

CNR No :- MHSI100000482025



:- REGULAR CIVIL SUIT NO. 14/2025 :-

:- ORDER BELOW EXH 05 :-

The Plaintiff has filed this suit for declaration, partition and injunction wherein she has filed the present application under Order XXXIX Rule 1 and 2 of The Code of Civil Procedure, 1908 (hereinafter referred as “CPC” in short).

2. It is contended that, Survey no.34 Hissa No.20 and survey no.33 Hissa No.10 situated at village Sateli Tal – Dodamarg measuring area 00-23-00 (Po. Kha. 00-01-00) and 0-06-00 (Po.Kha. 0-05-00) respectively are the subject matter of the suit and present application. (hereinafter referred to as ‘**suit property**’ for short).

3. The present suit has been filed for a declaration, partition, and injunction. The properties were previously owned by the deceased Ratan Ismail Shaha. Following her passing, these properties were inherited by the plaintiff and the defendants. The mutation entries reflect this inheritance.

4. According to the genealogy, plaintiffs 1 and 2, along with defendants 1 to 3, share half of the ownership of the properties, with each individual owning a $\frac{1}{5}$ th share. Defendant No. 1 has constructed a house on the property mentioned at Sr. no. 1 in the plaint, which is situated in a 2-R area. The plaintiff did not object to this construction initially. However, defendant No. 1 has now begun further construction on the same property.

5. When the plaintiff attempted to discuss the partition of

the properties, defendant No. 1 ignored her request and continued her construction activities. Subsequently, the plaintiff filed a complaint at the nearest police station. In response, defendant 1 falsely filed a complaint against the plaintiff and others, and she also verbally abused the plaintiffs. Given that the plaintiff has a share in the suit property and considering that, the defendant already has a house on the property while initiating further construction, there is a risk that the plaintiff's share could be negatively affected. Therefore, the plaintiffs are requesting a restraining order against defendant No. 1 until a final decision is made in this suit.

6. Defendant No.1 has filed her say at **EXH-28** and objected to the application by stating that, she is the owner and possessor of the suit properties and her name is appearing in the 7/12 extract of the suit properties. In the lifetime of her mother Habibabi Yakub Shaha, the 5-R area form property at Sr. No.2 was given to her. She has constructed a house in said property bearing house No.601. She also made compound to all 5-R areas. Plaintiff and defendants No.2 and 3 also have consented to the house. She is not raising any illegal construction. The suit is filed on false cause of action and also made false allegation. Hence, this application is liable to be rejected.

7. Perused the application and say. Heard Ld. Advocate Shri. S. P. Desai for the Plaintiff and Ld. Advocate Shri. B. V. Naik for Defendant No. 1. Following points arise for my determination and I have recorded my findings against each of them for the reasons enumerated below :-

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
01.	Whether the Plaintiff has made- out prima-facie case ?	Yes.
02.	Whether balance of convenience is in favour of the Plaintiff ?	Yes.
03.	Whether the Plaintiff will suffer irreparable loss in the event of refusal of temporary injunction ?	Yes.
04.	What Order ?	Application is allowed as per final order.

-: REASONS :-

8. In support of the application, Plaintiff relied upon the documents such as copy of 7/12 extract of Survey No. 33 Hissa No.10 at EXH-06, copy of 7/12 extract of Survey No. 34 Hissa No. 20 at EXH-07, copy of mutation entry No.253 at EXH-08, copy of mutation entry No.1158 at EXH-09, copy of mutation entry No.1174 at EXH-10, copy of mutation entry No.1733 at EXH-11, photographs of suit property, affidavit of plaintiff's son, report of NC Cr.No.46/2025, Notice under section 138 of Bhartiya Nagarik Suraksha Sanhita. On the other hand, Defendant No. 1 has not adduced any documentary evidence *prima facie*.

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.)

9. A plaintiff is seeking a restraining order against

defendant No. 1, claiming that she is conducting additional construction on the suit property, which includes her existing house. Defendant No. 1 owns house No. 601 on the suit property. However, there is uncertainty regarding whether this house is located on survey No. 34 or 33. The plaintiff asserts that, it is in survey No. 34, Hissa No. 20, while the defendant claims it is situated in survey No. 33, Hissa No. 10.

10. Defendant No. 1 claims explicitly that the suit property at Sr. No. 2 was given to her by her late mother during her lifetime. However, she has not produced any *prima facie* documents to support a transfer of ownership in her favour. Hence, it is her to prove said fact on merit and cannot be considered at this stage. Additionally, according to Mohammedan law, a Muslim person cannot dispose of more than one-third of their share through testamentary disposition. Therefore, her claim lacks a solid foundation and requires further proof regarding its legality.

11. During the arguments, the learned advocate for defendant No. 1 admitted that defendant No.1 was constructing in the backyard of her existing house. Therefore, the fact of construction is not disputed. Thus, again her construction in which survey number is remained uncertain. The plaintiff is seeking partition of the property as per their determinant share.

12. Both the plaintiffs and the defendants are governed by Muslim personal law regarding inheritance. The 7/12 extracts of the suit property are on record. It includes the names of the plaintiff and defendants. Admittedly they have inherited the property after the demise of their ancestor. Under Mohammedan law, the concept of

joint family property and the principle of representation is not recognized. Consequently, upon the death of an individual, the shares of the heirs are determined and fixed. As a daughter, the plaintiff cannot claim an equal share with her brother, the son.

13. Assessment extracts of their respective houses are filed on record. Admittedly defendant no.1 has started construction in the backyard which includes an additional area. As the daughter of a Muslim family, plaintiff no.1 is entitled to a share along with defendant no.1, equally. When there is more than one daughter, they receive an equal share of the residuary in the presence of a son. Therefore, although the plaintiffs are claiming a 1/5th share in the properties in question, according to Mohammedan law, the distribution may not be equal among the sisters and brothers. The construction of an additional portion will hinder the partition of shares for the other co-sharers. As a result, the plaintiffs have established a *prima facie* case in their favour.

14. Furthermore, it is not the case of defendant no. 1 that, she has not constructed in an excessive area. On the contrary, her pleadings are silent on the issue of construction, which only came to light during the arguments. Therefore, the possibility of encroachment on the part of other co-sharers cannot be ruled out at this stage. Hence, the balance of convenience lies in favour of the plaintiffs, as their loss is irreparable compared to that of defendant no. 1. Hence, I am answering points No. 1 to 3 in the '**Affirmative**'.

Point No. 4 :-

15. From the discussion made in the above points, it is clear that, plaintiffs have made out prima facie case in their favour. Further,

the balance of convenience is also lies in favour of plaintiffs. Resultantly, irreparable loss would be caused to the plaintiffs, if injunction is refused. Hence, I pass following order :-

-:: ORDER ::-

1. Application is allowed.
2. Defendants No. 1 is hereby restrained from raising further construction in the suit property by herself or by her agents, family members, or any other person on behalf of her. Additionally she is restrained from cutting trees in the suit property, till the final decision of the suit.

(Dictated and Pronounced in Open Court.)

Place : Dodamarg.
Date : 15/04/2025.

(R. G. Kumbhar)
Extra Jt. Civil Judge (Junior Division),
Dodamarg.