

Reg.Civil Suit No.88/2018

(CNR No.MHKO11-000747-2018)

COMMON ORDER BELOW EXH.5 AND EXH.17

1. The plaintiffs have filed the application at Exh. 5 for restraining the defendant No.1 from causing any obstruction to the construction work carrying out upon the suit property. The defendant No.1 has filed the application at Exh. 17 for temporarily restraining the plaintiffs and defendant No.2 to 4 from causing any obstruction of her peaceful possession over the suit property. Both parties have filed these distinct application under the provisions of Order XXXIX Rule 1 and 2 of The Code of Civil Procedure, 1908.

2. As per plaintiffs' application at **Exh.5**, following is the suit property -

Plot No. 110 situated at Shri. Lalbahaddur Shastri Co-operative Housing Society Ltd., Shirolu Pulachi , Tal.

Hatkanantale, Dist Kolhapur having total area 30 Feet X 50 Feet having following four boundaries

Towards East – Plot No. 111

Towards West – Plot No. 109

Towards South – Public Road

Towards North – Private Property

(Hereinafter referred as '**Suit property**')

3. As per the defendant No.1's application at **Exh.17**, she wants to protect her possession over the property i.e. Grampanchayat property No. 1168 situated upon Plot No. 110 at Shirolu Pulachi, Tal.Hatkanantale, Dist - Kolhapur having total area 299-00 Sq. feet having following four boundaries -

Towards East – Property of Lata Balu Kamble having

Grampanchayat Milkat No.1170

Towards West – Plot No. 109 (Grampanchayat Milkat No.1167)

Towards South – Grampanchayat Milkat No. 1171 of plaintiff
No.1.

Towards North – Property of Mubarak Shamshuddin Kazi

4. **As per Exh. 5 application, Plaintiffs' case in short is as under -**

The suit property was allotted in the name of Krushna Dhondi Kamble by Shri. Lalbahaddur Shastri Co-operative Housing Society Ltd., Shirolu Pulachi and after his death on 09/10/1992, the possession of Plot No. 110 was given to the plaintiffs on 28/03/1993.

5. In the year 2006, the plaintiffs have constructed the suit property and the plaintiffs and defendant No.2 to 4 started residing in it. On 08/06/2018, the plaintiffs and defendant No.2 to 4 wanted to replace the old tin sheets of suit property by removing the old one. They also want to construct the suit property. The plaintiffs and defendant No. 2 to 4 started carrying out the said construction work, but the defendant No.1 obstructed the plaintiffs from carrying out the construction work. The plaintiffs and defendant No.2 to 4 tried to convince her, but she didn't hear anything and she went to Shirolu MIDC Police Station for lodging report against the plaintiffs and defendant No. 2 to 4 and accordingly she lodged the complaint against them. They also lodged the complaint against the defendant No. 1.

6. The plaintiffs further contended that, to grab the suit property, the defendant No.1 is trying to harass the plaintiffs and defendant No. 2 to 4. Hence the plaintiffs hereby prayed that, the defendant No.1 or any person on her behalf be restrained from obstructing the construction work.

7. The defendant No.2 to 4 supported the suit of plaintiffs by filing their written statement and say at **Exh.20**. On the other hand, the defendant No.1 has filed her say at **Exh.15** and denied the allegations made in the application at **Exh.5**. She submitted that, she is the sister of plaintiff No.1 and the said fact is suppressed by the plaintiffs. She has admitted that, the said plot No.110 was allotted to Krishna Dhondi Kamble by the Co-operative Housing Society. But after the death of Krishna Dhondi Kamble in the year 1992, the plaintiff tried to record his name as legal heir to the Plot No.110. The defendant No.1 has made application to the concerned Housing Society and thereafter the name of defendant No.1, plaintiffs and defendant No.2 to 4 were recorded on the extract of suit property.

8. The defendant No.1 further submitted that, thereafter, Grampanchayat property numbers i.e. 1168, 1169, 1170 and 1171 were allotted. The Grampanchayat property No.1168 is in the name of defendant No.1, the Grampanchayat property No.1169 is in the name of plaintiff No.2, the Grampanchayat property No. 1170 is in the name of defendant No.2 to 4 and the Grampanchayat property No.1171 is in the name of plaintiff No.1 and 2. After the said entries, the defendant No.1 constructed the Grampanchayat suit property No. 1168 and is started residing in it since 2009. She is paying separate taxes e.g. House Tax, Water Tax etc. She further submitted that, the plaintiffs have not obtained any permission from the government office for the construction, repairing or renovation of the suit property. The plaintiff No. 1 is acting as the Director and Secretary of Shri. Lalbhadur Shastri Co-operative Housing Society Ltd., Shirolu Pulachi and by misusing his post, he has prepared some forged documents and same are used in the present matter.

