

CNR No :- MHSI100000332024.



Regular Civil Suit No. 08 of 2024

Order Below EXH. 05

Plaintiff has filed the present suit for declaration and permanent injunction wherein he has filed the present application for temporary injunction under Order – XXXIX, Rule -1 and 2 of The Code of Civil Procedure, 1908 (Hereinafter referred as 'CPC' for the sake of brevity) against Defendant No. 1.

Plaintiff's case in brief is as follows :-

02. Property bearing Survey No. 49A Hissa No. 8 situated at village Sateli, Tal. Dodamarg as more particularly described in paragraph No. 1 of the application is the subject matter of suit (hereinafter referred as 'suit property').

03. Suit property is ancestral property of Plaintiff and Defendants No. 1 to 3. After demise of their father, late Atmaram Baburao Korgaonkar on 17.04.2019, names of Plaintiff and Defendants No. 1 to 3 and their mother i.e Premavati were entered over revenue records. Premavati died on 20.06.2022 and thereafter, suit property devolved upon Plaintiff and Defendants No. 1 to 3 having $\frac{1}{4}^{\text{th}}$ share each. That the suit property is non agricultural property. However, after death of their father, Defendant no. 1 started treating suit property as his self acquired property. He has started making preparation for construction in suit property by digging pits for plinth, collected material such as chire stones, sand, etc. without the consent of Plaintiff and without any legal permission. That, the suit property is located at prime spot. Hence, on 09.02.2024, Plaintiff requested to the Defendant No. 1 to not to

make construction in any area adjacent to road. However, Defendant denied and threatened Plaintiff to dispossess. Hence, it is prayed that Defendant No.1 be temporarily enjoined from making any further construction in the suit property.

04. On the other hand, Defendant no. 1 objected the application by filing say at **EXH-30**. It is contended that, the suit and application is false and frivolous. That, Defendant No. 1 stays at village Mulas. However, his house therein is in dilapidated condition and its risky to stay therein. Hence, two years back, Defendant No. 1 informed Plaintiff and other Defendants that, he is going to make construction in area in suit property obtained by him in oral partition to which Plaintiff had consented. So also, in November 2023, Plaintiff and other Defendants had again consented for the construction by Defendant No. 1 in suit property. On 25.12.2023, Plaintiff even attended Bhoomi Poojan ceremony of proposed construction by Defendant in suit property. On the other hand, Plaintiff constructed house in ancestral property at Ghotgewadi without intimating Defendant No. 1. Considering the same, the Plaintiff will not suffer any loss. On the contrary, stopping construction in suit property will cause irreparable loss to the Defendant No. 1. Plaintiff has filed the suit only on order to harass and incur losses to Defendant No.1. Considering the same, it is prayed that Application be rejected.

05. Perused the Application and say. Heard Ld. Advocate for Plaintiff and Defendant No. 1.

06. Considering the rival contentions of the parties and material filed on record, the points which arise for my determination,

its findings along with the reasons are as follows :-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the Plaintiff has made- out prima-facie case ?	No.
2	Whether balance of convenience is in favour of the Plaintiff ?	No.
3	Whether the Plaintiff will suffer irreparable loss in the event of refusal of temporary injunction ?	Yes.
4	What Order ?	Application is rejected.

-: REASONS :-

As to Points No. 1 to 3 :-

(As all these points are interlinked and in order to avoid repetition of facts, they are dealt with, discussed and decided together.)

07. It is argued by Ld. Advocate for Plaintiff that, suit property is not yet partitioned. Plaintiff and Defendants No. 1 to 3 has 1/4th share each in suit property. If the Defendant No. 1 makes construction in suit property, then it may cause irreparable loss to the Plaintiff. That 7/12 extract shows name of Plaintiff along with Defendants. Photographs filed along with suit shows preparation of construction by the Defendant No. 1. Considering the same, Plaintiff has prima facie case. Irreparable loss and balance of convenience is also in his favour. He further argued as per the contents if application and prayed that the application be allowed as prayed.

