	ORDER BELOW EXH. 5 IN R.C.S. NO. 21/2020. Shubhangi Hindurao patil **Vs.** Shankar Dattatray Agnihotri.

By way of this application, plaintiff seeks interim mandatory injunction as well as interim injunction under the provisions of Order XXXIV, rule 1 and 2 of Code of Civil Procedure, 1908 (*hereinafter referred to as 'the C.P.C' for the sake of brevity*).

02. The facts as presented by the plaintiffs are as follows.

a) The subject matter of the suit is the house property situated at Kagal in House No. 894- A,B,C and D. There are four parts in it and out of which, ½ share i.e. 672 sq.mt in C.S No.3557 (total area – 1344 sq.ft with following boundaries i.e. towards the north - public road, towards south- C.S. No. 3559 and road, towards the east - house property of C.S. No. 3558 and towards the west- house property of C.S. No. 3555.

b) The suit property was ancestral property of deceased Vasudev Agnihotri. House property was partitioned amongst his own sons i.e. Laxman, Dattatray, Shripad and Ramchandra on 14/06/1948. Each of them received 1/4th share as follows i.e. towards the east - property was allotted to Ramchandra, and then adjacent to it again towards the east side, property was allotted to Laxman, then, towards the west side adjacent to Lakshman, property was allotted to Dattatray and towards the west side, adjacent to Dattatray, property was allotted to Shripad. Parties were put in possession of their respective shares.

c) Father of plaintiffs, Hindurao Patil purchased the 1/4th share of Shripad i.e. property towards the west side along with the open space in C.S. No. 3556 and 3559, by way of registered sale deed bearing 1286/1985 dated 12/09/1985. Then, the predecessor of plaintiffs have entered into the possession of the property. Accordingly, as per the purchase, name of plaintiffs have been recorded in the property card and they have been paying property tax, assessments and other dues etc. This property is adjacent to that of defendants' property. Thus, plaintiff and defendant have equal share (672 sq.ft each) in the total area of the property i.e. 1344 sq.ft.

d) However, this entire property is very old and it is about to collapse at any point of time. Hence, Kagal Municipal Corporation had issued them a notice on the complaint filed by neighbour, namely Bhausaheb Yashwant Patil on 20/05/2006 with respect to demolishing the plaintiffs' dangerous wall alongside their housing property. But, plaintiffs did not have any other alternatives but to reside in the home. However, in the heavy rains of 2009, the entire roof got collapsed and another notice was served on 11/09/2019. As the house structure became dangerous and risky, plaintiffs were compelled to leave the suit property and reside at the address mentioned in the plaint.

e) However, on 02/12/2019, defendants started constructed wall in the share of the property and created hurdles in the way of the plaintiffs. Plaintiffs tried to raise objection and requested them not to make construction in the suit property. However, defendants did not pay heed to the request and continued with their construction. Hence, plaintiffs were

constrained to institute the present suit claiming the relief of perpetual as well as mandatory injunction. As the present suit would take time to come its conclusion, hence, they are compelled to file the present application. Plaintiffs are four daughters and their parents are dead. They do not have income source. Hence, they seek interim reliefs of two kinds i.e. firstly, mandatory injunction so as to direct the defendants to remove the construction i.e wall made in the way of plaintiffs in/over the suit property and secondly, interim injunction so as to restrain the defendants from making any kind of construction in the suit property and also from disturbing, interfering their peaceful enjoyment of/in the suit property.

03. Say of the other side was called for. Defendants have resisted this interim application by way of their say below Exh. No. 12 wherein they contended that, the description of the suit property is wrong and misleading. They denied about partition of the suit properties in the family of Agnihotri. They also denied that, father of plaintiffs, Hindurao purchased 1/4th share of Shripad. Hence, plaintiffs are not in possession of the suit property. They also stated that, plaintiffs have deliberately mentioned the wrong address of the defendants and they are not residing at the address mentioned in the plaint.

