

Order passed below Exh. 134 in Reg. C.S. No. 264/2007

(Dilip Mane v/s. Anil Mane, etc.)

CNR : MHSN05-000999-2007

Defendant Nos. 7 has filed this application under Order XXIX, Rule 7 and sec. 151 of the Code of Civil Procedure. This defendant stated that, the present suit is for partition and an order of injunction is passed restraining the alienation. An order of status-quo is also in existence. The suit property was constructed prior to 100 years and is very old. It is now in dilapidated and dangerous condition. Earlier this Court had granted the defendants to change tin sheets on the roof. The flooring in the suit property is in very bad shape and is damaged. Due to the immense damage, there is danger of insects and reptiles. Such condition of the flooring is dangerous to the defendants and their family members living in the said property. Hence the present application for permission to change the flooring of the property.

2. The plaintiff has filed the say at Exh. 142 and strongly objected the application. He stated that, the suit is being prolonged due to the acts of these defendants. The plaintiff had filed application Exh. 58 and the Court had permitted to repair the roof by order dated 23.03.2010. The defendants have carried out the repairs as per the order. He had also filed application at Exh. 86 in similar fashion and it was rejected on 21.01.2014. He had filed Misc. Civil Appeal No. 72/2014 and has withdrawn the same. So the said order has attained finality. Now, the proposed repairs will change the nature of the

property and will prejudice the rights of the plaintiff. Hence the application be rejected.

3. I have heard the defendant No. 7 and Ld. advocate for the plaintiff at length.

4. The plaintiff has filed this suit for partition, separate possession, declaration and perpetual injunction. Defendant Nos. 5, 7, 10 and 11 have filed their written statement at Exh. 35. The issues have been framed at Exh. 48. Plaintiff filed his examination-in-chief by way of affidavit at Exh. 49. He has been cross-examined at length on several occasions. Thereafter the plaintiff has filed affidavit of witness Nilesh Patil at Exh. 115. While the matter was pending for cross-examination of this witness, this application came to be filed.

5. So far this defendant along with other defendant Nos. 5, 10, 11 has filed application Exh. 131 seeking similar relief to grant permission to change the flooring. This application is again of the same nature filed subsequently to the earlier application at Exh. 131. I have heard the parties on the said application as well and have passed order below Exh. 131. This Court has permitted the defendant Nos. 5, 7, 10, 11 to change the flooring with some conditions. So there is no necessity to pass independent order on this application. The defendant No. 5 is to be directed to follow the order under Exh. 131. Hence I proceed to pass the order follows,

ORDER

Defendant No. 5 to follow the conditions imposed as per order below Exh. 131.

Islampur
Date: 12.07.2019

(Abhijit R. Solapure)
Civil Judge Senior Division,
Islampur