9. The defendant No. 1 further submitted that, the plaintiffs are silent in their plaint about the total area, which they are going to

construct. On 08/05/2018, the plaintiff No.1 and defendant No.3 and 4 came into the house of defendant No.1, they assaulted her and also they have broken the cement sheets and caused mischief of Rs.8000 to 9,000/-. Hence she has filed complaint with the Shirol MIDC Police Station under C.R.No.124/2018 for the offences punishable u/s.452, 427, 323, 504 r/w. 34 of The Indian Penal Code. The plaintiffs are not coming with clean hands, they are not entitled to claim any relief, as they have suppressed material facts from the Court. Hence, she prayed to reject the application.

10. The defendant No.1 has also filed separate application at **Exh.17** for restraining the plaintiffs and defendant No.2 to 4 from causing any obstruction to her peaceful possession over the Grampanchayat Property No. 1168, situated upon the said Plot no. 110. She submitted that, without taking any legal permission, the plaintiffs and defendant No.2 to 4 are constructing the Grampanchayat Property No.1169, 1170, 1171 of plot No.110. Towards their common intention, they removed the tin roofs of the house of defendant No.1. On 20/07/2018 they have also broken the lock of toilet and bathroom and they have broken the tin sheets over the toilet and bathroom. They also abused and beat the defendant No.1. Thus, again C.R.No.145/2018 came to be registered against them and she constrained to file the present application for restraining the plaintiffs and defendant No.2 to 4 from causing obstruction to her peaceful possession over the suit property.

11. The plaintiffs have also filed their say to **Exh.17** at **Exh.22** and denied the allegations made in application at **Exh.17**. They denied that, the Grampanchayat property No. 1168 is in the possession of defendant No.1. They made counter allegations against the defendant No.1 that, she has furnished false information to the government office and availed the various government facilities in her name. She has

intentionally reported herself to be a widow, though her husband is alive till today. The defendant No.1 is nowhere concerned with the suit property. Hence they prayed to reject the application.

12. Heard Ld. counsels for both sides at length. From the rival pleadings, following points arise for my determination and I have recorded my findings thereon for the reasons stated below.

Sr. No.	Points	Findings
1	Who has prima facie case?	<i>Defendant No. 1</i>
2	In whose favour balance of convenience lies ?	<i>In favour of the defendant No. 1</i>
3	Who will suffer irreparable loss if injunction is not granted ?	<i>The defendant No. 1</i>
4	What order ?	<u>Application at Exh. 5 is Rejected.</u> <u>Application at Exh. 17 is Allowed.</u>

REASONS

13. In support of their contentions the plaintiffs have filed xerox copies of letter issued to plaintiffs by 'Shri Lalbahadur Shastri Co-Operative Housing Society, Shirolu Pulachi' dt. 28/03/1993, plot allotment letter issued to Late Krishna Dhondi Kamble, share certificate, No Objection Certificate dt. 08/08/2009, 15/12/2009 and 12/04/2018, tax receipt dt. 15/02/2018, permission for construction dt. 29/05/2008, information as to 'Indira Aawas Yojana' obtained under Right To Information Act, electricity bills etc. On the other hand the defendant No. 1 has relied upon assessment Extract of Grampanchayat Property No.

1168, copy of FIR dt. 20/07/2018, written complaint made to Sarpanch and Gramsevak of Grampanchayat Shirolu Pulachi dt. 20/07/2018, written complaint made before 'Mahatma Gandhi Tanta Mukta Gaon Samiti' dt. 19/07/2018, tax receipts dt. 20/07/2008, photo receipt dt. 20/07/2018, total 3 photos, Consent Deed executed by the plaintiff No.2 in favour of the defendant No. 1 dt. 20/06/2008, affidavit filed before the Executive Magistrate, Hatkanangale by Vimal Yadav dt. 30/08/2016, copy of Adhar Card of Vimal Yadav, reply given by Grampanchayat, Shirolu Pulachi to the letter of the defendant No.1 dt. 03/07/2018, Notice issued by the Grampanchayat Shirolu Pulachi to the plaintiffs and defendant No. 2 to 4 for stopping the construction work dt. 08/05/2018, FIR lodged on 09/05/2018 by the defendant No. 1 against the plaintiffs. Notice dt. 21/07/2018 issued by plaintiffs to defendant No. 1 and Gramsevak and Sarpanch of Grampanchayat Shirolu Pulachi etc. The documents filed by both the parties will be taken into consideration hereinafter for discussion at relevant paras.

AS TO POINT NOS.1 to 3 -

14. The point No. 1 to 3 are co-related to each other and to avoid the repetition, I have taken up them together for discussion. Considering rival contentions of both the parties, prima facie it reveals that, the defendant No.1 is the sister of plaintiff No.1 and defendant No.1 to 4 are daughters of the plaintiff No.2. It also prima facie reveals from the documents i.e. property card of property No.1168 that, it is belonged to the defendant No.1 and as per the property card of property No.1169, it belong to the plaintiff No.1.