04. Defendants further contend that, that the house in C.S. No. 3559 is very old and made of stones. Defendants are looking after the same. Plaintiff No. 1 is working in Kagal Nagarparishad . She has been misusing her office and with the help of Bhauso Yashwant Patil, issuing fake notices on the suit property in her

names so as to create false evidence. Hence, notices issued by Kagal Nagarparishad can not be relied open. Plaintiffs are trying to create rights in the suit property on the basis of false bills, property card, photographs, sale deed etc.. Rather, plaintiff No. 1 has been misusing her office by entering upon the suit property and taking photographs of the suit property with the help of the employee of the Kagal Nagarparishad. Articles shown in the photographs belong to defendants. Thus, plaintiff is just trying to present concocted story.

05. Defendants further contend that, due to the heavy rains, roof of the C.S. No. 3556 and 3559 got damaged. Walls of it, also gave away. Panchnama was prepared by the concerned office accordingly. Defendants have received amount as per the panchnama. Defendants have raised construction in C.S. No. 3556 and 3559. Plaintiffs are not concerned with this construction. Rather, plaintiffs are just trying to exploit the situation and enter into the suit property. Defendants have also file complaint against plaintiff No. 1 and Sunil Kasote.

06. Defendants further contend that, defendant No. 1 is residing at the suit property since his birth. Defendant No. 1 and his father Dattatray looked after suit property. In the recent past, defendants have undertaken the construction for the purpose of repairing the dilapidated condition of the suit property. Roof of the tin-shed have been fixed in the suit property. There is only one room where the defendants are residing. There is no other room or space in the suit property. Hence, contention of plaintiffs of residing in the suit property is false. Hence, case of the

plaintiffs is false. It is also questionable as per the contention of plaintiffs that, share of Shripad towards the western side was purchased, then why the boundaries are not mentioned in it. Thus, the alleged partition and sale never happened. Hence, considering that defendant No. 1 is in the possession of the suit property and also paying light bills and water charges, hence, the present application be rejected with costs.

07. In view of the rival contention as well as materials placed on record and considering the submissions of both the parties, (plaintiffs have filed their written submissions below Exh. No.18) which is nothing but a reiteration of their respective case, following points arise for my determination for which findings are recorded as per the reasons:-

Sr. No.	**Points**	**Findings**
1.	Whether plaintiffs prove that prima-facie case exist in their favour?	**Partly Yes.**
2.	Whether balance of convenience lies in the favour of plaintiffs?	**Partly Yes.**
3.	Whether plaintiffs would suffer irreparable loss or damage if the relief of injunction is not granted in their favour?	**Partly Yes**
4.	Whether plaintiffs are entitled for relief of interim injunction?	**Partly Yes.**
5.	What order ?	**Application is partly allowed**

08. Following are the documents placed on record below

Exh. No. 3 by plaintiff documents below Exh. No. 3, 24,

Sr. No.	**Description**	
1 and 2	Certified copies, photo-copy of property-card, assessment extracts.	**3.**
3.	Photocopy of the partition deed.	
5	Photocopy of the sale-deed.	
6 to 9	Map of C.S. No. 3556, 3557, 3558, 3559 and consolidation map of C.S No. 3556, 3557, 3558, 3559.	
11 and 12	Photo copy of Notice issued by Kagal Nagarparishad.	
13.	Receipts issued by Kagal Nagarparishad to Hindurao Patil.	
14. and 15	Photographs	

Sr. No.		**Exh. No.**
1.	Color photo copy of partition deed.	**Exh. No. 14.**
3.	Photo copy of the map.	

09. Following are the documents placed on record by the defendants in support of their case.

Sr. No.		**Exh. No.**
1.	Light bill on the name of Dattatray Vasudev Agnihotri	**21**
2.	Photographs of the suit property	
3.	Complaint made to the Kagal Nagarparishad by the defendants	

1 to 10, 12, 13, & 15 to 18	Receipts of the payment of the water charges of the name of defendant No. 1.	**24**
11, 14, 19, & 20 to 31	Receipts by assessment paid by defendant No. 1.	
32.	Assessment extract of defendant No. 1.	

