

MHRT070003732026

R.C.C. No.22/2026Geeta More V/s. Rajashri More &
Ors.

ORDER BELOW EXH.05
(Passed on 15.05.2026)

This is an application filed by the plaintiff seeking relief of temporary injunction against the defendants under Order XXXIX Rule 1 and 2 of C.P.C. 1908.

Narration of facts of plaintiff case in nutshell is as under -

02 Description of suit property -

Survey No.	Division	Area H-R-P	Assessment (Rs./Paise)	Local Name
4	1090	0-32-50 0-06-00 0-38-50 0-02-90 0-41-40	2.46	Gavthan

03. The four boundaries are, towards East - natural Rivulet, towards West - Adjacent Gat No.237 and Road, towards South - Adjacent Gat No.227, 223, 5, towards North- Adjacent Gat No.238, 239 and 3. The above mentioned property situated at Village Ubhale, Tal.Chiplun is subject matter of the suit. Defendant nos.1 and 2 are making illegal construction in the suit property without consent of plaintiff and other co-sharers.

04. The suit property is ancestral joint family property of the plaintiff, defendants, and other co-sharers from their

forefathers. Even today, the suit property as well as the other ancestral properties of the plaintiff and defendants have not been partitioned by metes and bounds, nor has any formal division taken place. Therefore, no one has an exclusive share fixed in the suit property or the other properties. Hence, the plaintiff is having undivided share in the suit property.

05. Defendant No.1 is the paternal aunt of the plaintiff and defendant no.2 is the son of defendant No. 1. Defendants no.1 and 2 are members of the joint family. In the suit property, there is a house standing in the name of Defendant No.1 bearing Gram Panchayat House No.53. Earlier, the said house belonged to co-sharers Ramchandra Narayan More, but after his death, defendant No.1 transferred the house to his own name without the consent of the other co-sharers.

06. Likewise, in the suit property there is also a house owned by co-sharers Laxman Narayan More, and another house owned by co-sharers Dattaram Shripat More and Pradeep Shripat More. Thus, there are total of three houses existing in the suit property. The plaintiff and many other co-sharers in the suit property reside in separate houses in the village area. However, the plaintiff and the other co-sharers continue to cultivate and use the suit property jointly.

07. While matters stood as stated above, the plaintiff and other co-sharers came to know that Defendants No. 1 and 2, without informing or obtaining consent from the plaintiff and other co-sharers, had demolished the old house

situated towards western side of the suit property and started constructing a new residential house thereon. At that time, the plaintiff and other co-sharers objected to the unauthorized construction being carried out by defendant No.1 and 2 in the suit property. However, defendants No. 1 and 2 gave evasive answers and continued the construction work of their new house. Therefore, on 16/01/2026, the plaintiff filed a complaint application to the Tahsildar, Chiplun and has also done so thereafter.

08. Thereafter, even after objections were raised by the plaintiff and other co-sharers against the construction carried out by Defendants No. 1 and 2, the defendants did not stop the construction work. Hence, on 01/03/2026, the plaintiff, on behalf of himself and other co-sharers, sent a legal notice to Defendants No. 1 and 2 informing them to stop the construction being carried out in the suit property. Although Defendant No. 1 received the said notice, Defendants No. 1 and 2 did not reply to it, nor did they stop the construction of their house. The plaintiff has also sought information from the Gram Panchayat regarding the said illegal construction and intends to produce the relevant documents in this matter after receiving the information.

09. Defendants No. 1 and 2 and their family members are arrogant and quarrelsome by nature. Taking advantage of the absence of the plaintiff and other co-sharers from the suit property, the defendants and their family members have been illegally cutting valuable trees standing on the suit property

and other ancestral properties and selling them for their own financial gain. The plaintiff, defendants, and other co-sharers repeatedly requested partition and separation of the suit property and other ancestral properties, but the defendants did not pay any heed. Hence, plaintiff is constrained to file present suit. It is prayed that, till final decision of the suit defendant no.1 and 2 may be restrained from carrying out work of construction and also defendant no.1 and 2 shall not cause obstruction to possession of the plaintiff.

