendant No.2 for its execution. Therefore, defendant No.2 has no right, title or interest in the suit property.

7. That on 01/12/1987 the erstwhile owner of the suit property namely Gangubai Eknath Pujari got approved the

construction plan from defendant No.1 and the construction is in accordance with the permission given by defendant No.1. The plaintiff and others have carried out necessary repairs and changes in the suit property and this fact is informed by plaintiff to defendant No.1. Accordingly, defendant No.1 has revived the assessment tax of the suit property and plaintiff is paying the revised municipal tax to defendant No.1. That the plaintiff has issued notice to defendant No.1 on 11/06/2018 and requested it to grant necessary permission for the repairs carried out in the suit property. Hence, the suit.

8. Defendant No.1 filed its WS and additional WS at **Exh.24** **Exh.24/A** respectively. Defendant No.1 has denied the contents of plaint and allegations leveled by the plaintiff. The contents of its WS in short are:- That the description of the suit property is not correct and no cause of action arose to file the suit. The plaintiff has no authority to claim any relief against defendant No.1. The construction standing over suit property is not carried out as per the approved building plan and plaintiff has carried out unauthorized construction over it without obtaining necessary permission from defendant No.1. In case, if plaintiff ought to have carried out any repairs in the suit property then it was obligatory for him to obtain necessary permission from defendant No.1.

9. That the Engineers working in the building construction department of defendant No.1 carry out inspection in respect of the construction carried out in the local limits of the municipal council and if any unauthorized construction is noticed, then the

construction activity is halted. It was noticed that plaintiff is carrying out unauthorized construction in the suit property and therefore, the first notice was issued to plaintiff and his brother Laxmikant Sharma on 03/06/2013 to stop unauthorized construction being carried out over suit property. However, they failed to file any reply. Thus, on 23/11/2015 and 09/12/2015 notices were issued to plaintiff, Laxmikant and Sunita Sharma and directions were issued to stop the unauthorized construction being carried out over suit property and to obtain necessary permission within thirty days from its receipt.

10. Despite this, plaintiff carried out unauthorized construction over suit property without obtaining any permission from defendant No.1. Therefore, as per the powers vested with defendant No.1 in view the provisions of The Maharashtra Regional and Town Planning Act, 1966 and The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 an FIR came to be lodged with Shrirampur City Police Station bearing C.R.No.11/2016. That the entire action is carried out by defendant No.1 in accordance with law and as plaintiff created obstruction during the work of demolition, it remained incomplete. Defendant No.1 has no concern with the dispute and the compromise that took place between plaintiff and defendant No.2. As plaintiff has not obtained any permission for alleged repairs carried out in the suit property, defendant No.1 has collected necessary revenue from plaintiff. On these and other grounds, defendant No.1 requested to dismiss the suit.

11. Defendant No.2 has filed his WS and additional WS at Exh.26 and Exh.145 respectively. Defendant No.2 has denied the contents of plaint in *toto* and the allegations leveled against him. The contents of his WS and additional WS in short are:- That the description and four boundaries of the suit property are incorrect. It is not true that the three tin shed rooms situated towards northern side of the suit property are allotted to the share of this defendant. That Shivsagar Dallu Sharma died on 20/04/2011 and he has four sons namely Nandlal (plaintiff), Baburam (defendant No.2), deceased Sitaram and deceased Anil. The widow of deceased Anil namely Saroj died on 01/06/2003. That the deceased Anil has two sons namely Laxmikant and Swaminath.

12. That the deceased Sitaram has a widow namely Sunita and a son namely Rohit as his heirs. All the legal heirs of deceased Shivsagar Dallu Sharma are not added as party to the suit and therefore the suit cannot proceed. That the plaintiff has suppressed material fact regarding pendency of other suits and thus, plaintiff is not entitled for the relief of injunction. That the plaintiff, Laxmikant and Swaminath have filed caveat application No.20/2013 against defendant No.1 and the address mentioned in it clearly shows that the suit property is ancestral property of plaintiff and defendant No.2. That defendant No.2 has filed RCS No.127/2013 against present plaintiff and others and the said suit is still pending.