R E A S O N S

Admitted Facts.

10. On perusal of the case of both the plaintiffs and defendants, it appears that, there is no dispute between the parties that, house No. 894 of the ancestral property of the Agnihotri family. However, it appears that, the parties are at dispute on many aspects. These aspects are dealt with one by one.

Interim Prohibitory Injunction.

11. Firstly, it is the case of the defendants that, plaintiffs are not entitled to any rights or interest in any part of the house No. 894 i.e the suit property. Defendants also questions the sale-deed which has been executed in favour of the plaintiffs by the Shripad Agnihotri. Defendants also denied the possession of the plaintiffs in C.S. No. 3557 in half of the area i.e. 672 sq. ft. Per contra, plaintiffs contend that, they have purchased the 1/4th share from Shripad Vasudev Agnihotri by way of registered sale-deed bearing No. 1286/1985 dtd. 12/09/1985. On perusal of the documents placed on record, plaintiffs have placed on record the sale-deed below Exh. No. 3/5. It is the photo-copy. On perusal of the sale-deed, it appears that, Shripad Agnihotri has transferred

his 1/4th share in the house No. 894-A,B,C, in favour of Hindurao Shankarrao Patil (predecessors of plaintiffs). The sale-deed also clearly mentions that, possession of the 1/4th share is also transferred in favour of Hindurao. Thus, the recitals of the sale-deed support the case of the plaintiffs. Even the property-card placed on record by the plaintiffs below Exh. No. 3/1 to 3, Sr. No. 1 to 3 of C.S. No. 3556, 3557, 3558, reflect the name of Hindurao Patil and then, after his death, that of the plaintiffs. Thus, it appears that, plaintiffs do have some rights and interests in the suit property.

12. Now, the property-card place on record below Exh. No.3/1 pertains to the year of 2006. Plaintiffs have even placed on record the property-card, आखीव पत्रीका of C.S. No. 3556, 3557 and 3558 below Sr. No. 2. It can be seen that, the name of Hindurao Patil and then that, of the plaintiffs are reflected on it. Further plaintiffs have also placed on record assessment extracts of the year 2016-17 to 2019-20. This pertains to house No. 894 and C.S. No. 3556 to 3559. Similarly, plaintiffs have placed on record the receipts of payment of the bills, dues to the Kagal Nagar-Parishad below Exh. No. 3/13. These receipts again pertains to house No. 894-D. These receipts stand in the name of Hindurao and it appears that the payment has been done by the plaintiff No. 1. These receipts pertain to the year of 1993, 1994, 1995, 1997, 1998, 1999, 2000, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2013, 2014, 2015, 2017, 2018 and 2019. Thus, from the sale-deed, property-card आखीव पत्री, assessment extracts, the

receipts, it appears that, plaintiff do have some rights and interests, even the possessory rights in the suit property.

13. Defendants have denied all these documents and taken the stand that, these documents are fabricated and forged. However, these document dates back to the year 1993 especially, receipts and the sale-deed which is registered, is of the year 1985. It is incomprehensible that defendants have not taken any action on these documents if, as per their contention, it is false and fabricated. Rather, these document reflect that, predecessor of plaintiffs purchased 1/4th share of Shripad in the suit property and also got the possession of the same. Defendants have not brought any material to rebut these documents. Rather, defendants have placed on record the receipts of the payment of the water charges below Exh. No. 24 Sr. No. 1 to 10. It is the contention of defendants that, plaintiffs have not placed on record any receipts of water charges which mean that, plaintiffs are not residing in the suit property. However, it is the contention of the plaintiffs that, there is a well in the suit property and plaintiffs use water from the well and hence, there is no need to pay the water charges.

