



R.C.S.No. 182/2021

Shivaji Yalugade etc. Vs. Jayram Yalugade etc.

CNR - MHKO130011292021

ORDER PASSED BELOW EXH.05

(Dt. 03/01/2022)

1. The current application is filed by the plaintiffs under Order 39 Rule 1 and 2 of the Code of Civil Procedure with request to restrain defendant no. 1 from making any construction, obstruction and interference in the undivided and common share of the plaintiffs in the suit property.

Brief facts of the plaintiffs case are as under:-

2. The following property is hereinafter will be referred as “the suit property”-

Sr. No.	Village	City Survey No.	Total Area
1.	Mouje Shendur, Tal. Kagal, Dist. Kolhapur	190	941.9 Sq.mtr.

3. It is the case of the plaintiffs that, the plaintiffs and defendants are belonging to the same family. The partition in respect of all the properties is already been taken place in between both these parties, and in accordance with this partition separate entries are made to the revenue record of the properties, except the suit property.

4. The plaintiffs have further averred that, as regards with the suit property, the partition has been effected in between the plaintiffs and defendants and share to the extent of 1/2 each is allotted to both the parties. In the suit property, the share to the eastern side was come to the share of plaintiffs and share to the western side was come to the share of defendants. In view of the above partition, both the parties are in their respective possession

over the suit property. However, to the contrary of actual partition, contrary entries have been entered in the property card of the suit property. Wherein the share of 5 Aane 4 Pai each is denoted to the share of plaintiffs and defendants. Thus, the defendants are claiming their 1/2 share in the suit property. The plaintiffs have resisted the same. However, all efforts of the plaintiffs are went in vein.

5. As per the plaintiffs, they are in possession of suit property. They are using the same property. The entrancement of the father of the plaintiffs is in the precincts and to the western side of the suit property. Defendant no. 1 is trying to construct in the share, more than that allotted to him. The said action of the defendant is illegal. The plaintiffs have no knowledge about the entries that are made in the property card of Suit property. The plaintiffs when resisted the defendants from the making construction in the suit property, at that time, they came to know about seriousness of entries made in the property card of the suit property. Thus, on the basis of these factual aspects and to restrain defendant no. 1 from making further construction in the suit property. The current application is filed.

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

6. Defendant no. 1 has resisted the current application by submitting his say and written statement at Exh.21. As per the defendant, the plaintiffs and defendants are not members of Hindu Joint family. To the suit property, there are three sharers i.e. Pandu Krushna Yalugade, Keraba Hari Yalugade and Rama Yalugade. The plaintiffs are the heirs of Pandu. All these three captioned persons are having 1/3 shares each in the suit property. The three sharers have already effected the partition for the suit property and in view of that partition, the plaintiffs are having 1/3 share to the east side of

the suit property. Defendants no. 1 to 3 are having share to the middle portion i.e. towards western side of the plaintiffs and to the adjacent of defendants no. 1 to 3. Rama Yalugade is having 1/3 share adjacent to the defendants no 1 to 3.

7. As per the defendant, city survey has been effected in the village Shendur in the year 1984. The entries that are made in suit property in accordance with consolidation scheme were communicated to the concerned persons i.e the plaintiffs and defendants on 23/08/1984, the plaintiffs have yet not challenged the said entries. In the registered sale deed no. 1058/2011 executed in between plaintiff no. 1 and plaintiff no. 2 in respect of the suit property, the description of suit property is mentioned, where in it is clearly mentioned that, plaintiff no. 2 is selling his sole share out of 5 Aane 4 Pai. The same fact is also mentioned by the plaintiffs in the written statement filed at R.C.S.no. 173/2011 wherein said plaintiffs were defendants.

8. As per the defendant, he is making construction in his own premises. Both the parties have already measured the suit land through the measurement officer Mr. Ballal and as per the measurement boundaries have been fixed. The construction of defendant is now come at the stage of slab. Thus, merely to cause loss and harassment to the defendant, instant application is filed and hence, the defendant has prayed to reject the same.

