



R.C.S. No. 75/2024

**Akkatai Bhupal Gharal etc.05 Vs. Sadashiv Appaji
Gharal etc.02**

CNR - MHKO130004822024

ORDER PASSED BELOW EXH. 05

(Dt. 30/04/2024)

01. This is the application of the plaintiffs filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure (In short C.P.C.) with request to restrain defendant no. 1 from making illegal construction in the suit property.

Brief facts of the plaintiffs case are as under:-

02. The following property will hereinafter be referred as the suit property:-

(A)

Sr. No.	Village & City survey no.	Admeasuring Area Sq.Miter
1.	Siddhnerli, Tal. Kagal City survey no. 653	1094.50 Sq.met.

Old dilapidated household property situated at Siddhnerli, Tal. Kagal, having it's four corners:-

Sr. No.		
1.	East	C.S. no. 652 & property of Ganu Gopal Lohar.
2.	West	C.S. no. 654 & property of Ganpati Sidhu Jatrata.
3.	South	Road towards Siddhnerli.
4.	North	Agricultural property & property of Gonugade & Gharal.

Property situated in above four corners belonging to

south-east corner (अग्नेय कोपरा) admeasuring 15x20 in which property belonging to the southern side constructed in stone & bricks & the open space belonging to the western side of this property, having it's four corners as under:-

Sr. No.		
1.	To the East	C.S. no. 652 & property of Ganu Gopal Lohar.
2.	To the West	Property of plaintiffs & defendants.
3.	To the South	Road to the Siddhnerli.
4.	To the North	Property belonging to the plaintiffs & defendants.

In the above four corners old house admeasuring 15x20 & to the western side of this house the illegal construction carried out by defendant no. 1 is the suit property.

03. As per the plaintiff, defendant no. 1 is making illegal construction towards the western side of old house property. Property above described is ancestral property of both the parties which is yet not partitioned. Both the parties are having their joint possession over the property. The document of property-card shows name of both the plaintiffs & defendants. The property of plaintiff & defendants is situated towards the southern side of south-east corner (अग्नेय कोपरा). In that property, in the year 2022, defendant no. 1 had started construction. However, the plaintiff has restrained him & has stopped his construction. The predecessors of plaintiff i.e. Bhupal Bapu Gharal is died on 23/07/2022. After his death, name of his heirs were mutated to the property-card of suit property. The heirs are having their respective shares in the suit properties.

04. As per the plaintiffs, name of the plaintiffs is there to the

property-card of suit property. In such a factual aspects, on 19/03/2024 defendant no. 1 has again started construction in the above property which earlier he has stopped in the year 2022. The plaintiffs have tried to restrain him, but at the time defendant has threatened them. The defendant is trying to change nature of the suit property by making illegal construction. Thus, to restrain defendant no. 1, the instant application is moved.

Brief facts of defendant no. 1 case is as under:-

05. The application is objected by defendant no. 1 by his say below Exh. no. 19. He has specifically denied all the pleadings made in the application. This defendant has specifically denied share of the plaintiff in the above property. As per the case of defendant, in between this defendant & predecessor of plaintiff i.e. Bhupal Babu Gharal, one suit bearing RCS no. 108/2001 was decided. The suit was filed for partition of agricultural properties. As the house properties were partitioned, house properties were not included in that suit. The plaintiff in that case i.e. defendant no. 1 in the current suit has made specific pleading in that regard. The predecessor of current plaintiff i.e. Bhupal was defendant no. 3 in that suit. Bhupal in that suit had submitted his written statement & in that written statement he had not demanded for partition of CS no. 653.

06. The defendant has come with specific case that, in respect of house properties, partition was already taken place. While deciding the issue of non-joinder of necessary properties the civil Court has not dismissed that suit on the ground of non-joinder of necessary properties to the contrary the civil Court has decreed the suit. The appeal preferred against the decree is dismissed by the District Court. In between the predecessors of the plaintiff & the

defendants house properties were already partitioned. Property situated in CS no. 6 is given to the share of defendants no. 2 & 3. Property in CS no. 653 has given to the share of defendant no. 1 & Grampanchayat property no. 519 out of Gat no. 162 is given to the share of predecessor of the plaintiffs. As per the partition, everyone is in the respective possession of his shares. The defendant has not made any complaint pertaining to the share given to the plaintiff. In fact, during life time of Bhupal, he has not demanded his share in CS no. 653.