14. For this purpose, plaintiffs rely on the partition deed placed on record below Exh. No.3/4. Plaintiff has also placed on record the partition deed below Exh. No. 14/1. On perusal of the unregistered deed, it dates back to the year 1934 hence, questions of the registration do not arise. However, if at all, there is any contention of registration, then whether this document is a partition deed or a family arrangement and whether it would

require registration, would be looked into detail during the course of trial. However, at this stage, if the document is perused, say for the collateral purpose, then, it appears that, brothers of Shripad were allotted half share in property bearing No. 20/21. It also clearly reflects that there is well in the property. Plaintiffs contend that, suit property has been transferred to predecessor of plaintiff i.e. Hindurao by Shripad. The sale deed placed on record lends support to the case of the plaintiffs. Now, defendants deny the execution of the partition deed. It is the contention of the defendants that, partition never took place between brothers i.e. Shripad, Ramchandra, Laxman and Dattatray. Now, issue with respect to the partition is not relevant for this proceedings as the present proceedings is restricted to the reliefs of mandatory injunction and perpetual injunction. Defendants have not provided any explanation with regard to the documents which have been placed on record by the plaintiffs but has merely denied it. This document dates back to the year 1934. Hence, presumption u/s. 90 of the Indian Evidence Act, 1872 applies to it considering that the document is older than 30 years and is produced from the proper custody, so, it can be presumed that it was duly executed by the brothers of Agnihotri. Predecessors of defendant No. 1 i.e. Dattatray is one of the executant. So, this document is binding on the successors of Dattatray, who are defendants and it act as an estoppel against defendant No. 1. So, from this document, it appears that, there is a well in the portion given to Shripad. That, portion is transferred to the predecessors of plaintiffs i.e. Hindurao Patil by the sale deed. If there is a well in the suit property, then it can be expected that plaintiffs are

utilizing the water from the well. Hence, the contention of the defendants about the non-availability of the receipts of the payment of the water charges with the plaintiffs is not forceful.

15. Moving further, defendants have relied on the receipts of the payment of the assessment, dues, taxes of the house property. Now, these receipts are placed on record below Exh. No. 24. Thus, receipts dates back to year 1999-1994 to 2013 and are with regard to the payment of the tax to the Kagal Nagar-Parishad. Most of these receipts stand in the name of 'Dattatray Agnihotri'. However, out of it, one receipt (which is placed on record below Exh. No. 24/19) is with regard to the payment of the taxes and dues to the Kagal Nagar-Parishad of the year 2013-14, reflects the name of the predecessors of plaintiff i.e. Hindurao Patil. It is pertinent to note that, all these receipts pertains to house No. 894. Similarly, receipts are also placed on record below Exh. No. 24/25 and 24/27. These receipts which are placed on record by the defendants themselves reflect that, plaintiffs also share the house No. 894 with defendants.

16. Defendants have relied on the electricity bill placed on record below Exh. No. 21/1. Now, this electricity bill stands in the name of Dattatray Agnihotri and it is of the month of October, 2021. The learned advocate for the defendants contend that, plaintiffs have not placed on record any such electricity bills. However, this may not be a ground to disbelieve the case of the plaintiffs as *prima-facie* plaintiffs have placed on record the sufficient documents i.e. sale-deed, property-card, receipts of the payment of the water charges, taxes, dues etc. Hence, absence of

the light bill would not be fatal to the case of the plaintiffs.

17. Moving further in the discussion, prima-facie inference can be drawn that plaintiffs do have rights and interests in the suit property. Defendants contend that, plaintiffs are trying to make up the false case that, they are in possession of the suit property by sending false notices in their names. It is the contention of the defendants that, plaintiff No. 1 is serving in the Kagal Nagar-Parishad and she is taking undue advantage of her position and with the help of some people, she is sending false notices in the names of their family at the suit property. Defendants heavily relied on the complaint below Exh. No. 21/3 which is addressed to the concerned authorities of the Kagal Nagar-Parishad wherein he raises the concern about the action of the plaintiffs. Defendants also contend that, plaintiffs enter into the suit property by taking unfair advantage of their position and click photographs. Per contra, plaintiffs have denied all these allegations. Now, perusal of the record of the case, it appears that, the suit property has become dilapidated hence, notices have been issued by the concerned authorities of Kagal Nagar-Parishad so as to vacate the suit property. Plaintiffs have placed on record this notice dtd. 11/01/2019 below Exh. No. 3/11 & 12. It is addressed to plaintiff No. 2 and it reflects the dangerous conditions of suit property. Now, contention of defendants is that, plaintiff No. 1 is trying to mis-use her position in the Kagal Nagar-parishad and then, trying to send notices on her name with respect to the suit property. But, this notice is of the year 2019. Similar notice is also placed on record by plaintiffs below Exh. No. 3/11. From these notices, it is