9. Heard Ld. Advocate Shri. A.J.Desai for the plaintiffs and Ld. Advocate Shri. S.S.Kestikar for defendant no 1.

10. In view of rival submissions from both sides, following points are arise for my determination and my findings with respect to each of the point is as under-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiffs have made out prima facie 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.

-: REASONING :-

As to Points No. 1 to 3 :-

11. Points no 1 to 3 are interrelated with each other, thus, to avoid repetition of facts they are discussed together.

12. It is the firm pleading of the plaintiffs that, they are having 1/2 share in the suit property by way of partition. However, wrong entry has been made to the city survey record of the suit property. The city survey entry is denoting 5 Aane 4 Pai share to the share of plaintiffs and defendants. The property card of the suit property is on record which denotes that, entry of 5 Aane 4 Pai is made before the name of plaintiffs and defendants. The plaintiffs advocate during their argument have argued that, defendant no. 1 is making construction in the share belonging to the plaintiffs, i.e in the area more than that allotted to him.

13. To rebut this contention, the defendant advocate Mr. Kestikar has pointed out some document to the notice of this Court. The defendant advocate has mainly relied on the registered sale deed No. 1058/2011 executed in between the plaintiff no.1 and 2. Wherein it is mentioned that, plaintiff no 2 i.e Balwant is selling in

fact has sold his entire share out of 5 Aane 4 Pai in the suit property. No doubt, the document is registered document, the entries in it have presumptive value. Furthermore, the plaintiffs themselves are appears to be the party to the said document. Furthermore, in a written statement filed in R.C.S.no. 173/2011, the plaintiffs have mentioned in para no. 13 about 5 Aane 4 pai share in the suit property. This contention in the written statement prima facie demonstrates that, the plaintiffs are having knowledge since long about the fact that 5 Aane 4 Pai share is denoted against there name in the suit property. The copy of registered sale deed and of the written statement is there on record filed by the defendant.

14. Furthermore, the inquiry report as submitted by the plaintiffs prima facie demonstrates that, the entries of 5 Aane 4 Pai were made on 23/08/1984 and same were communicated to the parties on 23/09/1984. This fact prima facie points out the knowledge of plaintiffs pertaining to these entries.

15. Now, one fact is clear that, the same record is yet not cleared or corrected as per the say of plaintiffs. Even though, the plaintiffs have submitted that, the defendant is making construction in the suit property more than the share belonging to him. There is no prima facie document to substantiate the same contention. The plaintiffs in support of their case have filed on record affidavits of Dattatray Teli at Exh. 24, Sagar Yalugade at Exh. 25, Shivaji Tiruke at Exh. 26 and Mahadev Tiruke at Exh. 27 and of the plaintiffs himself at Exh. 21. I think the documentary entries at this stage are in opposite to the pleading of the plaintiffs. Thus, the affidavits submitted by the plaintiffs can not be relied on at this stage. At this stage there is no prima facie evidence to point out $\frac{1}{2}$ share and $\frac{1}{2}$ possession of the plaintiffs over the suit property. Thus, the plaintiffs

have failed to prove their prima facie case. Balance of convenience does not lie in favour of the plaintiffs and if relief of injunction is not granted to them, it will not cause any harm to them. Resultantly, on the basis of above factual aspects, I answer points no. 1 to 3 in the negatives.

As to Point No. 4:-

16. As point no. 1 to 3 are answered in the negative. The application is liable to be rejected. Hence, in answer to point no. 4, following order is passed-

ORDER

1. The application (Exh.5) is rejected.
2. Order of status-quo granted vide Exh.18 is vacated.
3. In the peculiar facts and circumstances, there is no order as to cost.

Kagal.
Date: 03/01/2022.

(A. B. Jawale)
Civil Judge Junior Division,
Kagal.