13. In the suit bearing RCS No.127/2013 there is reference regarding the fact that this defendant has received two rooms during the oral partition and defendant No.2 is residing in his self

acquired property situated at Surya Pushp Towers, Shrirampur. During the pendency of RCS No.127/2013 the plaintiff and others demolished those two rooms which were allotted to the share of defendant No.2 and started unauthorized construction over suit property. Therefore, defendant No.2 sought relief of injunction against plaintiff and others. Despite this, plaintiff and others continued their unauthorized construction over suit property and defendant No.2 has brought this fact on record by carrying out necessary amendment in RCS No.127/2013.

14. After filing of RCS No.127/2013, Rohit and his mother Sunita Sitaram Sharma filed a civil suit against plaintiff, defendant No.2 and others for partition and separate possession, wherein the present suit property is also the subject matter of the said suit. Besides, defendant No.2 has filed RCC No.278/2013 in the Court of JMFC, Shrirampur against plaintiff and others for committing offence punishable under Section 191, 192, 403 and others read with 34 IPC. It is alleged in the said complaint that the accused had forged the signature of deceased Shivsagar Sharma for obtaining construction permission. The said case bearing RCC No.278/2013 is pending in the Court.

15. On the basis of FIR lodged by defendant No.1, RCC No.222/2016 is pending against plaintiff, Laxmikant and Sunita. It is alleged by defendant No.1 that plaintiff and others have carried out unauthorized construction over the suit property. Therefore, defendant No.2 moved an application before defendant No.1 for demolition of unauthorized construction carried out by plaintiff

over suit property. Accordingly, on 31/05/2018, 01/06/2018 and 02/06/2018 after obtaining necessary police protection, defendant No.1 demolished the Parapet, gate and compound wall of the suit property. The unauthorized construction carried out in the suit property was not demolished.

16. That the plaintiff is wrong doer and the Misc. Civil Appeal bearing No.11/2018, filed by him on 13/07/2018, came to be rejected on 07/09/2018. That the plaintiff is not entitled to claim the equitable relief of injunction because he has suppressed several material facts from this Court. That the plaintiff cannot claim the relief of injunction against defendant No.2, who is co-owner of the suit property. That it is observed in M.C.A. No.11/2018 that Gangubai has not commenced the construction work over suit property within period of one year after obtaining necessary permission and this fact is categorically suppressed by plaintiff in the present suit. On these and other grounds, defendant No.2 has also requested to dismiss the suit.

17. On the rival contention of both the parties, my Ld. Predecessor has framed Issues at **Exh.59**. I have reproduced those issues and recorded my findings thereon, for the reasons stated thereunder.

<u>Sr. No.</u>	<u>Issues</u>	<u>Findings</u>
1)	Does plaintiff proves the exclusive right over the suit property i.e. resurvey No.49, C.S.No.1971(A)/1, Municipal house No.3281, area 2 R, 202 Sq.Mtrs. ?	In the Negative

2)	Does plaintiff proves that his construction over the suit property is legal ?	In the Negative
3)	Does plaintiff proves the act of proposed demolition by defendant No.1 is illegal ?	In the Negative
4)	Does plaintiff proves that defendant No.2 is obstructing his peaceful possession over the suit property ?	In the Negative
5)	Is plaintiff entitled for mandatory injunction as prayed ?	In the Negative
6)	Is plaintiff entitled for permanent injunction as prayed ?	In the Negative
7)	What order and decree ?	As per final order

REASONS

18. Plaintiff and defendant No.1 have tendered oral as well as documentary evidence. Defendant No.2 has tendered documentary evidence. I have heard Ld. Adv. Shri.A.S.Kale for plaintiff, Ld. Adv.Shri. M.P. Gaware for defendant No.1 and Ld. Adv.Shri. Dilip Autade for defendant No.2.

As to Issue No.1 :-

19. In order to prove his ownership over suit property, plaintiff examined himself as PW No.1 by filing his affidavit of chief-examination at **Exh.89**. In his chief-examination he has duly reproduced the contents of plaint and deposed on oath that the suit property was owned by his father namely Shivsagar Dallu Sharma, who had purchased it from Gangubai Eknath Pujari along with the construction which was carried out by her over suit property as per

approved construction plan. There are three tin shed rooms situated towards northern side of the suit property. He further deposed that his father Shivsagar Dallu Sharma died on 20/04/2011 and he is looking after the entire family as head of the family. He further deposed that during the lifetime his father Shivsagar Dallu Sharma had given the suit property to him and defendant No.2 for residence.

