

MHKO110005552024



Regular Civil Suit No. 47/2024.
(CNR No.MHKO110005552024)

ORDER BELOW EXH.05.
(Savitri Kamble Vs. Sakharam Kamble and Others)

01. The plaintiff made the present application under Order XXXIX Rule 1, 2 and section 151 of the Code of Civil Procedure, 1908 (in short 'C.P.C.') against defendant no.6 with the prayer to prevent him from carrying out construction over the suit scheduled property i.e. land situated in Gat No.117/28.

Suit Properties -

02. Following agricultural land properties situated at village Shirolu Pulachi, Tal. Hatkanangale, Dist. Kolhapur.

Sr. No.	Gat No.	Total Area	Share	Size
1.	53/2	1 H. 24 R.	2 Aane 8 Ps. 1/6	Rs. 02.54 Ps.
2.	117/28	0 H. 05 R.	8 Aane.	Rs.0.31 Ps.
3.	117/59	0 H. 11 R.	8 Aane.	Rs.0.63 Ps.
4.	117/78/A	0 H. 08 R.	8 Aane.	Rs.0.57 Ps.
5.	341/2	0 H. 58 R. 60 Points	2 Aane 8 Ps.	Rs.1.83 Ps.
			Total.	Rs.5.83 Ps.

(The above mentioned properties are the subject matter of the suit, hence for the sake of brevity hereinafter referred as "**suit properties**")

Brief facts of the case of plaintiff are as under :

03. It is further story of plaintiff that, suit properties are ancestral properties of plaintiff and defendants no.1 to 13. They are in joint and

common possession of the suit properties. She further submitted that, deceased Sitaram Chimaji Kamble was common ancestor of plaintiff and defendants no.1 to 13. Sitaram Kamble and his wife Revakka Kamble were demised in the year 1990 and 1997 respectively, left behind three sons and three daughters namely Madhukar, Ananda, Gulab, Sonabai, Kallava and Chandubai respectively. Madhukar is the husband of plaintiff. Defendant no.6 is the nephew of plaintiff. She further submitted that, three daughters of deceased Sitaram Kamale relinquished their share in favour of their brothers namely Madhukar, Ananda and Gulab. So, Madhukar, Ananda and Gulab being the legal representatives of deceased Sitaram Kamble has 1/3 share each in the suit properties. Plaintiff further submitted that, till today suit properties are not partitioned between plaintiff and defendants no.1 to 13 by meets and bounds.

04. Plaintiff further submitted that, on the demise of Madhukar Sitaram Kamble her name and name of defendants no.1 to 5, were mutated to the revenue record of the suit property as legal representatives of deceased Madhukar. On the demise of Ananda Sitaram Kamble, name of the defendant no.7 to 10 were mutated to the revenue record of the suit property as his legal representatives and on the other hand name of the defendant no.11 to 13 were mutated to the revenue record of the suit property as the legal representatives of the deceased Gulab Sitaram Kamble. She further submitted that, defendants no.14 to 16, were purchaser of the suit properties and not related to the family of plaintiff and defendants no.1 to 13.

05. Plaintiff further submitted that, plaintiff and defendants no.1 to 13, jointly cultivating the suit properties and taking crops of *Soyabin*, *Shalu*, *Jwar*, *Groundnuts* in the suit properties. She further submitted that, in spite of this condition, defendant no.6 to 10, sold their respective share in

the suit scheduled property 1-Sr.No.5, i.e. Gat no.341/2, to the defendant no.16, vide registered sale-deed bearing no.3342/2023, without consideration. She further submitted that, defendants no.11 to 13, sold their respective share in the suit scheduled property 1-Sr.No.2 i.e. land situated in Gat no.117/28 to the defendant no.15 vide registered sale-deed 316/2023. Defendants no.11 to 13 also sold their respective share in the suit scheduled property 1-Sr.No.1 and 5, i.e. land situated in Gat no.53/2 and 341/2 respectively to the defendant no.16, vide registered sale-deed 316/2023. She further submitted that, defendants no.11 to 13, also sold their respective share in the suit scheduled property 1-Sr.No.4 i.e. land situated in Gat no.117/78/A to the defendant no.14, vide registered sale-deed bearing no.4700/2006. Plaintiff further submitted that, all these sale-deed was without consideration and defendants did not obtain her prior permission to execute the sale-deeds in respect of the suit properties. So, the same are not binding upon her share.

