

ORDER PASSED BELOW EXHIBIT NO.114
IN R.C.S. NO.70/2014

01. The plaintiff has filed instant application for grant of status-quo order against the defendant No.4.

02. By this application, the plaintiff has contended that he has instituted the present suit for partition and mandatory injunction. It is contended that, he has sought perpetual injunction restraining the defendant no.1 from making any sort of construction over the suit property. Defendants have appeared and filed their written statements. It is contended that, the defendant no.4 is making construction over the suit property without prier permission of this court and by taking disadvantages of the summer vacation. In such circumstances, the nature of the suit property would be changed and there would be complexity in the matter. In such circumstances, in order to restrain the defendant no.4 from making any sort of construction over the suit property, the plaintiff has prayed for grant of status-quo order.

03. The defendant no.4 has filed his say on same this application. He contended that he never constructed over the suit property block No.650. It is further contended that the defendant No.6 deceased Sugand has also constructed over the suit property to which the plaintiff has not taken objection. Hence he finally prayed for dismissal of the application with heavy cost.

04. I have heard the learned advocates for the plaintiff and defendants at length.

05. Admittedly, the relief of status-quo is as good as an injunction. Therefore, before granting such relief, the Court will have

to consider the relevant principles of *prima facie*, balance of convenience and irreparable injury which is likely to be caused one of the parties. The plaintiff has contended that the defendant No.4 is making construction over the suit property. Therefore, the status-quo order be issued against him in order to preserve the status of the suit property as it is. Thus, it is seen that, according to the plaintiff, the defendant No.4 is making construction over the suit property. Admittedly, the plaintiff has prays for relief of the perpetual injunction only against the defendant No.1 and not against defendant No.4. However, it is for the plaintiff to establish *prima facie* that the defendant No.4 is making construction over the suit property with respect to his pleading in the suit and instant application. However, the plaintiff has not produced any such *prima facie* evidence on record to show that the defendant No.4 is making new construction over the suit property. The photograph produced by the plaintiff does not confirm the actual spot of the construction and whose construction is. So it is difficult to rely on the photo at this stage of the suit. It is pertinent to note that injunction application at Exh.31 is also been rejected by this court. What is of significance is that, the contentions of the instant application are not supported with witnesses affidavits. It is also well settled principles of law that Co-owner in possession of property for and on behalf of other co-owner can not claim injunction against other Co-owner. As held by Hon'ble Bombay High Court in *Prakash Akotkar Versus Mansoorkha Gulabkha AIR 1996 Bombay 36.* All these circumstances, appearing from the record, leads me to conclude that there is no such *prima facie* case in favour of the plaintiff for issuance of status-quo order against the defendant No.4. So also, there is no

question of balance of convenience and sustaining irreparable loss by the plaintiff. Therefore, the instant application is bereft of any merit and liable to be rejected. Hence, I proceed to pass the following order.

-: ORDER :-

1. Application Exhibit 114 is rejected.
2. No order as to costs.

sd/-

(S.M.Jadhav)

Dt. 24.07.2017.

2nd Jt. Civil Judge, Junior Division,
Pethvadgaon.

CERTIFICATE.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Rajashri Rajendra Sawant (L.G.).
Name of Court	Shri.S.M.Jadhav 2 nd Jt. Civil Court & J.M.F.C. Peth-Vadgaon.
Date of Dictation	24/07/2017.
Judgment signed by the P.O. on	24/07/2017.
Judgment uploaded on	25/07/2017.