



**ORDER BELOW EXH. 05 IN R.C.S. NO.  
191/2021.**

**Ashwini Sushant Ghatage Vs. Shripati Bandu  
Pawar etc.09**

By way of this interim application below Exh. No. 5. Plaintiff seeks interim injunction so as to restrain defendant No. 1 to 3 from continuing the construction in the suit property till the conclusion of the present suit.

**Case of the plaintiff in brief is as under :**

**02.** a) Suit property is immovable agricultural property situated at Kagal at Lingnur Dumala, Kagal bearing Gat No. 376 with total area of 0H. 25R but 0.03.32R is the subject matter of the present suit with following boundaries -towards the east is the road, towards the west is the agricultural property belonging to Ganpati Gundu Powar, towards the south is the property belonging to Todkar, towards the north is the property belonging to Nayku Bhopale.

b) Plaintiff is daughter and defendant No. 2 and 3 are sons of defendant No. 1. Plaintiff used to reside with defendant No. 1 to 3 at Lingnur before her marriage and used to work in the suit property. Plaintiff was married into a not-to-do well family and hence, she demanded her share in the suit property, so that, she can cultivate the same and also support her family. However, defendant No. 1 to 3 denied partition and separate possession of her share, when plaintiff approached them on 15/05/2020 for partition. Defendant No. 2 and 3 retorted by saying that, 'you are

daughter and you are married and you do not have any share in the agricultural properties'. Plaintiff has tried many times to demand partition from defendant No. 1 to 3. However, defendant No. 1 to 3 have not shown any willingness for partition. She also sent the legal notice on 13/09/2021, but defendant No. 1 to 3 did not reply to this notice.

c) On 10/12/2021, plaintiff realized that, defendant No. 1 to 3 are trying to change the nature of the suit property by raising construction in it. Plaintiff inquired defendant No. 1 to 3 about the construction and at that time, it was revealed that the defendant No. 1 has sold the suit property to defendant No. 2 by way of sale-deed. Plaintiff sought information about the said transaction and it was found that, sale-deed dtd. 07/04/2021 by document bearing No. 930/2021 was executed without approval and consent of the plaintiff. Essential permission for the construction has not been secured by the concerned authorities. Thus, the sale-deed bearing No. 930/21 is not binding on the share of the plaintiff nor the construction is legal. Hence, the plaintiff is compelled to institute the present suit claiming the reliefs of partition and separate possession of the shares as well as perpetual injunction to restrain the defendants from changing the nature of the suit property as they are trying to raise construction. Plaintiff also seeks relief of declaration with regard to the sale-deed Bering No. 930/2021. As the present suit will take time to come to its conclusion, hence, plaintiff seeks interim relief so as to restrain the defendant No. 1 to 3 from carrying out construction in the suit property.

**The defence of the defendants is as follows -**

**03.** a) Defendant No. 1 to 10 appeared in the present suit and they have filed their written statement below Exh. No. 15 wherein they have denied all the contentions of plaintiff. They have further taken the contention that, plaintiff was married to Sushant Shankar Ghate and her in-laws are very well-to do. Defendant No. 1 to 3 have not undertaken any kind of construction in the suit property. Rather, it is the defendant no. 9, who is carrying out the construction in the suit property. Hence, the present interim application is not tenable. Plaintiff has herself stated that, no specific relief is being claimed against defendant No. 4 to 10, however, they are impleaded as formal parties in the present suit.

b) Defendant No. 1 to 3 have further taken the contention that, defendant No. 1 has transferred the property which is coming to his share to defendant No. 2 and 3 by way of sale-deed bearing No. 930/2021 dtd. 07/04/2021. Defendant No. 1 has received an area of 0H. 3.32R in Gat No. 376 by way of partition on 19/04/2002. By way of mutation entry bearing No. 278, name of defendant No. 1 was entered into the Village Form No. 7 and 12. Thus, suit property is the separate property of the defendant No. 1 and so, plaintiff is not entitled to claim any share in the separate property of defendant No. 1. Defendant No. 1 is entitled to transfer his share in faovur of defendant No. 2 and 3.

c) Defendant No. 9 has already applied for the construction permit on 20/12/2021 before सरपंच ग्रामपंचायत, लिंगणूर .It was informed to defendant No. 9 that, Gram Panchayat, Lingur

cannot give permission for construction in the other areas except that of गावठाण as per G.R. Government Resolution dtd. 24/02/2021. Hence, contention raised by the plaintiff about the absence of the construction permit is not tenable. Thus, plaintiff do not have any *prima-facie* case in her favour accordingly, this interim application is liable to be rejected.