06. Plaintiff further submitted that, she is in possession of land portion towards western side of suit scheduled property 1-Sr.No.3 i.e. land situated in Gat no.117/28. However, defendant no.6, forcibly carrying out the construction of a house over the said land, without having the partition of the said land. She further submitted that, on 27/02/2024, she requested to the defendant no.6, to have partition of the suit properties between them by meets and bounds, but defendant no.6 denied to accept her request and told to her that, he will continue his construction of house over the land situated in Gat no.117/28. So, she constrained to institute the present suit. She finally submitted that, if the defendant no.6, succeeded to complete the construction over the suit scheduled property 1-Sr.No.3 i.e. land situated in Gat no.117/28, then the nature of the suit property will be changed, which will be prejudicial to her right and interest in the suit property. Hence, she made the instant application, for seeking interim injunction against the

defendant no.6, to prevent him from carrying out the construction over the suit scheduled property 1-Sr.No.6, till final disposal of the suit.

07. Defendant no.6 filed his amended written statement vide **Exh.27**. Defendant no.6, objected the instant application on the various grounds. He only accepted the genealogy given by plaintiff. He further submitted that, the plaintiff instituted the present suit for partition of suit properties, but she did not give the four boundaries of the suit properties. So, suit properties are not described properly. He further submitted that, deceased Sitaram Kamble was the common ancestor of the plaintiff and defendants no.6. He further submitted that, deceased Sitaram has three sons namely Ananda i.e. father of defendant no.6, Gulab and Madhukar i.e. husband of plaintiff. In the lifetime of deceased Sitaram vide partition deed, he partitioned suit properties among his three sons i.e. Gulab, Ananda and Madhukar. As per the said partition, Gulab, Ananda and Madhukar got 1/3 share each in the suit properties and they are cultivating their respective shares allotted to them vide partition deed. He further submitted that, in the land situated in Gat no.117/28, there is ½ share in common of one Hambirrao and Mahipati. Hambirrao constructed a stone mud house on the land in his respective share in the land situated in Gat no.117/28 and the land belonging to Mahipati in Gat no.117/28, is vacant land. He further submitted that, toward the southern side of the land portion belonging to Mahipati in Gat no.117/28, there was south-north road i.e. 10 Feet in width and 150 Feet in length. The said road is a common road and being used by all adjacent neighbors including Ananda, Gulab, Madhukar, Hambirrao, Mahipati and others.

08. Defendant no.6, further submitted that, in the year 1987-88, suit properties were partitioned between Ananda i.e. father of defendant no.6, Gulab and Madhukar i.e. husband of plaintiff. As per the said

partition the central portion i.e. land admeasuring 0.83 R, was allotted to the Gulab, i.e. brother-in-law of plaintiff and uncle of defendant no.6. on the demise of Gulab, his legal representatives i.e. defendants no.11 to 13, sold their share to the one Laxman Atmaram Kamble vide registered sale-deed bearing no.316. Laxman Kamble has constructed a house on the said land portion and residing in the said house along with his family. However, plaintiff did not take any objection to the said transaction. But, plaintiff only objected to the construction being carrying on by defendant no.6, on the land situated in Gat no.117/28 i.e. suit scheduled property 1-Sr.No.3. So, the conduct of plaintiff is barred by law of estoppel. Defendant further submitted that, the said transaction was took place through the mediation of defendant no.1 i.e. son of plaintiff. So, plaintiff has entire knowledge that, suit properties were already partitioned.