10. Defendant no.1 and 2 filed their written statement at Exh.18 and strongly opposed the application on the ground that, suit filed by the plaintiff is false and misleading. The plaintiff has suppressed the material facts and has not come with clean hands to the court. Plaintiff has filed an application in this Court seeking a perpetual injunction against defendant nos.1 and 2. The property in dispute between the plaintiff and defendants is ancestral property. The plaintiff and defendants have not yet partitioned the said property. Therefore, despite this, the plaintiff has not sought relief of partition of the suit property and other properties in the present suit.

11. The plaintiff has sought a perpetual injunction against the defendants in the suit. The said claim is that the defendants should not carry out construction on the suit property situated at village Ubhale, Survey and Gat No.1090, and if such construction is carried out by the defendants, then such construction will obstruct the undivided share of the

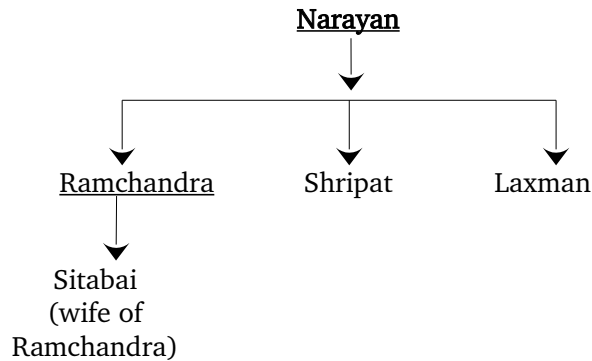
plaintiff and the other co-sharers. Before making such allegations, the plaintiff is first required to establish prima-facie how much area or share the plaintiff is entitled to in the ancestral property as per Hindu law. Likewise, if the defendants carry out construction, then how it would obstruct the plaintiffs' lawful share. Also, the construction being carried out by the defendants exceeds the share legally admissible to the defendants.

12. To establish all the above, the plaintiff is first required to state in the plaint, according to Hindu succession law, how much area from the ancestral property the plaintiff is entitled to receive. However, the plaintiff has made no such statement in the plaint. Likewise, as per to Hindu Law, the defendants are entitled to for example, $\frac{1}{2}$, $\frac{1}{4}$, $\frac{2}{3}$, $\frac{3}{4}$, etc., share in the suit property. But it has not been shown that the construction carried out by the defendants exceeds the share legally obtainable by partition in the ancestral property.