**04.** In view of the rival contention of both the parties and considering the documents placed on record and considering the submissions of both the parties, following points arise for my determination for which findings are recorded as per the reasons given below.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings.</b>
1.	Whether the plaintiff proves that, prima-facie is in her favour ?	No.
2.	Whether balance of convenience lies in favour of plaintiff ?	No.
3.	Whether irreparable loss or damage would be caused to the plaintiff, if the interim injunction is not granted in her favour?	No.
4.	Whether plaintiff is entitled for interim injunction ?	No.
6.	What order ?	Application is rejected.

**05.** The documents placed on record by the plaintiff are as follows.

<b>Sr. No.</b>	<b>Documents</b>	<b>Exh. No.</b>
1.	Print out copy of the Village Form No. 7 and 12 of the suit property.	

2.	Photocopy of the registered document bearing No. 930/2021.	<b>Exh. No. 3.</b>
3.	Print out of the mutation entry bearing No. 1374,	
4.	Print out copy of the notice sent by plaintiff to defendant.	
5.	Photographs of the suit property	
6.	Photo copy of Adhar-card of the plaintiff.	

Sr. No.	Documents	Exh. No.
1.	Certified copy of the mutation entry with respect to the suit property bearing No. 678.	<b>Exh. No. 10</b>
2.	Photocopy of the application given to the police station by the plaintiff	

06. Following are the document relied upon by the defendants below Exh. No. 16.

Sr. No.	Documents
1.	Application for the construction permit by defendant No. 9 before Grampanchayat Lingnur Dumala,
2.	Reply of the Grampanchayat Lingnur Dumala., to the defendant No. 9.
3.	Certified copy of the mutation entry bearing No. 678.
4.	Certified copy of the reply of the defendant No. 1 to the notice of plaintiff.
5.	Postal acknowledgment of the reply by defendant No. 1.

07. Rulings relied on by the parties would be referred to, when the occasion arises, during the course of discussion.

## REASONS.

### As to point No. 1 to 4:-

07. All the points are being discussed together, considering the common analysis of the materials on records.

08. The learned advocate for both the parties have reiterated the respective pleadings in their submissions and relied on the documents placed by them. In order to adjudicate properly, it is necessary to find out the undisputed facts. Relationship between plaintiff and defendant No. 1 to 3 is not disputed. Sale in favour of defendant No. 2 and 3 by defendant No. 1 by way of the deed dtd. 07/04/2021 bearing No. 930/2021 is also not in dispute. In view of this undisputed facts, now, the controversy between the parties is to be found out.

09. It is the contention of plaintiff that, suit property is the ancestral property of plaintiff and defendant No. 1 to 3. Per contra, defendant No. 1 to 3 contend that, the suit property is the separate property of defendant No. 1. Thus, the nature of the suit property is in dispute. In order to *prima-facie* arrive at the conclusion about the nature of the suit property, it is important to go through the documentary evidence placed on record by the parties. Defendant No. 1 to 3 have contended that, the suit property has been allotted to defendant No. 1 by way of the partition.

10. Both the plaintiff and defendant No. 1 to 3 have placed on record mutation entry bearing No. 679 (Exh. no. 10/1 and

16/3). If this mutation entry is perused then, it talks about the partition deed dtd. 19/04/2012. Now, it appears that, partition deed is not registered. However, this mutation entry appears to be certified and it has been mentioned herein that, 'property bearing No. 376 and 371 belonged to 'Lakhu Rama Bhople' and it is his ancestral property. Partition is being done between the real brothers and step-brothers and accordingly, the deed is executed on stamp paper of Rs.100'. As per the deed, defendant No. 1 has been allotted Gat No. 376 and even the आणेवारी shares are described in it. Thus, it appears that, defendant No. 1 has received this property from Lakhu Rama Bhople. Defendant no. 1 has last name 'Powar' and the same is mentioned in this mutation entry. Even if this mutation extract bearing No. 678 is perused minutely, then, it appears that, defendant No. 1 is stated to be a step-brother. Apparently, plaintiff has presented the genealogy on page No. 3 of the plaint. The propositus is shown as Bandu. Defendant No.1 i.e Shripati is shown as one of the successor along with the others. Thus, there is no clarity about Bhople and Powar being from one family, or their predecessors having a common ancestor. Although, defendant No.1 is stated to be step-brother, but there is still no clarity about the difference of the last name and no common ancestor. Hence, it cannot be inferred that, the suit property is the ancestral property of the family of plaintiff and defendant No. 1 to 3.

