

CNR No.MHST180002402023



Order Below Exh.85 in Spl.C.S No.71/2023

Present application is filed by plaintiffs against defendants for maintaining status-quo over the suit properties.

02. It is contended by the plaintiffs that defendants No.1, 12, 15, 19 and 23 are served with suit summons. Defendant No.1 has appeared in this suit but not filed any say to Exh.5 or written statement. Defendants No.12, 15 and 19 though served with suit summons have not appeared and filed their say and written statement. The contention of the plaintiffs in Exh.1 and Exh.5 be considered as the contents of this application. Suit properties are in possession of the plaintiffs, out of which, defendants are trying to dispossess the plaintiffs. By taking disadvantage of his name recorded to the suit properties situated at Mhaswad, defendant No.15 Udaysinh Jagdale is trying to make construction over said property without the permission from the concerned department. He is trying to cause obstruction to the possession of the plaintiffs over suit property. He is trying to create a third-party interest over said property. Hence, plaintiffs are praying for maintaining status-quo over the suit property. It is also prayed that till the final decision of the suit, defendant No.15 or any person on his behalf be restrained from causing obstruction to the possession of the plaintiff and also from creating third-party interest over the suit property. Hence, this application.

03. Defendants No. 12 to 22 have filed their say to this application at Exh.99. It is alleged that the application is false and liable to be rejected. Survey No.1236/5 bearing new Survey No.167/5 admeasuring 0H-03R out of 0H-09R is purchased by defendant No.15 by way of sale deed. With the said property, plaintiffs have concern. On 27.11.2007, defendant No.15 has purchased said property from Sampat Aaba Chopade by way of a sale deed and through M.E No.23892, his name is recorded to the 7/12 extracts. Since then, there is possession of defendant No.15 over the suit property. Further defendant No.15 has obtained permission for N.A form the concern Tahsildar in respect of said survey number. He has started the construction of temporary nature over the suit property by creating small blocks with the help of tin. This application is filed to harass the defendants. Suit properties are not the ancestral or joint family properties of plaintiffs and defendants. Plaintiffs have suppressed material facts from the Court. They have no prima-facie case. The construction of defendant No.15 is already complete. Hence, defendant No.12 to 22 prayed for rejection of this application.

04. Defendants No.1 to 9 have also filed their say to this application at Exh.102 and averred that suit properties are joint family properties of plaintiffs an defendants. Defendant No.15 has admitted this fact in front of Tahsildar, Man by filing an affidavit to that respect. Plaintiffs have filed an application dated 21.07.2025 to C.E.O Nagarparishad Mhaswad in respect of illegal construction at the hands of defendant No.15. Accordingly, Nagarparishad has issued a notice dated 06.08.2025 to defendant No.15 to stop and to remove

the illegal construction. Hence, defendants No.1 to 9 have prayed for allowing the application filed by plaintiffs at Exh.85.

05. Defendants No.23 and 24 have filed their say and written argument to this application at Exh.113. It is contended that suit properties are ancestral and joint family properties purchased out of the joint family income. Survey No.1236/5 (new Gat No.167/5) belonged to plaintiffs and defendant's joint family. Both have common possession over it. Defendant No.15 himself has filed an affidavit before the Tahsildar, Man and stated on oath that Gat No.167/5 belonged to their joint family. Defendant No.15 has no right to claim the said gat number exclusively as his own. Further he has no right to make any kind of construction or change its nature in any manner. If it is done, it may create more complications in this suit and defeat the lawful share of the plaintiffs and defendants causing them irreparable loss. The construction over the suit property is being carried out without any lawful permission from Nagarparishad. In this respect, the concerned department has issued notice to defendant No.15 and informed him to stop the construction. In spite of such instructions, defendant No.15 has continued his construction over the suit property. Hence, defendants No.23 and 24 have prayed for allowing the application on Exh.85 filed by the plaintiffs.

