

MHAU050029262025



Order below Exh.5 in RCS No.237/2025
(Kisan Murlidhar Bhade Vs. Dinkar Bhimrao Gore)

The plaintiff has filed this application for grant of temporary injunction restraining the defendants from creating new road under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure (For short 'the Code').

2] In short, it is application of the plaintiff that, the plaintiff is owner of block No.130 admeasuring 68 R situated at Waghla, Tal. Vaijapur, Dist. Chhatrapati Sambhajinagar having four boundaries-

To the East : Shivna Takli Project,

To the West: Boundary and land of Pathare and Ghodke,

To the South : Block No.129, Gavthan,

To the North: East-West road.

(Hereinafter, referred as 'suit property' for brevity).

The plaintiff is retired person residing at Chhatrapati Sambhajinagar and cultivating the land block No.124 and 130 of village Waghla through labours. Defendant No.1 is husband of sister of the plaintiff. Defendants No.2 and 3 are sons of his sister. The plaintiff has made application from time to time and claimed road from Gavthan to the suit property which is being used by the plaintiff. The plaintiff has got his suit property measured and installed pole by fixing the boundaries. But the defendants are trying to create road from the suit property. The plaintiff has filed complaint to the police station

against the defendants but police has not taken cognizance. The plaintiff is trying to give understanding to defendants but they are not listening. The plaintiff has apprehension that the defendants will create road in the suit property by making collusion with defendant No.4. The plaintiff has purchased the suit property from Kulkarni family. There is acquisition for Shivna Takli Project. Therefore at present 68 R land is remained but from the said land, the defendants are trying to create road with the help of tractor but the defendants have threatened to the plaintiff. Therefore, this suit is filed but time will required to dispose of the suit. Hence, this application is filed. The plaintiff has prima-facie case, balance of convenience lie in favour of the plaintiff and irreparable loss will be caused in absence of injunction order. Hence, prayed to allow the application and to restrain the defendants from creating road from the suit property and prayed to allow the application.

3] The defendants appeared in the suit and filed written statement and say at Exh.14 and denied the suit of plaintiff. There is no cause of action to file the suit. The defendant approached to the Mamlatdar Court for road and it is pending. Therefore the court has no right to pass any order. The defendants have not tried to create road. Defendants No.2 and 3 are owner of block No.128 and 129. There is road from the suit property i.e. from the border of block No.128 and 130. Moreover, there is road from block No.127, 128 and 130. The defendants are residing in block No.129 along with their cattle. Children of the defendants are using the said road to go

to school. But the plaintiff has obstructed the road of the defendants. Therefore they have filed the application under section 5 of Mamlatdar Court Act. The road is already in existence and defendants are not creating new road. Hence, no prejudice will be caused to the plaintiff. Balance of convenience does not lie in favour of the plaintiff. There is road since long. Hence, prayed to reject the application.

4] The points for determination along with my findings thereon with reasons are as follows:-

Sr.No.	POINTS	FINDINGS
1)	Whether the plaintiff has prima-facie case?	Yes
2)	Whether balance of convenience lie in favour of the plaintiff?	Yes
3)	Whether the plaintiff will suffer irreparable loss, if application is rejected ?	Yes
4)	What order?	The application is allowed

REASONS

As to Point Nos.1 to 3 :

5] Point Nos.1 to 3 are inter related and intermingled with each other. Moreover discussion on all the points is on same footing.

Hence, it will be legal and proper to discuss all the points simultaneously. Hence, I opt to discuss those simultaneously. Heard both the learned advocate for the parties. They argued to the tune of the application and reply. Perused the documents on record. In the documents, the plaintiff has filed two applications which are filed by the defendants. One is against the Kisan Bhade and second is against the Shital Patni. By filing the application against Shital Patni, defendants have contended that, there is only road from block No.139 to approach their field. In the circumstances, it appears that, the defendants have another road to approach to their field. If it was their contention that another road was available to them to approach their field then they should have contended in the application filed against Shital Patni but that is not contended. In the circumstances, now the defendants are stopped from saying that another road is available to them. In the circumstances, I found substance in the contention of the plaintiff that the defendants are trying to create new road from the suit property. In the circumstances, it appears that, the plaintiff has prima-facie case.

6] It is the contention of the plaintiff that, if defendants are not obstructed then they will create road from the suit property. If that is happened then plaintiff will suffer irreparable loss and it cannot be compensated in terms of money. At this stage, there is no document to show that the road contended by the defendants is in existence. In the circumstances, if they are not restrained then definitely prejudiced will be caused to the plaintiff which cannot be

compensated in terms of money. As per contention of the defendants, they have road to approach to block No.128 and 129 from block No.139. In the circumstances, no prejudice will be caused them. In the circumstances, it can be said that, there is balance of convenience in favour of plaintiff and irreparable loss to the plaintiff if injunction is not granted.

7] The plaintiff relied upon **Vishwanath Rambhaji Bhalerao V/S Usha Pralhad Kasbe 2010 (5) ALL MR 77** in which his Lordship held in paragraph No.9 that, finding recorded by Mamlatdar Court may be treated as the finding recorded on prima-facie assessment. Hence, it cannot be interfered. But the facts and ratio laid down are totally different. Hence, this ruling is not useful to the plaintiffs. The plaintiff relied upon **Shankar Appaji Ravan V/s Shivaji Janba Ravan W.P. NO.10797 OF 2018 decided on 30th Jan 2019** in which his Ladyship held that, if suit for injunction is pending before Civil Court the jurisdiction of Mamlatdar is barred. In view of this ruling the jurisdiction of Mamlatdar Court is barred. In the circumstances, it can be said that, the plaintiff has prima-facie case, balance of convenience lie in favour of plaintiff and he will suffer irreparable loss if injunction is not granted. Hence, I answer points No. 1 to 3 in the 'affirmative'.

As to Point No. 4:

8] The plaintiff established his entitlement for claim of temporary injunction. As per Section 26(2) of Mamlatdar Courts Act

the suit appears to be maintainable. Hence, the plaintiff entitled for injunction as prayed. Hence, it will be legal and proper to restrain the defendants from creating new road for the suit property till disposal of the suit. Considering facts and circumstances, it will not be proper to impose costs on any party at this stage. Hence, costs of application shall have to be directed to follow the event. Hence, I answer Point Nos.1 to 3 accordingly and in answer to point No.4, I pass the following order:-

ORDER

1. The application is allowed.
2. The defendants or any person on behalf of them are restrained from creating new road in the suit property till disposal of the suit.
3. The costs of the application to follow event.

Date : 14.08.2025

(P. D. Zambre)
Jt. Civil Judge Senior Division
Vaijapur

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	:- Syed Haroon
Court	:- Jt. CJSD, Vaijapur.
Date	:- 14.08.2025
Judgment signed by the Presiding Officer on:-	18.08.2025
Judgment/ order uploaded on	:- 18.08.2025