20. However, due to differences of opinion, defendant No.2 left the suit property along with his family and since 2006 he started residing in the property situated at Surya Pushpa Towers, Davkhar Road, Shrirampur which was purchased by Shivsagar Dallu Sharma. He further deposed that defendant No.2 has no concern with the suit property but still he was giving false complaint to defendant No.1. In his cross-examination conducted by defendant No.2 he admitted that a compromise has been arrived between him and defendant No.2 in respect of suit property and the property situated at Shivaji Road and RD No.26/2019 is pending.

21. He further admitted that as RD No.26/2019 is pending for disposal, the suit property is not yet partitioned between him, defendant No.2 and others. He denied the suggestion that it is the contention of defendant No.2 that as the suit property is not partitioned by metes and bounds, its nature should not be changed without his consent and permission. He also denied the suggestion that he has arrayed defendant No.2 in the suit without any reason and he has filed false affidavit of chief-examination against him.

22. Plaintiff has further examined his nephew Shri.

Laxmikant Anilkumar Sharma as PW No.2 *vide* **Exh.92**. His chief-examination is entire reproduction of the chief-examination of plaintiff. Thus, it would be a futile exercise to reproduce those facts. In his cross-examination by defendant No.2 he admitted that his joint family consists of plaintiff, defendant No.2 and his father and on the basis of compromise between them, RD No.26/2019 is pending. He further admitted that defendant No.2 has raised dispute in the said execution petition on the ground of valuation of the properties and the compromise arrived is not yet implemented.

23. It is the contention of plaintiff that he is absolute/exclusive owner of the suit property on the basis of compromise arrived between him and other legal heirs of deceased Shivsagar Dallu Sharma. Before appreciating the oral evidence available on record, it is necessary to peruse documentary evidence and more particularly, the certified copy of plaint and compromise decree passed in RCS No.127/2013 filed at **Exh.150** and of RCS No.200/2013 filed at **Exh.143**. After perusing the certified copy of plaint in RCS No.127/2013 it appears that the said suit was filed by defendant No.2 against present plaintiff, Laxmikant Anil Sharma, Swaminath Anil Sharma, Rohit Sitaram Sharma and Smt. Sunita Sitaram Sharma for perpetual injunction in respect of present suit property.

24. It was contended by defendant No.2 in RCS No.127/2013 that after demise of Shivsagar Dallu Sharma on 20/04/2011, oral partition between his legal heirs took place and two rooms of the suit property were allotted to his share. It is further pleaded in para

No.4 of the plaint in RCS No.127/2013 that present plaintiff, Laxmikant Anil Sharma and Swaminath Anil Sharma have demolished those two rooms of the suit property without his permission and therefore, he has filed a complaint dated 25/04/2013 with present defendant No.1. Whereas, the certified copy of plaint in RCS No.200/2013 discloses that this suit was filed by Rohit Sitaram Sharma and Smt. Sunita Sitaram Sharma against present plaintiff, present defendant No.2, Laxmikant Anil Sharma and Swaminath Anil Sharma for partition and separate possession of all the ancestral properties including the present suit property.

25. It is admitted position that both the suits bearing RCS No.127/2013 and RCS No.200/2013 got compromised and it was agreed that after obtaining the market value of the suit property as well as another property from Government Valuer, the amount of compromise will be determined and the civil suits and other cases will be withdrawn. The certified copy of RD No.26/2019 is filed by plaintiff at **Exh.173**. This certified copy of execution petition clearly discloses that as the parties have not acted as per the compromise arrived in RCS No.127/2013 and RCS No.200/2013, the said petition is pending for disposal. This fact that the parties have not arrived at compromise although agreed is admitted by plaintiff himself at Exh.89 and by PW No.2 Shri. Laxmikant Anilkumar Sharma in his cross-examination at Exh.92.

26. Therefore, the fact that the suit property is still ancestral property and all the legal heirs of deceased Shivsagar Dallu Sharma have their share or at least plaintiff and defendant No.2 have their

share is proved by the oral evidence adduced by plaintiff himself which is corroborated by documentary evidence. Besides, the PR card at **Exh.166** also discloses the names of plaintiff, defendant No.2, Laxmikant Anilkumar Sharma, Swaminath Anilkumar Sharma, Rohit Sitaram Sharma and Smt. Sunita Sitaram Sharma as joint owners of the suit property. Therefore, from the evidence available on record a clear inference can be drawn that plaintiff is not the absolute or exclusive owner of the suit property. For these reasons, I answer this issue in negative.

