

CNR No :- MHSI100001182025



:- REGULAR CIVIL SUIT No. 26/2025 :-

:- ORDER BELOW EXHIBIT - 05 :-

Plaintiff has filed the present suit for declaration and permanent injunction wherein the plaintiff have filed the present application against defendant for temporary injunction under Order-XXXIX Rule-1 and 2 of The Code of Civil Procedure, 1908 (hereinafter referred as 'CPC' in short).

2. The house bearing Gram-Panchayat house No. 66 situated at Gat No. 1584, village Pikule is the subject matter of the suit and hence, hereinafter referred as 'suit house'.

3. On 22.02.2024, the Plaintiff obtained ownership of the landed property Gat No. 1584 via Gift-deed bearing No. 257/2024 from the original owner Prabhavati Khema Gawas. In the year 1980, the father of the Plaintiff, Vishnu Thakur, had built House No. 268 on that property. Likewise, the uncle of the Plaintiff, Vitthal Thakur, constructed House No. 66 on that property. As House No. 268, built by the father of the Plaintiff, collapsed due to rain in the years 1995-1996, the Plaintiff constructed an independent house on that property which was numbered as Gram-Panchayat House No. 66. This House No. 66, constructed by the Plaintiff, is the suit property, having been assessed in the name of the Plaintiff. Thereafter, the Gram-Panchayat re-numbered Vitthal Thakur's House No. 66 as House No. 268, which was later assessed in the name of his wife Rukmini Thakur after his demise. The suit house was not the ancestral house of the Plaintiff and Defendant, and it is exclusively owned by the Plaintiff. The

Defendant is the brother of the Plaintiff and he resides at Mhapusa, Goa. On 17.08.2023, the Defendant applied to the Gram-Panchayat to record his name over the suit house by producing false tax receipts. The said application was objected to by the Plaintiff. However, in the Gram-Sabha dated 03.09.2024, House No. 66 was illegally divided into House No. 66-A, bearing the name of the Plaintiff, and House No. 66-B, bearing the name of the Defendant. On 06.06.2025, when police issued notice to the Plaintiff, he came to know that the Defendant is attempting to repair the suit house under Police protection. By making such repairs, the Defendant is attempting to create his rights over the suit house. The repairing of the house may cause the house to collapse. Hence, it is prayed that, until the final decision of the suit, the Defendant be restrained from disturbing the peaceful possession of the Plaintiff over the suit house, and from making any repairs in the suit house with the intention to create right over the suit house.

4. On the other hand, the Defendant appeared and filed his written statement cum say on this application at **Exhibit-14** and objected to the application. It is contended that the contents of the applications are false. That the landed property Gat No. 1584 is not exclusively owned by the Plaintiff, but the Plaintiff, Defendant, and Rukmini Vitthal Thakur, etc., have become its owners by adverse possession. House No. 66 is divided into House No. 66A and 66-B, and thus, there is no House No. 66 in existence today. Hence, the suit property as described in the plaint is not in existence. It is contended that House No. 66 was built by the father of the Plaintiff and Defendant, Vishnu and Vitthal, prior to the year 1960, which is jointly held as ancestral property by them. Their father built House

No. 268 in the year 1980 as their family expanded, after which Vitthal along with his family started residing in House No. 268, and the Plaintiff, Defendant, their father Vishnu, and mother Laxmi started residing in House No. 66. On 24.11.1981, the father of the Plaintiff and Defendant died, after which they, along with their mother, resided in House No. 66. As the family expanded, it became difficult to reside together, and occasional trifles began, due to which, in a meeting held with neutral persons, it was decided that the Defendant would keep his household items on the western side Varanda of House No. 66 and use it. Thereafter, for his daughter's education, he occasionally resides at Mhapusa. In July 2023, the said portion of the house where the Defendant resided became dilapidated, and hence, he applied for repairs to the Gram-Panchayat. However, as the assessment extract had only the name of the Plaintiff, the Gram-Panchayat, after inquiry, divided House No. 66 as 66-A and 66-B, assessing the name of the Defendant over House No. 66-B, and thereafter, vide permission dated 20.05.2025, the Defendant started repairing the house. However, the Plaintiff and his son started obstructing the repairs, and hence the Defendant sought Police protection. It is contended that the Plaintiff obtained Gift-deed No. 257/2024 dated 22.02.2024 from the original owners by misrepresenting them and by concealing the said fact from the Defendant. The Defendant is only asking for the repairs of House No. 66-B, and there is no threat to House No. 66-A. It is also contended that the suit is not tenable on various grounds such as non-joinder of necessary parties, under-valuation of the suit, etc. Hence, it is prayed that the Plaintiff has no prima facie case, and hence, the application be rejected.

5. Perused the application and say. Heard Ld. Advocate for the plaintiff and Defendant. The points for my determination, its findings along with reasons are as follows :-

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

-: **REASONS** :-

6. In support of his case, Plaintiff relied upon documents such as 7/12 extract of Gat No. 1584 at **Exhibit-6**, Assessment Extract of House No. 66 at **Exhibit-7**, Assessment Extract of House No. 66-A at **Exhibit-8**, Assessment Extract of House No. 66-B at **Exhibit-9**, the receipts of House Tax of House No. 66 of year 1997-98, 2018-19 and 2023-24, 4 photographs of suit house.

7. On the other hand the defendant relied upon documents such as Tax receipts of house No. 66 Dtd. 30.10.1998, Tax receipts of house No. 66-B of year 2024-25 and 2025-26, Assessment Extract of house No. 66-B at **Exhibit-19**, a permission issued by Gram-Panchayat to repair house No. 66-B Dtd. 20.05.2025, light bill and its consumer personal ledger of house No. 66, the damage report of house No. 66 filed by Gram-Panchayat to the Tahasildar, 6 photos of

the house No. 66-B and School Leaving Certificate of defendant.