06. In support of this application, plaintiffs have relied upon the photographs of the suit property showing construction, the notice issued by Mhaswad Nagarparishad in respect of construction, xerox copy of notarized agreement between plaintiffs and defendants in

respect of partition, plaintiffs have also relied upon the 7/12 extracts, City survey extracts and assessment list of suit properties and house properties.

07. Defendants No.1 to 9 relied upon an application filed by them to C.E.O Mhaswad Nagarparishad, an affidavit filed by defendant before the Executive Magistrate, Man-Dahiwadi, notice issued by Mhaswad Nagarparishad to defendant No.15.

08. On the other hand, defendants No.12 to 22 have relied upon documents such as photographs of the suit property, xerox copy of sale deed dated 27.11.2007 in the name of defendant No.15 in respect of suit property Gat No.1236/5, 7/12 extracts of said land, permission for N.A use issued by Tahsildar.

09. Defendants No.12 to 22 have relied upon the following case laws of the Hon'ble Apex Court and the Hon'ble High Court as under :

1. *Laxman Dadarao Bodake & Ors Vs. Vithal Dadarao Bodake & Ors, 2008 (6) AIR Bom R 581,*
2. *Mandali Ranganna & Ors Vs. T. Ramchandra & Ors, 2008(4) ALL MR 932 Supreme Court*
3. *Y. T. Entertainment Ltd Vs. One More Thought Entertainment Pvt. Ltd & Ors,2009 (5) ALL MR 555 (Bom).*
4. *Rekha Narayan Marotkar & Ors Vs. Rambhau Badhu Khadgi & Ors, AIR 2007 Bombay 135*

All the above referred case laws are in respect of an application under Order 39 Rule 1 and 2 of the CPC. In this case, the plaintiffs by filing this application is seeking the relief of status-quo. Hence, above referred cases laws are be considered while deciding an application under Exh.5.

10. Plaintiffs have filed this suit for partition and separate possession of the suit properties which they are claiming to be ancestral as well as the properties purchased out of the income of joint family properties. There are so many agricultural lands as well as the house properties which are the subject matter of the suit. Defendants No.1 to 9 and defendants No.23 and 24 have supported the claim of the plaintiffs. Plaintiffs have mainly relied upon the affidavit filed by defendant No.15 before the Executive Magistrate, Man-Dahiwadi, wherein he has admitted that the suit properties are their ancestral and joint family properties. The notice issued by Mhaswad Nagarparishad dated 06.08.2025 shows that the construction which is being carried by defendant No.15 is done without the lawful permission from the concerned authority. Defendant No.15 is contending that Survey No.1236/5 exclusively belonged to him. It appears from the xerox copy of the affidavit filed by defendant No.15 before the Executive Magistrate, Man that he has put the suit property Survey No.1236/5 in the joint family property of their family. Hence, principle of blending will apply. Though defendant No.15 has denied this affidavit and his signature on it, but it has to be proved by him by way of filing evidence to that respect. It is not disputed by the defendant No.15 that he is carrying out such construction over the said gat number. There appears the names of

plaintiffs and defendants separately as well as in common on the 7/12 extracts of the suit properties. It is admitted position that the construction is going on over the suit property. Though it may be temporary construction, but the possibility of alienation or creation of third-party interest by defendant No.15 cannot be ruled out at this stage. No hearing is yet conducted by the plaintiffs on Exh.5. Under such circumstances, till the decision of Exh.5, it is necessary to preserve the property in dispute. Hence, I pass following order:

ORDER

1. The Application below Exh.85 is allowed as under.
2. Defendant No.15 is directed to maintain status-quo over the suit property till the further order of this Court.
3. Both the parties are hereby directed to advance argument on Exh.5 on next date without fail.

Date :16.09.2025.

Place: Vaduj.

(Smt. F. B. Baig)
Jt. Civil Judge Senior Division,
Vaduj.