09. Defendant no.6, further submitted that, the land admeasuring 0.83R, towards south-east corner in Gat no.117/28, was allotted to the plaintiff and land admeasuring 0.23 R, towards south-west corner in the Gat no.117/28, was allotted to him. In the land allotted to him, in the Gat no.117/28, he has taken a bore-well and also a electricity supply in his name and enjoying the same as exclusive owner and possessor of the said land. He further submitted that, the legal representatives of Ananda i.e. his father, sold their respective share i.e. land portion admeasuring 3.25R, situated in suit scheduled property 1-Sr.No.5 i.e. gat no.341/2, to the Arvind Baburao Kurane vide registered sale-deed 3342/2023, dated 08/05/2023. So, legal representatives of Ananda Kamble including himself has no any share in the suit scheduled property 1-Sr.No.5 i.e. land situated in Gat no.341/2. He further submitted that, Ananda Sitaram Kable, Sonabai Ganpati Kamble, Kallava Shamu Kurane and Chandubai Bhupal Kamble i.e. legal representatives of deceased Sitaram Chimaji Kamble, sold their respective share situated in Gat no.117/78, to Shree Datta Nagari Sahakari

Pat Sanshtha Maryadit, Siroli for consideration of Rs.1,16,000/- vide registered sale-deed bearing no.2537. Plaintiff has knowledge of the said fact, but she suppressed the said material fact from the Court.

10. Defendant no.6, further submitted that, as per the partition took place in the year 1987/88, the land portion 1.83R, situated in Gat no.117/59, i.e. suit scheduled property 1/3 was allotted to him and in the year 2022-23, he constructed four rooms on the said land, and he given the same on rented basis. He further submitted that, as per the said partition land admeasuring 1.83R, situated in Gat no.117/59, was allotted to the share of plaintiff and defendants no.1 to 5. They mortgaged the said property with Shabir Himat Desai. He further submitted that, this fact shows that, suit properties were already partitioned between plaintiff and defendant no.1 to 13. So, plaintiff and defendant no.1 to 5, could mortgage their respective share with Shabir Desai. He further submitted that, Nivas Gulab Kamble i.e. defendant no.11, sold his respective share in the Gat no.53/2 i.e. suit scheduled property 1-Sr.No.1 to the Arvind Baburao Kurane i.e. defendant no.16, vide registered sale-deed bearing no.5576, dated 05/11/2008. This fact well known to the son of the plaintiff i.e. defendant no.1. So, plaintiff can not say that, partition of the suit properties were took place. He further submitted that, son of the plaintiff i.e. defendant no.1, entered into an agreement-to-sell with Arvind Baburao Kurane i.e. defendant no.16, in respect of land situated in Gat no.341/2, i.e. suit scheduled property 1-Sr.No.5. He also accepted earnest amount of Rs.1,30,000/- from the defendant no.6, and this fact is well aware to the plaintiff. But, only with the collusion with defendant no.1, she made the present suit, with ill intention to harass to defendant no.6. He further submitted that, the land situated in Gat no.341/2, i.e. suit scheduled property 1-Sr.No.5, was allotted to the share of defendants no.6 to 10 and they were enjoying the said property as exclusive owner. So, there is no

need to have prior permission of the plaintiff, to sale the said land to defendant no.16.

11. Defendant no.6, further submitted that, defendants no.11 to 13, i.e. legal representatives of deceased Ananda i.e. uncle of defendant no.6, sold the land portion 3.25R, and 6.88R, situated in Gat no.341/2, and 53/2 respectively to the defendant no.16 vide registered sale-deed bearing no.5576, for consideration of Rs.1,55,000/-. As the implementation of registered sale-deed, name of the defendant no.16, was mutated to the 7/12 extract of the land situated in Gat no.341/2 and 53/2 vide mutation entry no.20287. Till today, plaintiff nowhere challenge the said mutation entry. So, after the laps of 15 to 16 years from the execution of registered sale-deed, plaintiff is not entitled to sought the relief of declaration, to declare the registered sale-deed as null-and-void and not binding upon her share. Defendant no.6, finally submitted that, the suit properties were already partitioned prior to institution of present suit and there is no joint and common possession of the plaintiff and defendants over the suit properties. He also submitted that, the cause of action put forth by the plaintiff to institute the suit was not also arise at any point of time on or after 27/02/2024. He also submitted to reject the application by imposing the cost of Rs.1,00,000/-.