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.)

8. In short, the plaintiff's case is that house No. 66 was independently built by Plaintiff and defendant has no concern with it. Yet, Despite the plaintiff's objections, the Gram-Panchayat, in its meeting dated 03.09.2024, illegally divided the suit house into House No. 66-A in the name of the plaintiff and House No. 66-B in the name of the defendant. On 06.06.2025, upon receiving a police notice, the plaintiff became aware that the defendant was attempting to carry out unauthorized repairs to the suit house under police protection, with an intention to create false ownership rights.

9. Ld. Advocate for Plaintiff argued that, 7/12 extract of Gat No 1584 is in the name of Plaintiff, house No. 66 is assessed in the name of Plaintiff. The assessment of House No. 66-A and 66-B are illegal. The tax receipt dated 30.10.1998 in name of father of Plaintiff and Defendants is fraudulent as father had died in year 1981. hence division of house No. 66 on basis of that receipt is illegal. The photos shows that the construction is demolished beyond repairs. Gram-Panchayat has not granted permission to the defendant to repair the house. On these grounds, it is prayed that, the Application be allowed as prayed. Learned Advocate for the Plaintiff argued that the 7/12 extract of Gat No. 1584 is in the name of the Plaintiff, and House No. 66 is assessed in the name of the Plaintiff. The assessment of House No. 66-A and 66-B is illegal. The tax receipt dated 30.10.1998 in the name of the father of the Plaintiff and Defendants is

fraudulent as the father had died in the year 1981. Hence, the division of House No. 66 on the basis of that receipt is illegal. The photos show that the construction is demolished beyond repairs. The Gram-Panchayat has not granted permission to the Defendant to repair the house. On these grounds, it is prayed that the Application be allowed as prayed.

10. On the other hand, it is argued by the Learned Advocate for the Defendant that House No. 66 is an ancestral house. All receipts produced by the parties reflect the name of the father of the parties. The Defendant is repairing House No. 66-B, which is in his name. Mainly on these grounds, it is prayed that the Application be rejected.

11. Upon perusal of the 7/12 extract of Gat No. 1584 (Exhibit-6), it appears to be registered in the name of the Plaintiff. The assessments for House No. 66 (Exhibit-7) and House No. 66-A (Exhibit-8) appear to be in the name of the Plaintiff, while the assessment for House No. 66-B (Exhibit-09 and Exhibit-19) appears to be in the name of the Defendant. There is no dispute that House No. 66 was assessed in the name of the Plaintiff. The Plaintiff contends that the house was divided by the Gram-Panchayat in its Gram-Sabha dated 03.09.2024, purportedly on the basis of a fraudulent tax receipt. Whether the tax receipt of the year 1998-99 was illegal cannot be determined at this juncture. Consequently, the legality or illegality of the said division of House No. 66 cannot be ascertained at this point and shall be determined only after the completion of evidence by both parties. Although the 7/12 extract of Gat No. 1584 is in the name of the Plaintiff, the fact remains that

House No. 66-B, which is admittedly a part of House No. 66, is assessed in the name of the Defendant. Furthermore, the tax receipts for the years 2024-2025 and 2025-2026 produced by the Defendant prima facie demonstrate that the amount has been paid by the Defendant. The photographs produced by the Plaintiff (Exhibit 27), the photographs filed by the Defendant (Exhibit 18), and the report dated 11.07.2025 filed by the Gram-Panchayat to the Tahsildar (Exhibit 18) all prima facie indicate that the house has sustained damage. Therefore, it prima facie appears that House No. 66-B, which is damaged, is in the possession of the Defendant.

12. Upon review of the Application and the pleadings in the Plaint, the Court observes a significant inconsistency. The Plaintiff asserts, at one point, that House No. 66 remains in existence and is assessed in the Plaintiff's name. Conversely, the Plaintiff also contends that House No. 66 was divided by the Gram-Panchayat into House No. 66-A (assessed in the Plaintiff's name) and House No. 66-B (assessed in the Defendant's name). The Plaintiff has identified House No. 66 as the disputed property, i.e., the suit house. However, if House No. 66 has indeed been divided into 66-A and 66-B, it becomes unclear how House No. 66, no longer existing as a single entity, can properly constitute the subject matter of this suit. While the Plaintiff alleges the division to be illegal and thus does not appear to acknowledge it, the illegality of this division has not been proven at this stage. Considering these aspects, the pleadings in the Plaint and Application appear confusing and potentially misleading. This raises doubt as to whether the Plaintiff has approached the Court with clean hands.

13. In light of the foregoing discussion, and based upon the Plaintiff's own assertions that House No. 66 has been divided into House No. 66-A and House No. 66-B, the Court finds that no question arises regarding the Defendant causing disturbance to the Plaintiff's possession over House No. 66, as the said singular entity is, by the Plaintiff's own account, no longer in existence, having been divided. Consequently, the Plaintiff has failed to establish a prima facie case. For the same reasons, the considerations of balance of convenience and irreparable loss do not weigh in favor of the Plaintiff. Hence I answer Points No. 1 to 3 in the '**Negative**'.

Point No. 4 :-

14. From the discussion set forth in the preceding points, it is clear that the Plaintiff is not entitled to the temporary injunction as prayed. Therefore, the application is liable to be rejected with costs. Accordingly, in answer to this point, the Court proceeds to pass the following :

-:: O R D E R ::-

1. Application is rejected with costs.

(Dictated and Pronounced in Open Court.)

Place : Dodamarg.
Date : 04/11/2025.

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