08. On the other hand, Ld. Advocate for Defendant No. 1 argued that, Defendant No. 1 has 1/4th share and is making construction in his share of suit property. Plaintiff has always consented for construction in suit property. So also, it is argued that, Plaintiff constructed house in ancestral property at Ghotgewadi without intimating Defendant No. 1. Hence, Plaintiff has not come with clean hands. He further argued as per the contents of his say contending that, Plaintiff does not have any prima facie case, irreparable loss and balance of convenience. Hence he prayed that, application be rejected.

09. As per contents of Plaintiff, suit property, it jointly owned by Plaintiff and Defendants. 7/12 extract at **EXH-07** shows the name of Plaintiff and Defendants No. 1 to 3 as occupants. From the mutation entries No. 3093 and 3406 at **EXH-08 and EXH-09**, it appears that, after the death of their father and mother, names of Plaintiff and Defendants No. 1 to 3 were recorded in revenue records. The 8-A extract at **EXH-06** reflects the name of Plaintiff and Defendants. As such, Suit property appears to be ancestral property of Plaintiff and Defendants No. 1 to 3 and after demise of their father, late Atmaram Baburao Korgaonkar on 17.04.2019, names of Plaintiff and Defendants No. 1 to 3 and their mother i.e Premavati were entered over revenue records. So also, it appears that after the death of Premavati, Plaintiff and defendants No. 1 to 3 has 1/4th share each in the suit property.

10. On the other hand, it appears from say of Defendant No.1 that, his case is that of oral partition. However, there is noting on record in support of the same. Further, though it is the case of

Defendant No.1 that, Plaintiff and other Defendants earlier consented for construction of Defendant in suit property, however, there is no material in support the said fact. The photographs filed along with list at **EXH-04** prima facie shows alleged construction being tried to be made in suit property. Even the pleadings of Defendant No.1 clearly shows that, he is trying to make construction in the suit property.

11. However, it is necessary to understand that, Plaintiff has filed the present suit for declaration of his share and for permanent injunction against the Defendant No. 1 to restrain him from making further construction. It is the case of Plaintiff that, suit property is not yet partitioned. Under such circumstance, as per section 34 of The Specific Relief Act, 1963, it was duty of Plaintiff to seek all the reliefs which he was able to seek i.e. partition as well. However, Plaintiff omitted to do so. As such, it appears that Plaintiff has failed to come before Court with clean hands and in accordance to the provisions of law. It is necessary to keep in mind that, injunction is an equitable relief. Thus in order to seek equities, one must do equity. Considering that the Plaintiff is seeking injunction against the co sharer, due to above mentioned reasons, it cannot be said that the Plaintiff has prima facie case. So also, from the above said reasons, balance of convenience also does not lie in favour of Plaintiff. The fact that Defendant is making construction in suit property as admitted by the Defendant No. 1 himself may certainly cause irreparable loss to the Plaintiff. However, that is not sufficient. Considering the same, there is no prima facie case and balance of convenience in favour of Plaintiff. However, point of irreparable loss is in favour of Plaintiff. Hence, I answer Points No.1 and 2 in the

‘**Negative**’ and Point No.3 in the ‘**Affirmative**’.

As to Point No. 4 :-

12. In order to grant temporary injunction, the factors such as prima facie case, balance of convenience and irreparable loss shall co-exist in favour of Plaintiff. From the above discussion, the factors such as prima facie case and irreparable loss does not exist in favour of Plaintiff. Hence, the Plaintiff is not entitled for any temporary injunction as prayed. As such, the application is liable to be rejected with costs. Accordingly, in answer to this Point, I proceed to pass the following :-

-:: ORDER ::-

1. The Application is rejected with costs.

(Dictated and pronounced in open Court)

Place : Dodamarg.
Date : 19/06/2024.

(Y. P. Bavkar)
Civil Judge (Junior Division),
Dodamarg.