

**ORDER BELOW EXH. 5.**

**(Passed on 20/09/2025)**

1. The plaintiffs/applicants have filed the present suit for declaration and perpetual injunction along with an application for temporary injunction.

2. The case of the plaintiffs/applicants is that they are brother and sister. They jointly owned and possessed agricultural land bearing Gut No.202, total admeasuring 3 H 44 R, out of which 0.86 R and 0.87 R is their share respectively, situated at the outskirts of village Khelshivapur, Tq. Jalgaon Jamod and District Buldana. The boundaries of the said land are such as on the eastern side Gut No.202, on the western side Gut No.201, on the northern side 0.40 R land in Gut No.202 owned by the defendant, and on the southern side 1.21 HR land standing in the name of one Bharatkumar Gandhi. The defendant has purchased 1.21 HR land in Gut No.223 from one Premkumar Jaiswal situated towards the northern side of his 0.40 R land.

3. The applicants contend that they have a cart way (hereinafter referred to as the "disputed way") passing from Jam to Shivni road, through the northern to southern boundaries of Gut No.222, and further passing from west to east through the 0.40 R land owned by the defendant in Gut No.202, to approach their field. It is submitted that the said way has been in existence since the last 40 to 50 years and has been continuously used by the applicants and their predecessors to cultivate their land.

4. It is further contended that the disputed way is also mentioned in the registered sale deed dated 17/05/2000 executed in favour of plaintiff No.1, sale deed dated 17/05/2000 in favour of Taslim Shah and in other transactions relating to Gut No.202. Even the vendor of the defendant has acknowledged the existence of the said way. The applicants state that they have no alternative approach to their land. They further state that since they refused to sell their property to the non-applicant and instead executed an agreement of sale with one Mohanlal Jaiswal on dated 13/03/2024, the non-applicant became inimical and

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obstructed the disputed way. He also threatened the applicants with dire consequences.

5. The applicants have relied upon a private survey map filed on record, showing the disputed way. It is contended that they have a prima facie case, balance of convenience lies in their favour, and if injunction is not granted they will suffer irreparable loss. Hence, the plaintiffs prayed for temporary injunction restraining the defendant from obstructing their use of the disputed way.

6. The defendant/non-applicant appeared and strongly opposed the application. It is contended that the applicants have filed a false suit on the basis of a private survey map which has no legal sanctity. According to the non-applicant, the applicants have an alternative way to approach their field from village Jamod, in front of the lands of one Bhikamchand and Ratanlal Gandhi, towards the left side of Shivdand, directly leading to the applicants field. The non-applicant further submitted that he has already filed a suit against the applicants for removal of encroachment to the extent of 0.20 R and also obtained an order of temporary injunction restraining the applicants from alienating their property to purchaser Mohan Jaiswal. He submitted that the applicants, in collusion with purchaser are trying to create a new way on his land. He further contended that no such way is shown in the Government map.

7. The non-applicant has further taken the plea that since the dispute is with respect to a way, the applicants ought to have approached the Mamlatdar Court under the provisions of the Mamlatdar Courts Act, 1906, and therefore, the present civil suit as well as the application are not maintainable and liable to be rejected.

8. From the pleadings of the parties following points arise for determination which are answered accordingly for the reasons stated below :-

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether the applicants/plaintiffs have prima-facie case in their favour ?	Yes.

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2.	Whether balance of convenience lies in favour of the applicants/plaintiffs ?	Yes.
3.	Whether the applicants/plaintiffs will suffer irreparable loss if injunction is refused?	Yes.
4.	What Order?	Application is allowed.

**Reasons**

9. The applicants/plaintiffs have produced on record several documents such as map along with spot inspection report, sale deeds of different dates, Mutation extracts, 7/12 extract of Gut Nos. 222, 223 & 202 and affidavit of adjacent land owner.

10. The defendant /non-applicant has produced on record maps of Survey No. 144/1 & 2, Gat Nos. 222, 223 and Survey No.94/1 respectively, certified copies of RCS No 67/2023 and RCS No.18/2024, Certified copy of interim Order in RCS No.18/2024, and affidavits of adjacent agriculturists.

11. Heard the parties. Perused the record, documents produced by the parties.

**As to point Nos.1 to 3 :-**

12 It is a settled position of law that in order to obtain interim injunction, a party must establish a prima facie case, balance of convenience in its favour.

13 At this prima facie stage, the applicants have produced sale deeds and other documents wherein the existence of the disputed way is mentioned. They have also produced a map prepared by a private surveyor. On the other hand, the defendant has relied upon the government map and contends that the plaintiffs have an alternative approach. He relied upon **Balasaheb Bhanudas Pawar Vs State of Maharashtra And Others 2021 latest Case Law 4673Bom**, wherein,

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Hon'ble Bombay High Court supporting that from map of Court Commissioner no inference can be drawn the existence of road. *In the case of Ashwin Amrut Firodia Vs Anil Machindra Shisode WP No. 13554 / 2021 and in Qed Properties Private Limited Vs Maharashtra State Board Development Corporation Ltd. And Others*, in which the Hon'ble Bombay High Court was pleased to observe that there are settled parameters for grant of temporary injunction. Unless all the three parameters are made out, no temporary injunction can be granted. Howbeit facts of the aforesaid authorities are altogether different will not applicable to the present case.

14. The dispute regarding existence of way is a matter of evidence and can only be decided after full-fledged trial. However, considering that the plaintiffs claim continuous user of the disputed way since decades and reference to such way is found in earlier sale transactions, a prima facie case is made out in their favour.

15. As regards the plea of jurisdiction raised by the defendant, it is true that under the Mamlatdar Courts Act, 1906, the Mamlatdar Court has powers to decide disputes relating to right of way. However, the present suit is not confined only to a right of way simpliciter. The applicants have sought declaration and perpetual injunction based on their ownership rights and easementary claim. Such reliefs are beyond the jurisdiction of the Mamlatdar Court and fall within the domain of the Civil Court under Section 9 of the CPC. Hence, at this stage, the suit cannot be said to be barred for want of jurisdiction.

16. Considering the material placed on record, a prima facie case exists in favour of the applicants. Balance of convenience also tilts in their favour because if the disputed way is obstructed, they would face difficulty in approaching agricultural lands for cultivation,. On the contrary, the non-applicant will not suffer irreparable loss if temporary protection is granted till disposal of the suit. In view of above discussion the applicants are entitled to the discretionary equitable relief of interim injunction. Hence, point Nos. 1 to 3 are answered in the negative and in answer to point No.4, I pass the following order :-

ORDER

1. The application for temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, is allowed.
2. The defendant, his agents, servants or any person claiming through him are hereby restrained from obstructing or interfering with the plaintiffs peaceful use and enjoyment of the disputed way passing through Gut No. 222, 223 and 0.40 R land in Gut No.202, till disposal of the suit.
3. No order as to costs.

Date :-20/09/2025.

( Priti D. Mendhe )  
Civil Judge (Jr.Dn),  
Jalgaon – Jamod.

**Certificate**

I affirm that, the contents of this PDF are same words for words, as per the original order.

Name of Stenographer : Dipak K. Matkar  
Name of Court : C. J. J. D., Jalgaon Jamod.  
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