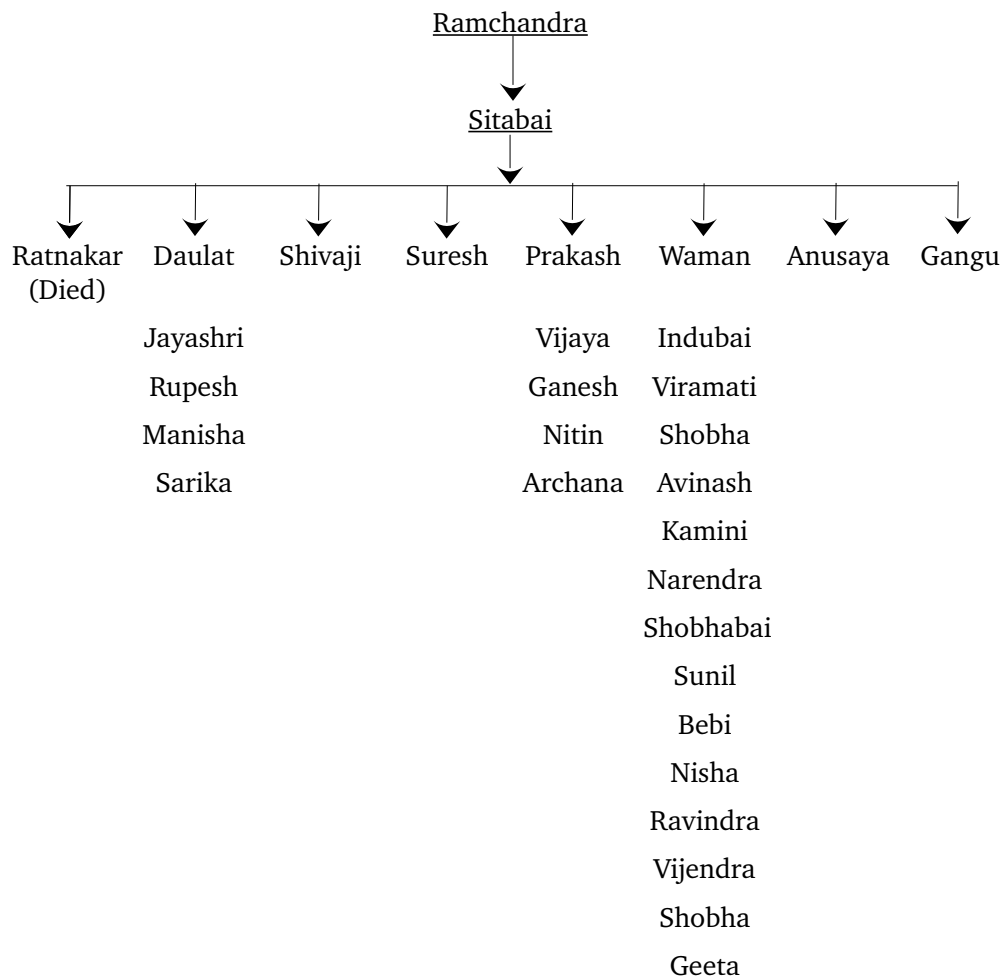
13. To determine whether the construction carried out by the defendants would obstruct the plaintiffs' share, it is first necessary for the plaintiff to specifically state how much area in the suit property they are entitled to obtain. However, since no such statement has been made, it cannot be said that, the construction being carried out by the defendants would create obstruction to the plaintiff undivided share. The present suit is only for injunction and not for partition. Therefore, the plaintiff is required to state how much area in the undivided share she is entitled to receive. Since the

plaintiff has not made such a statement in the plaint, this Court cannot infer that, the construction made by the defendants would obstruct the undivided share of the plaintiffs and other co-sharers. The Genealogy of plaintiff and defendants is as follows -

[A]



[B] Legal heirs of deceased Ramchandra More as following-



14. Considering the Genealogy (family lineage)

produced on record, late Narayan More had partitioned the property among his legal heirs. Ramchandra More had 7 children out of which Ratnakar has died unmarried. Hence, Ramchandra More devolves 1/6 shares among his heirs. The plaintiff is first required to specify how much share she is entitled to in the total ancestral property. However, in the entire plaint or even in the interim injunction application, the plaintiff has deliberately avoided mentioning how much area from the ancestral property belongs to her or how much belongs to the defendants. The plaintiff has also avoided mentioning the total extent of the ancestral property. The present suit appears to have been filed only to harass the defendants.

15. The plaintiff and defendants, as well as their predecessors, late Narayan More, owned several properties at village Ubhale, Tal.Chiplun, Dist.Ratnagiri. Late Narayan More had three sons namely Ramchandra, Shripat and Laxman, who were his legal heirs. During his lifetime, late Narayan More had constructed a house on the suit property bearing Gat No.1090 at village Ubhale. Earlier, the plaintiff and defendants' grandfather Ramchandra and his two brothers Shripat and Laxman lived jointly in the said house. After the marriages of Ramchandra and his two brothers, late Narayan More divided the old house into three portions so that all three sons could conveniently reside separately in the same house. Thereafter, disputes arose among the three sons and their wives. Hence, during his lifetime, late Narayan More orally partitioned the suit property bearing Gat No.1090

situated at village Ubhale among his three sons and fixed the area falling to the share of each son.

16. Defendant No.1 got married around the year 1970. For some time thereafter, he resided with his in-laws and with late Narayan More. Later, due to the increase in family members and to avoid disputes, in the year 1978, the father-in-law of Defendant No.1, late Ramchandra More, by oral partition, carried out construction of a separate house in the area that had fallen to his possession and share, and started residing there. The house constructed earlier by Ramchandra More bore House No.193. Although Ramchandra had constructed an independent house on the suit property, his other two brothers, Shripat and Laxman, continued to reside in the old house of late Narayan More.