12. Heard arguments of learned counsels of both sides at length. Considering rival pleadings of both parties and documents filed on record, following points arose for my determination. I have given my findings to each of them with reasons as below :

<i>Sr. No.</i>	<i>ISSUES</i>	<i>FINDINGS</i>
1.	Whether plaintiff has <i>prima-facie</i> case ?	<i>In Negative.</i>

2.	Whether balance of convenience lies in favour of plaintiff ?	<i>In Negative.</i>
3.	Whether plaintiff was suffer irreparable loss if the temporary injunction is not granted against defendant ?	<i>In Negative.</i>
4.	What order ?	<i>As per final order.</i>

REASONS

13. In order to prove their case, plaintiffs have relied upon following documents.

Sr. No.	Document	Exh. No.
1.	Copy of 7/12 extract of Gat no. 53/2.	3/1
2.	Copy of 7/12 extract of Gat no. 117/28.	3/2
3.	Copy of 7/12 extract of Gat no. 117/59	3/3
4.	Copy of 7/12 extract of Gat no. 117/78/A.	3/4
5.	Copy of 7/12 extract of Gat no. 341/2	3/5
6.	Photographs of suit properties.	3/6 & 3/7
7.	Copy of registered deed no.4700/2006.	21/1
8.	Copy of registered deed no.5576/2008.	21/2
9.	Copy of registered deed no.3342/2023.	21/3
10.	Copy of registered deed no.316/2013.	21/4

14. Defendant no.6 has relied upon following documents.

Sr. No.	Document	Exh. No.
1.	Copy of partition deed dated 08/03/1988.	18/1
2.	Copy of agreement deed dated 08/05/2018.	15/1
3.	Copy of registered deed no.318/2013.	15/2
4.	Copy of release deed of defendant no.7 to 10.	15/3
5.	Copy of mutation entry no.13605	15/4

6.	Copy of release deed no.960.	15/5
7.	Copy of registered deed no.2537.	15/6
8.	Copy of bill for bore-well.	15/7
9.	Copy of MSEB bill in the name of defendant no.6	15/8
10.	Copy of MSEB bill in the name of defendant no.15	15/9
11.	Copy of assessment extract no. 117/59.	15/10
12.	Copy of assessment extract no. 117/59.	15/11
13.	Copy of mutation entry no.20287.	15/12
14.	Copy of photograph of suit property.	15/13
15.	Copy of photograph of suit property.	15/14
16.	Copies of photographs of suit property.	29/1 to 29/3

AS TO POINT NO.1 TO 4 :-

15. The point No.1 to 4 are interlinked with each other, hence to avoid the repetition, I have taken up them together for discussion.

16. Learned advocate Shri. D.M.Jadhav, appearing for the plaintiff vehemently argued that, all suit properties are ancestral properties of plaintiff and defendants no.1 to 13. Till today suit properties are not partitioned between plaintiff and defendants no.1 to 13, by meets and bounds. However, defendant no.6, forcibly trying to erect construction over the land situated in Gat no.117/28, without obtaining prior permission of plaintiff. He further submitted that, defendant no.6, carrying out the construction on the land, which is suitable for him and the same is causing change in the nature of suit property. He further submitted that, unless suit properties are partitioned, every person interested in the suit properties has equal interest in it. So, without partition of the ancestral properties, no co-sharer has right to presume that, a particular portion will be allotted to his share and thereby carry out the construction on it. Per-contra learned advocate Shri.C.S.Shikhare appearing for the defendant no.6, vehemently argued that, in the lifetime of Sitaram Kamble, i.e. ancestor of plaintiff and

