

ORDER BELOW EXH.13 IN REG.CIVIL SUIT NO.68/2020
(CNR-MHRG14-000503-2020)

Kalpesh Waman Patil & Ors.

Vs.

Rohan Lahu Patil & Ors.

The Plaintiffs filed the present application for restraining the Defendants from making construction on the suit property and prayed for status-quo of the suit property.

2. Heard Ld. advocate for the Plaintiffs and the Learned advocate on behalf of Defendants.

3. The Ld. Advocate on behalf of the Plaintiffs submitted that the suit property is of ownership of the Plaintiffs and the Plaintiffs are in possession of the suit property. The Defendants has wrongfully encroached upon the suit property and are making illegal construction over it. He further submitted that the Defendants have appeared but failed to file written statement and say below Exh.5. Therefore, the ad-interim relief of status-quo be granted till the filing of say on Exh.5.

4. The Ld. Advocate on behalf of Defendants submitted that the father of the Plaintiffs Late Waman Babaji Patil has already filed three suits vide R.C.S.No.51/2006, R.C.S.No.117/2007 and R.C.S.No.11/2011 relating to Survey No. 118, Hissa No. 5, which is pending before Civil Judge Sr. Divn. Pannel. In those suits the Plaintiffs have already appeared and prayed for mandatory injunction relating to the house admeasuring 27 ft. X 25 ft. on Survey

No.118/5 situated at Chanaje. The construction mentioned by the Plaintiffs in the present suit is within the area mentioned in the earlier suits for declaration and mandatory injunction. He further submitted that the Plaintiffs are already a party in the previous filed suits relating to the suit property and had all the scope to file the present application in those suits. He further submitted that the filing of the present suit in itself is not tenable and, therefore, the present suit shall be stayed by this court. Hence, the present application of status-quo be rejected.

5. Considering the submissions and from the perusal of the documents produced by the Defendants it appears that the property at Survey No. 118/5 situated at Chanaje, Tal. Uran, Dist. Raigad is the subject matter in the R.C.S.No.51/2006, R.C.S.No.117/2007 and R.C.S.No.11/2011, which are pending before C.J.S.D., Panvel. According to the Plaintiffs, the subject matter in the present suit is the 20 X 20 ft. land from the northern side of the property at Survey No.118/5. From the perusal of the photographs produced on record by the Plaintiffs it is very evident that the alleged construction is adjacent to a house and looks to be the part and parcel of the same house under it's shed. It does not appear to be a separate individual construction of a house.

6. It is the admitted fact that the property at Survey No. 118/5 is the subject matter of previously instituted suits, which are pending before Panvel Court. Merely, additional construction of a house which is already a subject matter in the previous instituted

suits cannot be said to be a cause of action of filing a separate suit. As far as, the present application is concerned it seems that the Plaintiffs have not come with clean hands, therefore the Plaintiffs are not entitled for the relief of status-quo. In view of above observation I pass the following order -

ORDER

1.	Application (Exh.13) is hereby rejected.
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Uran
Date :02/12/2020

(F. F. Irani)
Civil Judge, J.D., Uran