**11.** Moving further, but the Village Form No. 7 and 12 below Exh. No. 3/1 reflects the name of defendant No. 1 as co-sharer. Defendant No. 1 has sold his property to his son

defendant No. 2 and 3, hence, their names are reflected in place of defendant No. 1. Even if it is assumed that the suit property was originally ancestral property then, if the partition has taken place between the defendant No. 1 and his brothers or step brothers or with his predecessors, then, after partition, the suit property becomes his separate property. As per mutation extract bearing No. 678 (Exh. No. 10/01 and 16/05), this entry was certified in the year 2002. It is quite obvious that, defendant No. 1, 2 and plaintiffs were born before 2002 considering their ages as reflected in the title page of the plaint. Now, property which was received by defendant No. 1 after partition would have become separate property of defendant No. 1, but it is well settled position of law as also upheld in *Dipo Vs. Wassan Singh AIR (1983) S.C 846* that the property inherited from the father by his sons becomes joint family property in the hands of the sons. The relevant portion is as under (SCC page No. 378-79), para 2.

“2...Property inherited from paternal ancestors is, of course, “ancestral property” as regards the male issue of the propositus, but it is his absolute property and not ancestral property as regards other relations”.

This position has been reiterated in *Doddamuniyappa Vs. Muniswamy (2019) 7 SCC 193* on page 201. Thus, plaintiff, defendant No. 2 and 3 holds the suit property as ancestral property in their hands.

12. Now, as per the ruling of *Vineeta Sharma Vs. Rakesh Sharma (2020) 9 SCC 1*, daughters are recognized as co-parceners since birth and they are entitled to all the rights and incidents of co-parcenership. Accordingly, plaintiff being daughter

of defendant No. 1 also holds the suit property as ancestral property with defendant No. 2 and 3. But this is just an assumption considering that, the suit property has been received from the male ancestors (direct descendants upto fourth generation) from the defendant No. 1 but as I have observed earlier there is no clarity about the relationship between Rama Bhole & Bandu Powar, although defendant No.1 is stated to be step-brother in the mutation entry No. 678. However, considering the contention of prior partition by defendant No. 1 to 3, it gives me sufficient reason to state that defendant No. 1 would hold the properties received on partition as separate properties with regard to other relatives or members of the family, but for his children, it would be ancestral properties. Accordingly, his children become co-parceners with him.

**13.** Moving ahead, adjudication over the issues as to whether the partition deed being unregistered can be read in evidence or whether it is admissible is not subject matter of the present interim application. As per above observations, the suit property is an ancestral property between plaintiff and defendant No. 1 to 3. Plaintiff being daughter is now, entitled as co-parcenary rights and interest in the suit property. It has been clarified in *Vineeta Sharma Vs. Rakesh Sharma (supra)*, that the rights of the daughter in the co-parceners cannot be jeopardized by any transaction, be it may be alleged sale by defendant No. 1 in favour of defendant No. 2 and 3. But, this sale is on the premise that, suit property is separate property of defendant No. 1. However, defendant No. 1 has not taken any stand that, suit

property has been purchased from own independent income or without the aid or assistance of income of ancestral property or joint family property. Hence, the sale in favour of defendant No. 2 and 3 becomes questionable. However, both the parties would have opportunity to lead evidence during trial and the issue of nature of the suit property and the right of defendant No. 1 to transfer the suit property in favour of defendant no. 2 and 3 can be adjudicated thoroughly after considering evidence of both the parties. However, at this stage prima-facie, it appears that, there was some partition between the brothers of defendant No. 1 and his predecessors, thus, he has received the suit property on partition. Suit property becomes ancestral property for his children i.e. plaintiff and defendant No. 1 to 3. But, the triable issue about the exact nature of the suit property (in view of the above discussion regarding mutation entry No. 678) exists.

14. However, the crux of the matter is about the construction carried out in the suit property. Plaintiff has placed on record photographs below Exh. No. 3/5, wherein it can be seen that, some construction is being carried out in the agricultural property. Now, it is the contention of plaintiff that, defendant No. 1 to 3 are raising this construction. Per-contra it is the contention of defendant No. 1 to 10 that, the defendant No. 9 is raising construction in the suit property. This is the very contentious issues as from the photographs placed on record by the plaintiff below Exh. No. 3/5, nothing can be inferred as to who is raising the construction. Plaintiff has placed on record the letter sent to the Kagal Police Station below Exh. No. 10/2, with respect to the

construction. This letter is sent on 21/12/2021. However, plaintiff has not mentioned as to where the construction is being raised or by whom it is raised. Thus, it appears that, plaintiff is just on a wild goose chase.