As to Issue No.4 :-

27. It is the contention of plaintiff that by making false complaint regarding unauthorized construction by him over suit property, defendant No.2 is causing obstruction to his peaceful possession over suit property. While deciding Issue No.1, I have arrived at conclusion that plaintiff is not the absolute or exclusive owner of the suit property. Significantly, RD No.26/2019, which came to be filed on the basis of compromise arrived in RCS No.127/2013 and RCS No.200/2013, is still pending and therefore, apart from plaintiff, defendant No.2 is also the joint owner and possessor of the suit property. Therefore, being a joint owner of the suit property, defendant No.2 has undivided share in the suit property. Plaintiff has admitted during the course of his cross-examination at Exh.89 that he cannot depose the date on which defendant No.2 has caused obstruction to his possession over suit property. For these reasons and in view of material admission given by plaintiff himself, I answer this Issue in negative.

As to Issue Nos.2 & 3 :-

28. It is the contention of the plaintiff that he has not carried out any unauthorized construction over suit property but taking into consideration the needs of his family members he has carried out certain repairs in the suit property. It is further his contention that the act of demolition of portion of the suit property by defendant No.1 is illegal. In order to prove these material facts, plaintiff has examined himself as PW No.1 at Exh.89. In his chief-examination he deposed on oath that defendant No.2, who has no concern with the suit property, started making false complaint to defendant No.1 regarding unauthorized construction over suit property. He deposed that in fact, the erstwhile owner of the suit property namely Gangubai Eknath Pujari had already obtained construction permission for the suit property and the construction was carried out as per the permission granted by defendant No.1.

29. He further deposed that old structure on the area adm.101 Sq.Mtrs. of the suit property was standing and some necessary repairs are carried out in the said portion. The completion certificate for these repairs was not obtained and the said repairs were carried out after taking into consideration the inconvenience faced by his family and the heirs of his deceased brothers namely Anil and Sitaram. He deposed that defendant No.1 is collecting necessary assessment tax in respect of the said repairs carried out in the suit property. He further deposed that on 08/06/2008 Swaminath Anil Sharma and Laxmikant Sharma moved an application to defendant No.1 for regularizing the work

of repairs carried out in the suit property. However, as defendant No.2 raised his objection, defendant No.1 has passed order below **Exh.59**.

30. He further deposed that a notice was published by defendant No.1 thereby appealing the citizens to regularize till 31/12/2018 the unauthorized construction carried out by them before 31/12/2015. Accordingly, he and his brothers have submitted documents with defendant No.1 but the latter rejected their proposal. He deposed that on the basis of complaint made by defendant No.2, the officers of defendant No.1 visited the suit property on 31/05/2018 at about 12.00 noon and started the demolition of the suit property. At that time he obstructed them from carrying out the demolition and he and defendant No.2 agreed to compromise their dispute.

31. He further deposed that the demolition drive was carried out without verifying whether in fact unauthorized construction is carried out by him and it was only done under the pressure of defendant No.2 and his wife Smt.Anita Baburam Sharma. He further deposed regarding pending civil suits and other cases but as these facts are not pleaded in the plaint, I do not deem fit to discuss these facts. In short, it is evidence without pleadings. In his chief-examination he has proved the contents of office copy of notice dated 11/06/2018 issued by him and others through their advocate to defendant Nos.1 and 2 and the Collector, Ahmednagar. The notice is duly marked at **Exh.92**.

32. In his cross-examination he deposed that the suit

property was purchased by his father in the year 1992 and he has seen the approved plan submitted by Gangubai Pujari. The approved plan was confronted to him and thus, it is marked at **Exh.93**. He deposed that he has not seen the letter by which her map was approved and he has also not seen the construction permission letter issued to Gangubai Pujari. He deposed that the contents of plaint and his chief-examination were prepared as per his instructions and he has not carried out any repairs/changes in the suit property after purchasing from its erstwhile owner.

33. He was confronted with the portion mark- 'A' of his chief-examination and he deposed that it is true and correct. The said portion mark- 'A' is in respect of fact deposed by the plaintiff that he has carried out necessary repairs in the standing structure on the area adm.101 Sq.Mtrs. of the suit property. He deposed that he has not made any complaint against the officers of defendant No.1 for collecting excess assessment tax from him. He further deposed that as per his contention he has carried out necessary repairs in the inner area of the suit property and for that purpose he might have demolished a wall. He deposed that he has not obtained permission from defendant No.1 for demolition of the said wall.