defendants no.1 to 13, suit properties were partitioned between his three sons. i.e. Ananda, Gulab and Madhukar i.e. husband of plaintiff. As per the said partition husband of plaintiff i.e. Madhukar and father of defendant no.6, i.e. Ananda, and heirs of Gulab are in possession of the share allotted to them. He further submitted that, legal representatives of deceased Gulab, Ananda and Madhukar i.e. husband of plaintiff also sold some portion allotted to them in the suit properties to the defendants no. 14 to 16, by various registered sale-deed. He further submitted that, as suit properties were already partitioned, so only defendants were in position to sale their respective share in the suit properties to the defendants no.14 to 16.

17. Defendant no.6, in support of his submission heavily relied upon partition deed dated 08/03/1988 vide **Exh.18/1**. He also relied upon 7/12 extract of Gat no.117/28, vide **Exh.3/2**, registered sale-deed bearing no.318/2013 vide **Exh.21/4**.

18. It is pertinent to not here that, on minutely perusing partition deed dated 08/03/1988, vide **Exh.18/1**, it is seen that, the said partition deed was took place between Sitaram Chimaji Kamble i.e. deceased ancestor of plaintiff and defendants no.1 to 13 and Ananda Sitaram Kamble, Gulab Sitaram Kamble, Madhukar Sitaram Kamble, i.e. husband of plaintiff. It is admitted to both the parties that, deceased Sitaram Chimaji Kabmle have three sons, namely Ananda, Gulab and Madhukar i.e. husband of plaintiff. It is also admitted to both the parties that, Ananda is the deceased father of defendant no.6 and Madhukar is the deceased husband of plaintiff. On this point, considering the relationship between plaintiff and defendant no.6, it is seen that, plaintiff is Aunt of defendant no.6. It is also necessary to consider here that, the husband of plaintiff i.e. Madhukar and father of defendant no.6, i.e. Ananda were real brother of each other.

19. On minutely perusing recitals of partition deed dated 08/03/1988 vide **Exh.18/1**, it is canvased that, as per the said partition the land portion admeasuring 2½ Gunthe, situated in Gat no.117/28, was allotted to Ananda, Gulab and Madhukar each. It is also seen from the said partition deed that, remaining Gat numbers i.e. suit scheduled properties were also partitioned between Ananda, Gulab and Madhukar in the year 1988. It is also pertinent to note here that, till today neither plaintiff nor any of defendants challenge the validity of and legality of the said partition deed. In the present suit also plaintiff did not challenge the said partition deed. It means, both plaintiff and defendants relied upon the said partition deed. So, it is crystal clear from the partition deed dated, 08/03/1988 that, suit properties were already partitioned between predecessor in title of plaintiff and defendants no.1 to 13.

20. It is also pertinent to note here that, on minutely perusing 7/12 extract of Gat no.117/28, vide **Exh.3/2**, it is seen that, land admeasuring 0.00.83R, was in the name of defendant no.6. This fact also make it crystal clear that, as per the partition deed, took place between deceased Sitaram Kamble and his three sons, names of plaintiff's husband i.e. Madhukar and names of defendant no.6's father was mutated to the 7/12 extract of the Gat no.117/28. This fact also make it crystal clear that, the suit properties most particularly the land situated in Gat no.117/28, is not in joint and common possession of the plaintiff and any other defendants. It is also pertinent to note here that, till today neither plaintiff nor any other defendants challenge the mutation entry vide which name of the defendant no.6, was mutated to the 7/12 extract of the Gat no.117/28 or any other suit scheduled Gat number. So, this fact giving strength to the submission of defendant no.6, that, suit properties were already partitioned, vide partition deed dated 08/03/1988 and as the implementation of the partition deed name of the plaintiff and defendants no.1 to 13, was mutated to the 7/12

extract of suit properties.