being revealed that, defendant No. 1 and plaintiff No. 1 have been addressed to together. Defendants have failed to comment on these notice as well as failed to explain as to why they have not taken action against this notices promptly. Thus, the contention of the defendants is hard to digest that plaintiff No.1 has managed to influence the other departments of the Kagal NagarParishad and acted so heavily for her own interests. Hence, contention of the defendants is not tenable.

18. As I have stated earlier at the cost of repetitiosn, plaintiffs are also in possession of the suit property. Hence, possession of the plaintiffs needs to be protected. It is stated by the plaintiffs in their pleadings that, plaintiffs are not in possession of the property as they have left the suit property due to the dilapidated and conditions. However, then, again plaintiffs contend that, they have started residing in the suit property after carrying out some repairs. However, it is hard to believe that, when the local authorities have directed the plaintiffs to vacate the suit properties then also, plaintiffs are still residing in the suit property in such dangerous conditions. To show their possession, plaintiffs have placed on record (below Exh. No. 3, 14, 15) some photographs, from which it appears that, some meagre household articles, are kept at the background along with the some buckets. However, if the photographs are seen deeply, then it clearly reflect that, the suit property is in dilapidated conditions and it is not safe for the purpose of residence of humans. So, it is being reflected that, plaintiffs are not residing in the suit property. But even though, plaintiffs are not residing in the suit property, they do

have rights and interest in the suit property and their rights and interest as owners of the suit property needs to be protected. Defendants have vehemently denied the rights and interests of plaintiffs in the suit property. This act as obstruction to the possessory rights of the plaintiffs in the suit property. Although the possession is not actual but this possession should not be disturbed and obstructed by the defendants. If this right is not protected then, irreparable loss or damage would be caused to the plaintiffs as the same cannot be measured in terms of money. Hence, interim prohibitory injunction needs to be granted in favour of the plaintiffs, so as to protect their de-jure possession in the suit property. Accordingly, point No.1 to 3 are answered in the affirmative.

Interim Mandatory Injunction.

19. Plaintiffs have also claimed the interim mandatory injunction against the defendants. It is the contention of the plaintiffs that defendants have raised wall in the share of the plaintiffs i.e in the suit property and they have created hurdle in the way of the plaintiffs. Even though, plaintiffs requested to stop the construction, defendants have not listened. Hence, mandatory injunction be granted so as to pull down this wall. In order to substantiate their case, plaintiffs have placed on record photographs below Exh. No. 31/14, 31/14, specifically the photographs No. 3, wherein plaintiffs pointed out towards the wall which is in pinkish in colour and contends that, this wall stands in their share and due to this, their way is obstructed. Perused the photographs minutely and it appears, that this wall seems to be

attached to the door and it is does not appear to create any hurdle in any way. Thus, contention of the plaintiffs are vague. It is pertinent to note that plaintiffs have not given any particulars about the wall i.e. the exact location where the wall is constructed in their share, the length and width of the wall. Plaintiffs not even described when the wall was raised. Prima-facie case needs to be strong for the grant of interim mandatory injunction. Plaintiffs have relied on the ruling of ***Dorab Cowasji Warden Vs. Coomi Sorab Warden 1990 CJ (SC) 178***. Now, if this ruling is perused minutely, then it clearly lays down the principles of grant of the mandatory interim injunction, of which the most important is that plaintiff has a strong prima-facie case i.e. the case shall be higher standard than a prima facie case that is normally required for a prohibitory injunction. But, in the present case, plaintiffs have failed to show strong prima-facie case, hence, this ruling is not helpful to the plaintiffs.