34. He further deposed that he has submitted an application along with revised map/plan to defendant No.1 for carrying necessary repairs in the suit property and he is ready to file its copies, if found. He admitted that the revised map/plan was rejected by defendant No.1. He deposed that he do not remember whether this fact of rejection of his application and revised

map/plan is stated in his plaint and affidavit of chief-examination. He further deposed that at present there is permanent structure over suit property. He was asked a question whether at the time of purchasing the suit property there was permanent construction in existence ? to which he answered that there were two rooms of Wattle and Daub (कुडकामटीच्या) and the remaining structure was standing.

35. He denied the suggestion that there was no permanent construction over suit property when it was purchased and the construction over the suit property was old and in dilapidated condition. He again reiterated on oath that he has not carried out any construction over suit property and deposed that he is ready to submit documentary evidence on record to show that he has informed defendant No.1 regarding the repairs carried out in the suit property. He denied the suggestion that defendant No.1 had issued him notice because he has carried out unauthorized construction over suit property and he has filed this false suit with a view to cause delay in carrying out any action by defendant No.1.

36. In his cross-examination by defendant No.2 he admitted that he has not obtained any written consent or permission from defendant No.2 and others before carrying out any repairs in the suit property. He denied the suggestion that with a view to deprive defendant No.2 of his share in the suit property, he has filed the false suit against him. Plaintiff further examined his nephew Shri. Laxmikant Anilkumar Sharma as PW No.2 at **Exh.92**. His chief-examination is reproduction of the chief-examination of plaintiff.

However, in addition to the deposition of plaintiff he has deposed that as per the approved plan and the letter issued by defendant No.1 the permission was given on the condition to demolish the temporary structure and the construction is carried out in accordance with this permission.

37. He further deposed that no additional or extra construction is carried out beyond the permission granted by defendant No.1 but its completion certificate is not obtained. As stated earlier, his rest of the chief-examination is complete reproduction of the chief-examination of plaintiff and therefore, there is no point in reproducing the same. In the cross-examination conducted by defendant No.1 he deposed that Gangubai had obtained construction permission in the year 1988 and he has seen the said construction permission. He deposed that he cannot say what was the duration of that permission and whether its duration was one year. He further deposed that he can say regarding the nature of construction over suit property prior to year 1991 and as per his contention there were four rooms of permanent structure. He deposed that he has filed document at list below **Exh.32** to show that there were four rooms of permanent structure standing on the suit property. After verifying the list of documents at list below Exh.32, the witness could not find any such document.

38. He deposed that he cannot say which of his family member has received the notice issued by defendant No.1 and on 04/08/2018 he has submitted an application to defendant No.1 to regularize the construction carried out on the suit property. He

deposed that the nature of construction over the suit property at present is same as it was in the year 1991 and he has no information as to why defendant No.1 has issued notice to plaintiff. He further deposed that plaintiff has not provided any information to him regarding the notice issued to him (plaintiff) by defendant No.1.

39. He further deposed that they have submitted construction plan with defendant No.1 to carry out new construction in the suit property and it was submitted by his brother Swaminath Anil Sharma. He admitted that defendant No.1 has not granted permission to them and deposed that he is ready to file photographs to demonstrate the nature of construction over suit property and those photographs will bear the date, time, longitude and latitude. He denied the suggestion that even today the unauthorized construction is standing over suit property and to protect it, he has filed false affidavit of chief-examination and deposing false.

40. The burden to prove both the issues is upon plaintiff. It is his contention that the construction over suit property is legal and the act of demolition by defendant No.1 is illegal. From the facts mentioned in the plaint and deposed by plaintiff as well as by his witness suggests that plaintiff wants to say that the construction over suit property was carried out by Gangubai Eknath Pujari in accordance with the permission given to her by defendant No.1. This fact is categorically deposed on oath by plaintiff at Exh.89 and by Laxmikant Anilkumar Sharma at Exh.92.

41. However, it is pertinent to note that in the plaint itself

plaintiff has pleaded that he has carried out necessary repairs in the suit property after taking into consideration the needs of his family members. At this juncture, it is necessary to peruse para No.2 on page No.3 of the plaint wherein this fact has been stated by the plaintiff. Therefore, the contention of plaintiff that he has not carried out any construction in the suit property holds no water. The para No.4 of cross-examination of plaintiff at Exh.89 clearly discloses that he has demolished a wall for carrying out those repairs and he has not obtained any permission from defendant No.1 before demolishing the said wall.