07. It is contended by the defendant that, predecessor of plaintiffs have not made any dispute pertaining to their share, after decision of RCS no. 108/2001. The defendant has specifically contended that, house properties are already partitioned. Separate entries are there in respect of house properties. The plaintiffs inspite of knowledge of decision in RCS no. 108/2001 has suppressed these facts from the Court. The plaintiffs have not come to the Court with clean hands. Therefore, they are not entitled to the equitable relief. Defendant no. 1 is making construction in the share allotted to him. Therefore, if construction is restricted at the moment, then it may cause loss to him. The plaintiff & defendants no. 2 & 3 are not concerned with the construction of defendant no. 1. Therefore, with these submissions, the defendant has submits to reject the application.

08. Heard Advocate Shri. K.S. Patil for the plaintiffs & Advocate Shri. S.S. Kestikar for defendant no. 1.

09. On the basis of rival pleadings of both the parties, following points are arise for my determination and my findings with respect to the same with reasoning is as under:-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiffs have made out <i>prima-facie</i> case?	In the Negative.
2.	Whether balance of convenience lies in favour of the plaintiffs ?	In the Negative.
3.	Whether irreparable loss will be caused to the plaintiffs, if remedy of temporary injunction is refused?	In the Negative.
4.	What order?	As per final order.

REASONS

As to points No. 1 to 3:-

10. All the points are interlinked with each other. Thus, to avoid repetition of facts, they are discussed together.

11. Perusal of rival pleading of both the parties, one thing is clear that, defendant no. 1 is making construction in the property as quoted by the plaintiffs. The plaintiffs are claiming their share in CS no. 653. Per contra, defendant no. 1 has denied plaintiffs share in the above property. As per the case of plaintiffs, the suit property is yet not partitioned. Per contra as per defendant no. 1, house properties were already partitioned & the plaintiffs have no right in the above property. To substantiate their pleading, the plaintiffs have relied on several documents. The property-card of CS no. 653 shows name of plaintiffs. But as per the case of defendant, entry of plaintiffs name in property-card is mere formal and no substantial rights are created by that entry.

12. It is not in dispute that, earlier suit RCS no. 108/2001 was decided in between both the parties. That suit was instituted by

current defendant no. 1 against the predecessor of the plaintiffs i.e. Bhupal. It is pertinent to note that, in that suit, the Court has discussed about the ground taken by Bhupal pertaining to non-joinder of necessary properties. In that suit, while submitting written statement Bhupal has taken ground that all the properties are not included in that suit. However, the Court has discussed that issue and has decreed the suit. The appeal preferred against that decree is also dismissed by the District Court. This fact is not disputed.

13. Thus, these things goes to show that, issue pertaining to the objection of Bhupal in respect of non-joinder of necessary properties was already discussed & decided by the earlier Court in RCS no. 108/2001. While deciding that issue, the Court has observed that, house properties might have been partitioned in between the parties and therefore house properties were not included in that suit. Those observations are remained intact as appeal preferred against the original decree is dismissed.

14. Certainly name of the plaintiffs is appearing to the property-card extract of suit property in owners column. But, defendant no. 1 has placed on record several documents to show his possession over the suit property. This defendant has filed several assessment tax receipts to show that, he has regularly paying assessment taxes towards the Grampanchayat Sidhnerli in respect of suit property i.e G.P. no. 29-A. Defendant no.1 has also filed on record electricity bills. Those bills shows that, property no. 29 is standing in the name of Sadashiv Aappaji Gharal.

15. The tax receipts filed on record are public documents. Therefore, there is no dispute that taxes were paid in respect of G.P. no. 29-A. Defendant no. 1 has also placed on record copies of

registered maintained from the year 1968 by Grampanchayat Siddhnerli to show that property no. 29 situated at Sidhnerli was belonging to Aappaji Gharal and he had regularly paid taxes for it. The defendant has filed on record one certificate issued by Grampanchayat Siddhnerli dtd. 10/04/2024 which demonstrates that, G.P. no.29-A is a part of CS no. 653. These tax receipts directly shows that, defendant no. 1 is in the possession of the suit property. Per contra, except property-card, the plaintiffs have not filed on record any document to show their possession over the suit property.