15. Defendant No. 1 to 10 have placed on record the letter/ application addressed to Grampanchayat Lingnur (Exh.No. 16/02). This letter is addressed by defendant No. 9. He has asserted that, he is raising construction in Gat No. 376 and accordingly, he is seeking permission. However, Grampanchayat has replied to him stating that they do not have authority to approve construction in other areas except that of Gaothan. Thus, it appears from these documents that, defendant No. 9 is raising construction in Gat No. 376. But the suit property is restricted to the area of 0.03.32R in Gat No. 376. The name of defendant No. 9 do appears on the Village Form No. 7 and 12 (placed on record by plaintiff below Exh. No. 3/1). Defendant No. 9 is entitled to an area of 0.03.17R in the Gat No. 376, which makes him one of the co-sharer. Thus, there is no clarity in the interim application by the plaintiff as well as documents placed on record by the plaintiff below Exh. No. 10/2 i.e. letter sent to Kagal police station as to in which area in Gat No. 376, construction is being carried out and by whom construction is being raised. Thus, this equitable relief of interim injunction cannot be granted when there is such an ambiguity. The receipt of the notice by the defendants (Exh. No. 16/4) reflects that, it was addressed on 23/09/2021 and at that point, no construction was being raised. Thus, mere photographs are not helpful to the plaintiff.

16. Plaintiff has strongly contended that, the alleged construction is illegal and the necessary permission from the concerned authority is not secured. However, whether the alleged construction is being raised without the permission of the concerned authority is not lookout of the Civil Court. Concerned authorities under the relevant laws can take action against the alleged construction if it is found to be illegal.

17. Plaintiff has placed on record two rulings *Smt. Ang Lhamu Vs. Smt. Ladenla & Others AIR 1983 Sikkim*, wherein, she has relied on the paragraph No. 7 and 8 which reflects that, the construction is being done against the municipal bye laws, plaintiff has the right at this stage to restrain the defendant from further raising illegal construction, as if concerned construction is allowed to be completed, then the whole purpose of the suit would fail. But the facts of the case is distinguished from the facts of the present case as the construction was about the cinema building in the residential area in the city of Gangtok, which is the capital of State of Sikkim. But, the same is not true in the present case.

18. Plaintiff also relied on the ruling of *Tej Karan v. Sushil Kumar, 1996(3) Civil LJ 22*. However, in this case, construction was done in the city of Bikaner and easementary rights of light and air was involved in the case. So, this ruling is not helpful to the plaintiff.

19. Plaintiff has relied on the ruling of *Onkar Nath Vs. Ram Nath Gupta & Ors. AIR 1985 Delhi 293*. However, the question of illegal construction in the metropolitan city of Delhi of India in contravention of the building byelaws is involved, hence, this is not applicable in the present case. However, in the instant application, plaintiff has not even mentioned which bye-laws or rules are being contravened while the raising of the construction.

20. Another contention raised by plaintiff that, if the alleged construction is completed, then, it would change the nature or the scope of the suit property. Suit property is an agricultural property. From the photographs placed on record below Exh. No. 3/5, it appears that, the house structure is being raised. But then whether it completely changes the nature of the suit property i.e it converts the whole of the suit property i.e 0.03.32 R into a house structure or whether some of its are utilized, is unclear. Again, there is a question as to who is raising the construction. Thus, considering that, there is no clarity regarding location of construction, a blanket injunction cannot be granted. Although, plaintiff has prima-facie right of coparcenership in her favour, other aspects regarding the balance of convenience and irreparable loss or damage cannot be proved considering the peculiar facts and circumstances of this case as discussed above. The issues of illegal construction against bylaws is un-substantiated as plaintiff has not stated which bylaws or building laws are being violated. Rather, it is a contentious issue as to whether the construction is illegal. Hence, considering the all these aspects, plaintiff is not entitled for interim injunction.

Hence, point No. 1 to 3 are answered in the negative and consequently, point No. 4 is also answered in the negative. Accordingly, in answer to point No. 5, the following order is passed-

**ORDER**

1. Application is rejected.
  
2. There is no special circumstances to award the costs of this application, hence, cost in cause.

Date :- 08/02/2022  
Place : Kagal.

(Katkar Vijaya N.S.)  
Jt. Civil Judge, Junior Division,  
Kagal.