42. Now whether this fact of demolition of the wall is to be considered as a minor repair or alternation in permanent structure is necessary to be ascertained. For that purpose, it is necessary to peruse Section 189 of the The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Sub Section 2 of Section 189 clearly states that before beginning to construct any building, the person intending so to construct shall give to the Chief Officer notice thereof in writing and shall furnish to him at the same time..... Sub Section 1 of Section 189 deals with the expression "to construct a building" and clause (a) clearly states about any material alteration.... and clause (e) states that such alteration which affects the security or stability of the building.....

43. Therefore, by demolishing the wall for carrying out alleged necessary repairs in the suit property the plaintiff has clearly disturbed the stability of the existing structure. In view of Section 189(2) it was obligatory on the part of plaintiff and others,

except defendant No.2, to issue notice in writing to the Chief Officer of defendant No.1. However, plaintiff has not filed any such document on record which would show that notice was issued by him to defendant No.1.

44. From the oral evidence of plaintiff and his witness it can be gathered that they themselves have deposed on oath that they have carried out necessary repairs in the suit property. As plaintiff has failed to obtain necessary permission for carrying out repairs in the suit property, the construction which is carried out is to be considered as unauthorized construction. In view of the relevant provisions of The Maharashtra Regional and Town Planning Act, 1966 the defendant No.1 is empowered to take appropriate action including the demolition of unauthorized construction. However, the procedure is provided in Section 53(1)(a) regarding issuance of notice to the owner or occupier of the property. To that effect defendant No.1 has examined two witnesses on its behalf.

45. Smt. Sucheta Shashikant Shinde examined as DW No.1 at **Exh.185** has deposed on the basis of office record and during the course of her chief-examination she has proved some documents, which includes Local Mail book (स्थानिक टपाल बुक) at **Exh.187** and **Exh.188**. These two documents are in respect of the notice bearing outwards Nos.3619 and 3765 issued by defendant No.1 to plaintiff and others on 24/11/2015 and 09/12/2015 respectively. No doubt, the oral testimony of Smt. Sucheta Shashikant Shinde is not believable because of certain important and material admissions given by her in the cross-examination but the documentary

evidence adduced by defendant No.1 cannot be neglected.

46. Defendant No.2 has examined its Engineer Shri. Abhishek Jitendra Marathe as DW No.2 at **Exh.193**. In his chief-examination he has duly proved the contents of the office copy of notices dated 24/11/2015 and 09/12/2015 and therefore they are duly marked at **Exh.196** and **Exh.197**. During the course of his cross-examination nothing contrary evidence came to be extracted. Therefore, there is no reason to disbelieve his oral testimony by which and on the basis of office record, he has proved the office copy of notices dated 24/11/2015 and 09/12/2015.

47. From the documentary evidence adduced by defendant No.1 it clearly transpires that legal recourse was adopted by it before initiating the action of demolition of the unauthorized construction over suit property. It will not be out of context to mention here that plaintiff has failed to file any document on record to show that the construction over suit property was carried out by Gangubai Pujari as per the approved plan at Exh.93 because plaintiff has neither filed copy of construction permission nor copy of completion certificate issued by defendant No.1. On the one hand, plaintiff is claiming he has carried out necessary repairs and on the other hand he is claiming that the construction as it existed at the time of purchasing the suit property is still standing there. The plaintiff is blowing hot and cold in the same breath. Besides, the tax assessment receipt at **Exh.111** filed by plaintiff and issued by defendant No.1 clearly discloses that plaintiff has paid certain amount towards unauthorized construction. Had there been no

unauthorized construction standing over on the suit property then there was no reason for plaintiff to pay the tax for the unauthorized construction. For the entire discussion, I hereby answer both the issues in negative.

As to Issue Nos.5 to 7 :-

48. As I have recorded my findings to issue Nos.1 to 4 in negative, the question of allowing any of the claim of plaintiff doesn't arise. Before concluding it is necessary to mention here that Courts are not expected to protect an unauthorized construction by way of injunction. Thus, I answer issue Nos.5 & 6 in negative and for issue No.7, I pass following order:-

ORDER

1.	The suit is dismissed.
2.	No order as to costs.
3.	Decree be drawn up accordingly.
	Pronounced and dictated in open court.

Date : 21/04/2026

(Ashish B. Marlecha)
Civil Judge Senior Division,
Shrirampur, Dist. Ahmednagar