

MHKO190005702023ORDER PASSED BELOW EXH.24

IN

R.C.S No.211/2023Shivaji *Balwant* Patil Vs. Tanaji *Balwant* Patil
and other 1

(Date:13/11/2025)

Defendant has filed present application for grant of permission to carry out construction over Block No.1332/B.

2. It is contention of defendant No.1 that, the plaintiff has filed the present suit for partition and perpetual injunction. Plaintiff in his plaint as well as injunction application para No.3 admitted that, the house property having Grampanchayat property No.642 situated in suit Block No.1332/b has been partitioned and half (1/2) share at Northern side has been given the him. Now the defendant No.1 want to construct new house at the place of his old house. Hence, he has filed the present application for permission to construct the house.

3. Plaintiff filed his say vide Exh.26 and opposed the application. Plaintiff contended that the present application is false and not tenable in the eyes of law. Defendant No.1 ought to have make an application for permission to construct the house to the appropriate authority. Defendant No.1 has no right to ask for permission for construction of house in half portion of suit property block No-1332/b. Defendant No.1 has filed his written statement vide Exh.15 and denied the contentions in plaint para No.3. Also defendant has made counter claim by omitting/except the suit property block No.1332/b. However the defendant No.1 in his prayer clause sought the relief of partition of 1/3 share in suit property. In such circumstances the present application is not maintainable. Defendant contended that he individually has purchased the block No.1332/b.

However he has not sought any relief of declaration regarding the same. Lastly, plaintiff prayed for rejection of the application.

4. Heard both the side.

5. Perused the record. It appears that plaintiff has filed the present suit for declaration and perpetual injunction. Defendant No.1 filed his written statement vide Exh.15 and denied the contentions in plaint. Defendant in his written statement para No.7 denied the contentions in plaint para No.3 in which it is contended that half ($\frac{1}{2}$) share in house suit property in block No.1332/b was given to him. However, in the present application defendant contended that half ($\frac{1}{2}$) share in house suit property in block No.1332/b was given his share and he wants to construct house over it. Defendant No.1 has also filed counter claim for partition of the suit properties and properties included in the counter claim and also for the relief of injunction. Defendant in his written statement and counter claim has denied the theory of partition in the year 1996 as pleaded by the plaintiff in the plaint. Under such circumstances defendant No.1/plaintiff in counter claim cannot take benefit of the facts in the plaint which he has expressly denied. The defendant No.1 has filed counter claim for partition. Defendant No.1 has pleaded in his counter claim that, all the suit properties in counter claim and plaint are yet to be partitioned between plaintiff and defendants by metes and bounds. Defendant No.1 has claimed $\frac{1}{3}$ rd share in the suit properties and properties mentioned in the counter claim.

6. Considering the pleading of defendant No.1 made in his counter claim it appears that, there is no partition between plaintiff and defendants by metes and bounds. Plaintiff and defendants are co-sharer. It is settled

position of law that, co-sharer has every right, title and interest in the joint property even if not in actual possession thereof. The possession of one co-sharer in the joint property amount to possession of the all co-sharers even if the other co-sharers are not in actual and physical possession thereof. Even a co-sharer in exclusive possession of any joint property cannot be permitted to raise construction and change the nature thereof, because every co-sharer is joint owner in respect of every inch. A co-sharer cannot raise construction over the joint property without the consent of the other co-sharer. Record shows that, plaintiff has resisted the present application. This shows that, plaintiff has not given consent to defendant No.1 to raise construction. Under such circumstances defendant No.1 cannot be permitted to go ahead with the construction in violation of the right and interest of the other co-sharers. The sum and substance of the above discussion is that, the present application deserves to be rejected. Hence, I pass following order.

ORDER

The application Exh.24 is hereby rejected.

Date: 13/11/2025

(R. D. Shinde)
Civil Judge Junior Division,
Radhanagari.