21. It is also pertinent to note here that, on minutely perusing registered sale-deed bearing no.318/2013, vide **Exh.21/4**, it is seen that, the same was executed between Laxman Atmaram Kalokhe i.e. defendant no.15 and Jayshree Gulab Kamble, Rajshree Ravindra Dhobale, Nivas Gulab Kamble and Asha Kamlesh Kamble, i.e. defendants no.11 to 13. It is necessary to mention here that, defendants no.11 to 13, are the legal heirs of deceased Gulab Kamble, who is one of the sons of deceased Sitaram Kamble, i.e. uncle of defendant no.6 and brother-in-law of plaintiff. It is also necessary to mention here that, the subject matter of the present registered sale-deed is the land situated in Gat no.117/28 i.e. suit scheduled property 1-Sr.No.2. On minutely perusing the four boundaries of the land mentioned in the registered sale-deed vide **Exh.21/4**, it is seen that, towards eastern side there was landed property of Madhukar Kamble i.e. deceased husband of plaintiff. If, the suit properties were not partitioned between ancestor of plaintiff and defendants, then how there was a separate land portion towards eastern side of Gat no.117/28 in the name of Madhukar Kamble i.e. deceased husband of plaintiff, and how defendants no. 11 to 13 were in position to sale the land i.e. 0H, 05R, out of the Gat no.117/28, by describing particular four boundaries of the said land. If, we consider this fact in the light of submission of defendant no.6, it is also crystal clear that, prior to institution of the present suit, suit properties including the land situated in Gat no.117/28, was partitioned between the ancestor of plaintiff and defendant no.6, and other defendants. So, only defendants no.11 to 13, were in position to sale out the land allotted to them vide partition deed dated 08/03/1988. So, considering the sale-deed vide **Exh.21/4**, it made it crystal clear that, suit properties were already partitioned between ancestors of plaintiff and defendants no.1 to 13.

22. It is submission of the defendant no.6 that, son of plaintiff i.e. defendant no.1 entered into an agreement-to-sell with defendant no.16, to sale the land situated in Gat no.341/2 i.e. suit schedule property 1-Sr.No.5 and he also accepted the earnest amount of Rs.1,30,000/- towards the part payment of consideration of the said land. To prove the said fact, defendant attracted my attention towards the document vide **Exh.15/1**. On minutely perusing the said agreement-to-sell on **Exh.15/1**, it is seen that the same was executed between defendant no.16 and Chiman Ananda Kamble i.e. defendant no.6, Sakharam Madhukar Kamble i.e. defendant no.1 i.e. son of plaintiff and Nivas Gulab Kamble i.e. defendant no.11. It is also seen that, one the subject matter of the present agreement-to-sell is the land portion admeasuring 0H, 0.11R situated in Gat no.117/59 i.e. suit schedule property 1-Sr.No.3. It is also pertinent to note here that, till today neither plaintiff nor defendants no.1, 6 or 11, have challenge the said agreement-to-sell vide **Exh.15/1**. Plaintiff also does not explain if the suit properties was not partitioned between herself and remaining defendants, then how her son i.e. defendant no.1, along with defendant no.6 and 11 could entered into an agreement-to-sell with defendant no.16 to sale one of the suit schedule property. This keeping mum on the point of the plaintiff, on this point clearly indicating that, there is strength in the submission of defendant no.6, that prior to institution of the present suit, suit properties were already partitioned between predecessor of plaintiff and defendant no.1 to 13.

23. It is also pertinent to note here that, it is reveal from the record that, defendants no.11 to 13, have sold their respective share in the suit schedule properties to the defendant no.16, vide two different register sale-deed i.e. 5576/2008 and 3342/2023 respectively. It is also pertinent to note here that, as per the execution of said registered sale-deed, name of the defendant no.16, was also mutated to the revenue record of the suit

properties. It is also necessary to consider here that, defendant no.16, is not from the family of plaintiff and defendants no.1 to 13, and till today plaintiff did not challenge the mutation entry bearing no.20287, vide which name of the defendant no.16 was mutated to the revenue record of the suit properties. In such scenario it is duty of the plaintiff to explain, how name of the defendant was mutated to the revenue record of the suit properties i.e. too when he was not one of the family member from the common ancestor of plaintiff and defendants no.1 to 13. Plaintiff also not put forth any reason for not challenging the mutation entry bearing no.2087. So, this fact also crating the doubt on the submission of plaintiff that, till today suit properties are not partitioned between herself and defendants no.1 to 13.