16. It is important to note that, defendant no. 1 has come with the specific case of earlier partition & memorandum of that partition was written on 26/04/2010 in between the parties. Copy of that memorandum is placed on record by the defendant. This copy shows that property in CS no. 6 was given to the share of Shiva Mahadev Gharal. Property in CS no. 653 was given to the share of Sadu Aappaji Gharal i.e. current defendant & property in CS no. 519 was given to the share of Bhupal i.e. predecessor of this plaintiffs. Certainly, copy of that partition-deed is in the xerox form. However, there is nothing to preclude this Court from considering this copy at interim stage. Thus, xerox copy prima-facie highlights earlier partition of house properties in between the parties.

17. The defendant has filed on record supportive affidavit of attesting witness Ramchandra Magdum at (Exh. 22) who deposed that property in CS no. 653 is in the possession of defendant & the plaintiffs have no concern over this property. He further supported the case of earlier partition as placed on record by defendant no. 1. In fact, it appears that, this person was attesting witness to the partition-memo dtd. 26/04/2011. Therefore, his testimony is quite assumes much importance in the case. Indeed, the plaintiffs have

also filed on record supportive affidavit of Balaso Chaugle (Exh. 13) to show & support case of non-partition of house properties. However, recitals in said affidavit shows that, this witness is hearsay pertaining to the fact of earlier non partition of the properties. Therefore, I found no much substance in the supporting affidavit of plaintiff witness.

18. So these documents as placed on record prima-facie suggests that, except entry to the property-card, there is nothing on record to show that the suit property is in the possession of plaintiffs. Per contra, the case put-up to by defendant no. 1 clearly points out actual possession of this defendant in the above property.

19. Significantly while drafting this application the plaintiffs have not uttered single word pertaining to the RCS no. 108/2001. The fact of that suit is specifically suppressed by the plaintiffs from the Court. Indeed, while claiming equitable relief, the party have to come before the Court with clean hands. But, here it appears that, the plaintiffs by suppressing such a facts have not approached before the Court with clean hands.

20. The plaintiff to support their case placed on record several citations those are as follows:-

Sr. no.	Citations.
1.	Basant Singh Vs. Janki Singh & Ors. AIR 1967 ALL L.J.1
2.	Hari Singh Vs. Jaswant Singh, AIHC 1988 REVL R 1 299
3.	Chinnamma and Ors Vs. Nagaraj & Ors, AIR 1996 Karnataka 11.
4.	Smt. Urmila Devi & Ors. Vs. Nagar Nigam Lucknow, AIR 2003.

5.	Bharamdev Vs. Jai Singh,1998 AIHC 3271
6.	Sarladevi Vs. Shailesh AIR 1996 Bombay
7.	N. Umapathy Vs. B.V. Muniyappa AIR 1997 (SC) 2467
8.	AIR 2005 SC

I have gone through citations. But, as the plaintiffs have failed to establish their prima-facie possession over the suit property. I think those citations will not be helpful to the plaintiffs case.

21. The defendant has placed on record following citation:-

Sr. no.	Citation.
1.	A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, 2012 (2)

Ratio in the citations is dealing with the duties by Court while deciding interim application & concept of “clean hands” while seeking equitable relief. Indeed as discussed above, factual aspects of the case denotes that the plaintiffs have not approached before the Court with clean hands. In my view, the documents placed on record prima-facie suggest earlier partition of house properties & separate possession of each one in view of that partition. In these factual aspects, plaintiffs have no prima-facie case, balance of convenience does not lies in their favour & thus, remedy of injunction if refused, they will not suffer to loss. Hence, I answered points No. 1 to 3 in the negatives. In answer to point No. 4, following order is passed:-

ORDER

1. The application (Exh. 05) is rejected.
2. Ad-interim injunction granted earlier, is vacated.

3. In the peculiar facts & circumstances, there is no order as to costs.

Kagal.

Date: 30/04/2024.

Sd/-.

(A. B. Jawale)

Jt. Civil Judge Junior Division,
Kagal.