17. During this period, due to increasing family disputes between Laxman and Shripat, late Laxman More also constructed a separate house in the area that had fallen to his possession through oral partition. However, Shripat continued to reside with his family in the house of late Narayan More, after some time, due to employment reasons. While the heirs of Ramchandra were not interested, the plaintiff, though this is a jointly owned house, also showed no interest in reconstruction of the house for the said reason.

18. The defendants are constructing the house only within the area falling to the share of themselves, their mother, and their father. In such circumstances, merely because a formal partition has not taken place, if the

defendants are prevented from constructing the house, grave injustice will be caused to them. In village Ubhale, Gat No.1090 was orally partitioned earlier, and the defendants are carrying out construction in an area measuring approximately 20 x 33, which is less than 1R of the area that had come into their possession and occupation through oral partition. Gat No.1090 had already been orally partitioned earlier, and accordingly the heirs of late Narayan More are possessing and cultivating the portions falling to their respective shares. Even today, the defendants are cultivating the land falling to their share through oral partition. Therefore, if the defendants are restrained from constructing a house on the suit property, irreparable loss would be caused to the lawful and equitable rights of the defendants.

19. Late Narayan More owned several properties in village Ubhale. Apart from that, late Ramchandra Narayan More also personally owned several properties. The defendants and plaintiff also have shares in those properties. Therefore, the defendants have not carried out any construction in a manner that would obstruct the plaintiff share. In fact, the plaintiff issued a false and frivolous notice only to harass the defendants. The plaintiff has filed the present false and frivolous suit and interim injunction application without any valid cause of action. Therefore, they prayed to reject the application.

20. Heard learned Adv. Shri.A.S.Kambali for the plaintiff and learned Adv. Smt.Haldankar for defendant nos.1

and 2. From consideration of facts and pleadings of the parties following points arises for my determination, to which I have recorded by findings for reasons stated below-

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether plaintiff has made out prima-facie case in his favour ?	No
2.	Whether balance of convenience lies in favour of plaintiff ?	No
3.	Whether plaintiff will suffer irreparable injury, if temporary injunction is not granted ?	No
4.	What order ?	Application is rejected.

-:: REASONS ::-

21. The plaintiff in order to substantiate her claim, has produced on record following documents at Exh.07 and 22-

- i) Certified copy of 7/12 Extract of Gat No.1090,
- ii) Certified copy of 8A Extract,
- iii) Certified copy of Gat Book of Map of suit property,
- iv) Xerox copy of complaint application filed to Tahsildar,
- v) Xerox copy of application filed to Grampanchayat,
- vi) Xerox copy of notice given to defendant nos.1 and 2,
- vii) Xerox copy of post office receipt,
- viii) Original Photographs.
- xi) Xerox copy of letter of Guarantee given by plaintiff,

- x) Xerox copy of complaint to Grampanchayat, Ubhale dated 16.02.2026,
- xi) Xerox copy of assessment receipt,
- xii) Xerox copy of Mutation entry no.738,

22. Defendant nos.1 and 2 in order to substantiate their claim, has produced on record following documents at Exh.24.

- i) Original assessment receipt,
- ii) Original assessment extract of house property bearing no.53, 30, 469/A, 469/B,
- iii) Certified copy of 7/12 extract of Gat No.109.

AS TO POINT NOS.1 TO 3 -

23. In order to succeed and while determining the temporary injunction application the plaintiff has to prove three essential ingredients i.e. prima-facie case in her favour, balance of convenience lies in her favour and irreparable injury is likely to cause to her if injunction is not granted in her favour. At this juncture it is also relevant to note provisions of O. 39 R. 1 of the C.P.C which runs as under:-

Cases in which temporary injunction may be granted -

Where in any suit it is proved by affidavit or otherwise,

- a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or***
- b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,***

c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until tile disposal of the suit or until further orders.