20. Plaintiffs have also relied on the ruling of ***Roopchandan Vs. Punamchand 1961 CJ (Raj) 49*** on the point that, an unauthorized interference is established, when an co-owner of a joint wall raises its height, otherwise use of such wall, whether express or implied. However, facts of the ruling is distinguishable as that of the present case as the dispute in this rulings was between the parties who were brothers and the dispute pertains to the joint wall situated between their respective houses.

21. Plaintiffs have also relied on the rulings of ***Krothapalli Satyanarayana and V/s. Koganti Ramaiah 1983 CJ (SC) 172***.

On the perusal of this ruling, it appears that the facts of the present case are distinguishable from that of the present case. The suit was instituted for the declaration and the removal of the encroachment which was done by constructing wall which is causing obstruction for passing and repassing with the cattle and carts from the lane. The suit was resisted by the defendants on the ground that compound wall has been constructed at the boundary of the land of their ownership. It was held that plaintiff acquiesced in the act of encroachment and therefore, discretionary relief of mandatory injunction for removal of encroachment cannot be granted. But, it was observed further that mandatory injunction must be issued to restrain the defendant from making further encroachment. But, in the present case, plaintiffs have not even mentioned where wall was constructed. Rather, the construction of wall is completed, so in the present factual matrix, this ruling is not helpful to the plaintiffs.

22. Plaintiffs have also relied to the ruling of ***Shivputrappa Parappa Kamshetti Vs. Shivrudrappa Kallappa Huli, 1926 CJ (Bom) 230.*** Now, this ruling dealt with the question as to whether, if one co-owner raises the wall without the consent or acquiescence of the other co-owner, he makes himself liable to an action for an injunction. The answer to this question came in the following way that, law the plaintiff can himself remove the raised portion of the wall without rendering himself liable to a claim for damages, he is a fortiori entitled to come to the Court and ask for an injunction in order to get the raised portion removed. This ruling is certainly binding, however,

inequitable relief of injunction has to be granted in view of the facts and circumstances of the case and also considering the strong prima-facie case for interim mandatory injunction as laid down in the ***Dorab Cowasji (supra)*** and if the same is looked into then, it is clear that, there is no strong prima-facie case in favour of the plaintiffs as plaintiffs have failed to described the particulars of encroachment as discussed above. Equitable relief of interim mandatory injunction cannot be granted on such vague and incomplete pleadings. Hence, in view of the above discussion as there is no strong *prima-facie* case for the grant of interim mandatory injunction, point No. 1 to 3 are answered in the negative and in answer to point No. 4, the claim of interim mandatory injunction is rejected.

23. In view of the above discussion, plaintiffs are entitled for the protection of possession in the suit property as prima-facie case is found in their favour and the aspect of balance of convenience and irreparable loss or damage to their rights and interests are also found in their favour. But with respect to the grant of interim mandatory injunction, there is no prima-facie case. So, the aspects of balance of convenience and irreparable loss falls to the ground. Consequently, point No. 1 to 4 are answered in the affirmative for the grant of the interim prohibitory injunction and point No. 1 to 3 are answered in the negative for the grant of interim mandatory injunction. Consequently, point No. 4 is answered in the affirmative partly for the grant of the prohibitory interim injunction. Thus, coming towards the conclusion, in answer to point No. 5, the following order is passed.

O R D E R.

1. Application is partly allowed.

2. Defendants are hereby restrained from causing any obstruction, interference or disturbance to the possession of the plaintiffs in/over the suit property either through themselves or through their agents, servants, assignees etc. till the conclusion of the present suit or till further orders of the Court.

3. The relief of interim mandatory injunction is rejected.

4. There are no special circumstance to award costs of this application, hence, costs in cause.

Sd/-.

Date :- 31/03/2022 **(Katkar Vijaya N.S.)**

Place : Kagal. **Jt. Civil Judge, Junior Division, Kagal.**