

CNR No. MHRT010001952023**ORDER BELOW EXH. 07 IN MISC., CIVIL APPEAL NO. 04 OF 2023**

Gangubai Laxman Kamble	Appellant
<i>Versus</i>	
Prabhakar Babu Jadhav etc. 3	Respondents

1. This is an application seeking ad-interim injunction against the construction undertaken by the defendant (respondent no. 1) at the suit property i.e. field Gat No. 125 area 0-68-0 R situated at village Patere gaon (Veral) Tal. Lanja, Dist. Ratnagiri.

2. The appellant and respondent nos. 2 and 3 have filed Regular Civil Suit No. 53 of 2022 before the learned Civil Judge (J.D.) at Lanja, Dist. Ratnagiri for injunction that till partition of the suit property by metes and bounds between all the share holders, the defendant should not carry out the construction at the suit property. Similar prayer made in application for temporary injunction application (Exh. 8) was rejected by the learned trial Court by order dated 02/03/2023.

3. The above order is impugned in the present appeal.

4. Heard Shri. U.M.Bhatwadekar, learned Advocate for the original plaintiffs. He emphasized that it is specifically asserted that the suit field is not partitioned amongst the parties and the parties do not occupy any specific portion thereof. He submitted that the defendant, who is one of the co-sharers, has started construction on a portion of field which is not exclusively occupied by him nor it is allotted to his share. As soon as it was noticed that the defendant intended to start a

construction, the suit was filed. Since then the construction has speedily progressed. Once the construction is completed it would add further complication to the suit. Shri. Bhatwadekar further submitted that plaintiff is ready to serve the notice of this appeal to the defendant (respondent no. 1) immediately by emergent process. In the meanwhile, the defendant be restrained from progressing further with the construction. The respondent nos. 2 and 3 are original plaintiff nos. 1 and 3, therefore, they are supporting to the plaintiff. It is submitted that they are appearing suo moto. Separate notice is not required to them.

5. Considered the submissions. Perused the pleadings, documents and the order passed by the learned trial Court. Prima facie, it appears that there is nothing to show that which particular portion is allotted to or occupied by the respective share holders. The learned trial Court did not give due consideration to the fact that the construction is undertaken without necessary prior sanction from the proper authority. In these circumstances, the request for temporary injunction needs further consideration. Prima facie, there is some arguable case in favour of plaintiffs. It is, therefore, necessary to restrain the defendant (respondent no. 1) from proceeding further with the construction. Hence, following order.

ORDER

1. The defendant (respondent no. 1) is restrained till next date i.e. 14/03/2023 from carrying out any further construction at the suit field Gat No. 125 area 0-68-0 R situated at village Patere gaon (Veral) Tal. Lanja, Dist. Ratnagiri.

2. The appellant to serve the defendant (respondent no. 1) with notice of this appeal alongwith copy of this order by emergent process and special bailiff.

3. The plaintiff to comply with Order 39 rule 3 of the Code of Civil Procedure.

Ratnagiri

Date:- 08/03/2023

(V.R.Joshi)

Principal District Judge,
Ratnagiri.

I affirm that the contents of this Pdf file order are same words as per original order.

Misc. Civ. Appeal No. (O. below Exh. 7)	:-	04/2023.
Name of Stenographer	:-	V. B. Joshi.
Court Name	:-	Principal District Court, Ratnagiri.
Date of Decision	:-	08.03.2023
Order signed by P.O. on	:-	08.03.2023
Order Digitally signed on	:-	08.03.2023
Order uploaded on	:-	08.03.2023