24. If above mentioned conditions are satisfied then only plaintiff is entitled to the relief of temporary injunction. It is the case of the plaintiff that, defendant nos.1 and 2 without consent of plaintiff and other co-sharers have started illegal construction of suit property situated in Gat No.1090 towards Western side. The plaintiff has also stated in para 2 of the application that, no partition has been effected between plaintiff and defendants in respect of suit property and other joint family properties. On perusal of 7/12 extract of Gat No.1090 it transpires that, apart from plaintiff and defendants name of other co-sharers are also mutated in owner column. However, they have not been added as necessary parties to present suit. Plaintiff has also produced on record 8A extract along with Exh.7/2 standing the name of Dattaram Shripat More and Pradip Shripat More. Apart from Gat No.1090 other properties are also mutated in the name of Dattaram Shripat More and Pradip Shripat More. However, the said

properties are not added in the suit. Admittedly, plaintiff and defendants are co-sharers in the suit property.

25. The Hon'ble Punjab and Haryana High Court, in case of **Bachan Singh v. Swarn Singh** AIR 2001 P & H 112 has held that,

“when a co-owner, can seek an injunction as against another co-owner and it has been laid down as under:-

On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) A co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest”.

26. There is presumption in Hindu Law that family is joint. There can be division in status amongst the members of joint Hindu

Family by definement of shares which is technically called "division in status" or an actual division among them by allotment of specific property to each one of them which is described as division by mets & bounds. Even for the sake of moment it is assumed that, partition has been effected by metes and bounds between plaintiff and defendants, character of any joint family property does not change with the severance of the status of the joint family and a joint family property continues to retain its joint family-character so long as the joint family property is in existence.

27. The Hon'ble Apex Court in case of **Bhagwant P. Sulakhe vs Digambak Gopal Sulakh And Ors. AIR 1986 SC 79,**

“The character of any joint family property does not change with the severance of the status of the joint family and a joint family property continues to retain its joint family-character so long as the joint family property is in existence and is not partitioned amongst the co-sharers. By an unilateral act it is not open to any member of the joint family to convert any joint family property into his personal property.”

28. The Hon'ble Apex Court in case of **Annasaheb Bapusaheb Patil & Ors. vs Balwant And Balasaheb Babusaheb AIR 1995 SC 895,** has held that,

“In the case of a Hindu joint family, there is a community of interest and unity of possession among all the members of the joint family and every coparcener is entitled to joint possession and enjoyment of the coparcenary property. The mere fact

that one of the coparceners is not in joint possession does not mean that he has been ousted. The possession of the family property by a member of the family cannot be adverse to the other members but must be held to be on behalf of himself and other members. The possession of one, therefore, is the possession of all. The burden lies heavily on the member setting up adverse possession to prove adverse character of his possession by establishing affirmatively that to the knowledge of other member he asserted his exclusive title and the other members were completely excluded from enjoying the property and that such adverse possession had continued for the statutory period. Mutation in the name of the elder brother of the family for the collection of the rent and revenue does not prove hostile act against the other.”

29. In the facts of the case in hand prima-facie it is not brought on record by the plaintiff how the partition has been effected and which property is allotted to the share of the defendants and other co-sharers. Plaintiff has failed to prove that, there is partition by metes and bounds in respect of the suit property and all of the properties. In the facts of the case in hand, plaintiff has claimed mere perpetual injunction and has not sought relief of partition and separate possession. Hence, suit of the plaintiff itself is not maintainable. Prima facie plaintiff has failed to show that act of the defendants are detrimental to the interest of the plaintiff. So that defendant needs to be restrained from causing obstruction to her possession over the suit property. Balance of convenience

does not tilt in favour of plaintiff because no mischief is likely to be caused to plaintiff if injunction is not granted. No irreparable injury is likely to be caused to plaintiff if temporary injunction is not granted to her. In the light of conspectus of above discussion, I answer point Nos.1 to 3 in negative. In answer to point no. 4, I proceed to pass the following order-

ORDER

1. Application Exh.05 is rejected.
2. Plaintiff to bear his own Costs.

Place - Chiplun
Date - 15.05.2026

(K.A. Powar)
C.J.J.D., Chiplun.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/order are same, word to word, as per the original Judgment/order.

Name of Stenographer	Mr. S. J. Thorat
Name of Court	C.J.J.D. & J.M.F.C., Chiplun.
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