24. It is also pertinent to note here that, on perusing the entire sale-deeds, produced by plaintiff herself vide **Exh.21**, it is seen that, the same was in respect of the suit properties and the same was executed between defendant no.14 to 16, and some of the defendants, who are held from the same family of plaintiff and defendants no.1 to 13. This fact also make it crystal clear that, vide partition deed dated 08/03/1988, suit properties were already partitioned between Madhukar, Ananda and Gulab, i.e. predecessor of plaintiff and defendants no.1 to 13. On the other hand, on perusing 7/12 extract vide **Exh.3/1** to **Exh.3/5**, it is also crystal clear that, name of the plaintiff and defendants more particularly the name of the defendant no.6, was mutated to revenue record of the suit properties, for their respective separate share in the suit properties.

25. Learned advocate Shri.C.S.Shikhare appearing for the defendant no.6 submitted that it is within the knowledge of plaintiff that, vide partition deed dated 08/03/1988, suit properties were already partitioned between predecessor of plaintiff and defendant no.6. However, by suppressing this material fact from the Court, plaintiff made the present

application for getting discretionary equitable relief in the nature of preventive injunction. So, plaintiff is not entitled for the equitable relief in the nature of preventive injunction for that purpose he heavily relied upon the judgment of Apex Court in, **Harcharanjit Singh Thind (Capt.) Vs. Deeksha Thind and others (2008 (3) M.H.L.J.)** In the said judgment Hon'ble Apex Court held that, "*Relief of injunction, discretionary and equitable relief, the party who suppresses material facts from the Court, does not deserve the grant of any discretionary relief.*" In the present case in my hand also, it is seen from the record that, name of the plaintiff was mutated to the 7/12 extract of the suit properties. This fact, clearly indicating that, as per implementation of partition deed dated 08/03/1988 name of plaintiff and defendants were mutated to the 7/12 extract of suit properties. But plaintiff suppressed this material fact from the Court. So, I am of the opinion that, supra cited judgment is applicable to the present case on my hand. So, if we consider the present case, in the light of supra cited judgment, I am of the opinion that, plaintiff is not entitled for the discretionary equitable relief from the Court, as she suppressed material fact i.e. partition of the suit properties vide partition deed dated 08/03/1988.

26. On perusing entire material produced by the plaintiff and defendant no.6, it is crystal clear that, suit properties were already partitioned between predecessor of plaintiff and defendant no.6. It is also seen that, the land on which defendant no.6, is carrying out the construction was allotted to his father and on the demise of his father, the same was allotted to his share. So, prima-facie it is seen that, plaintiff failed to establish a prima-facie case, which is necessary a thorough trial. On the other hand as it is seen from the photographs on the record and submission of both the parties that, construction being carried out on behalf of defendant no.6 is in progress. If in such situation defendant no.6,

is prevented from carrying out the construction over the land situated in Gat no.117/28, then irreparable loss will be caused to the defendant no.6, which shall not be compensated in terms of money. As, defendant no.6, is in possession of the land situated in Gat no.117/28, and on the same land he carrying out the construction by investing huge amount. So, at this stage balance of convenience is also in favour of defendant no.6. Hence, considering above discussion, I am of the candid opinion that, plaintiff failed to prove that, prima-facie case is in his favour, balance of convenience is also in his favour and hardship being cause to her is more than, defendant no.6. So, considering above discussion, I answered points no.1 to 3 in negative and to answer point no.4, I proceed to pass the following order -

ORDER.

1. The application (**Exh.5**) stands rejected.
2. The application (**Exh.5**) is disposed off accordingly.

Date : 08/05/2024.

(L.M.Pathan)
Civil Judge Junior Division,
Peth-Vadgaon.