15. It prima facie reveals that, the plaintiffs have started construction work. Though the advocate for plaintiff orally argued that the plaintiffs are only replacing tin sheets of their house, but the prayer of plaintiffs shows that, they are seeking injunction order for protecting the

construction work, for which they obtained no objection from Shri Lal Bahaddur Shastri Co-op Housing Society Ltd. on 12/04/2018. Therefore, it prima facie shows that, the plaintiffs have obtained permission for construction of Plot No.110 from 'Shri Lalbahadur Shastri Co-Operative Housing Society Ltd., Shirolu Pulachi'.

16. It also prima facie transpired from the letter of defendant No.1, which was given to the Sarpanch, Gramsevak of Shirolu Grampanchayat and photos on record that, plaintiffs and defendant No.2 to 4 have put up rafters in the toilet and bathroom of defendant No.1. It also prima facie shows that, the plaintiffs and defendant No.2 to 4 have started construction of their house and for that purpose, they have disturbed the possession of defendant No.1 in the Grampanchayat Property No. 1168.

17. The defendant No.1 has put up her grievance before the Sarpanch and Gramsevak of Grampanchayat Shirolu for restraining the plaintiffs and defendant No.2 to 4 from carrying out the construction work. She has also put up her grievance before 'Mahatma Gandhi Tanta Mukta Gaon Samiti' on 19/07/2018. Accordingly, the Grampanchayat Shirolu Pulachi has directed the plaintiffs and defendant No.2 to 4 that, not to carry out any construction work over the property of the defendant No. 1. Though the plaintiffs have not spoke about the relationship with the defendant No.1, the Consent Deed/letter dated 20/06/2008, the plaintiff No. 2 has given her consent to her daughter i.e. the defendant No. 1 to construct her house in the Plot No. 110.

18. The documents on record also prima facie shows that, initially the suit property was in the name of Krishna Dhondi Kamble and thereafter name of plaintiff No.1 entered on record. The documents filed by the plaintiffs shows that, 'Shri. Lalbahaddur Shastri Co-operative

Housing Society Ltd., Shirolī Pulachi' has permitted the plaintiffs to construct the suit property, accordingly they have obtained permission for construction. The photos filed by the defendant No.1 shows that, while constructing the house the plaintiffs and defendant No.2 to 4 have removed locks of the toilet and bathroom of defendant No.1 and putting up rafters they caused obstruction for using the said bathroom and toilet for her daily needs.

19. The plaintiffs have filed assessment extracts of Grampanchayat property No.1169, 1170, 1171 on record. The defendant No.1 has filed assessment extracts of Grampanchayat property No.1168 on record, which prima facie supports the contention of defendant No.1 that, there are separate house properties of plaintiffs and defendants in the Plot No. 110. The documents on record, prima facie does not show that, while constructing their house, the plaintiffs and defendant No.2 to 4 has taken as much as care that, not to disturb the possession of the defendant No.1 over Grampanchayat property No. 1168 which is situated at Plot No. 110.

20. The questions whether the defendant No.1 is having any right in the suit property or not, whether she has obtained the 'Indira Aawas Yojana' by furnishing false information, these can be proved after the evidence both the parties and at the time final adjudication of the suit, therefore these questions cannot be considered at this interim stage.

21. Considering the above reasons prima facie it reveals that, the plaintiffs and defendant No.2 to 4 have obstructed the possession of defendant No.1 over the property No.1168 which is situated in plot No.110 by breaking cement roofs and locks of bathroom and toilet, also by putting up rafters in the toilet and bathroom. Therefore the defendant No.1 has prima facie case. The plaintiffs are not having prima facie case.

The balance of convenience lies in favour of defendant No.1 and not in favour of plaintiffs. If the plaintiffs and defendant No.2 to 4 are not restrained from carrying out the construction work, then they will disturb the possession of defendant No.1 and irreparable loss will be caused to her. Therefore, I answer the point No.1 to 3 accordingly.

AS TO POINT NO.4

22. Considering the findings as to the point no. 1 to 3, the application of defendant No.1 at **Exh.17** deserves to be allowed and the application of the plaintiffs at **Exh.5** deserves to be rejected. Hence, in view of the point No. 4, I pass the following order :-

ORDER

- 1 The application at **Exh.5** is hereby rejected.
- 2 The application at **Exh.17** is hereby allowed.
- 3 The plaintiffs and defendant No.2 to 4 are hereby temporarily restrained from causing obstruction to the defendant No.1 over the Grampanchayat property No.1168 situated in plot No.110 till the final decision of the present suit.
- 4 Costs in main cause.

Date : 08/08/2018

Sd/-
(J. S. Gaikwad)
Jt. Civil Judge Jr.Dn., Peth-Vadgaon

I affirm that the contents of the P.D.F file order are same, word to word, as per the original judgment.

Name of the Stenographer	Sou.K.S.Gaikwad
Name of the Court	Smt.J.S.Gaikwad, Jt. Civil Judge Jr.Dn., Peth-Vadgaon
Date of Dictation	08/08/2018
Judgment signed by the PO. on	10/08/2018
Judgment uploaded on	10/08/2018