

MHBU-1100-0729-2022



Received on	:	04/10/2022
Registered on	:	04/10/2022
Decided on	:	13/03/2026
Duration	:	Yr. Ms. Ds.
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IN THE COURT OF THE AD-HOC DISTRICT JUDGE - 1,
MALKAPUR, DIST. BULDANA.
(Presided over by Rajendrakumar B. Giri)

M.C.A. NO.22/2022

Exh. No.23

Gram Panchayat, Punhai,
Tq. Motala, Dist. Buldana Through its,
1) Secretary, Gat Gram Panchayat,
Punahi
2) Sarpanch, Gat Gram Panchayat,
Punahi
Tq. Motala, Dist. Buldana.

... Appellants.

--Versus--

1) **Vasant Parvat Raut @ Vasudev
Narayan Raut,**
Age about 64 years,
Occupation – Agriculturist,
2) **Shridhar Narayan Raut,**
Age about 62 years,
Occupation – Agriculturist,
3) **Kailas Narayan Raut,**
Age about 60 years,
Occupation – Agriculturist,
All R/o. At. Punahi Tq. Motala,
Dist. Buldana.

... Respondents.

CLAIM: Appeal under section 104 r/w order 43 Rule 1 of the Code of Civil Procedure, 1908.

Appearance :Ld. Adv. Shri. S. G. Kulkarni for the Appellants.

Ld. Adv. Shri. S. S. More for the Respondents.

-: J U D G M E N T :-

(Delivered on this 13th day of March, 2026)

Being aggrieved by the order of grant of temporary injunction in application at Exh.5 by the Learned Jt. Civil Judge Junior Division Motala in R.C.S. No.26/2021 dtd. 10/01/2022, the original defendants have filed the present appeal.

02. The parties are referred by their original status in the said suit, for the sake of brevity, in the present appeal.

03. The original suit is filed for perpetual injunction in respect of the property bearing Gut No.02 having 4 R. land situated at Village Punahi Tq. Motala Dist. Buldana (Herein after referred as suit property for sake of convenience).

04. The plaintiffs, who are real brothers interse are in possession of the 4 R land i.e. the suit property. The plaintiff No.01 was given in adoption to his real uncle Parvat Baliram Raut prior to 30 years by way of adoption. The plaintiffs approached the Court by contending that the property in Gut No.02 was originally owned by Vishwanath Kashiram Patil (Kolte). In the year 1996, he alienated 2 R land in favour of father of plaintiffs and 2 R land in favour of Dr. Kamalkant

Thakur R/o Motala. The said transaction could not be recorded as Vishwanath Kashiram Patil died in the meantime.

05. The Gut No.02 is situated adjacent to the Gut No.208 which is situated adjacent to north and south side of the suit property. It is owned by the state government. The remaining land in Gut No.02 is standing in the name of legal heirs of deceased Vishwanath Kashiram Patil. The defendant Gram Panchayat, out of political rivalry, issued a notice for removal of encroachment to the plaintiffs in the year 2015 however it did not result into any action. The father of plaintiffs died in the year 2017. Thereafter, the defendant No.02 got elected as a Sarpanch from the opposite party of plaintiffs and accordingly he started issuing notices to the plaintiffs for removal of encroachment. The defendants have issued the notices dated 16/06/2021, 06/07/2021 and 09/08/2021 for removal of encroachment and for dispossessing the plaintiffs from the suit property. Accordingly, the plaintiffs filed the suit for perpetual injunction as noted above and prayed for interim relief of grant of temporary injunction.

06. The defendants vide their written statement / say to the application traversed the contentions of the plaintiffs. They contended that the plaintiffs are not having title over the suit property nor they are in its lawful possession. The suit property is belonging to the legal heirs of Vishwanath Patil. The Punhai-Ridhora-Motala road is situated on the northern side of Gut No.02. It proceeds from *gavthan* area. The Gram Panchayat has

undertaken the construction of said road. The plaintiffs have raised a garbage dumping ground on the said road, thereby obstructing the use of said road by the villagers. The defendant Gram Panchayat issued notices to the plaintiffs as well as other villagers who have resorted to the using of the said road as a dumping ground for garbage which has been replied by the plaintiffs by raising false grounds. The plaintiffs are trying to encroach on the Gram Panchayat road by taking resort to the present litigation. The maintainability of this suit and the application for interim injunction was resisted by the defendants on the grounds of non issuance of pre-institution notice, non joinder of necessary party and suppression of facts. Accordingly, they prayed for rejection of the application.

07. The Learned Trial Court allowed the application for grant of temporary injunction predominantly on the ground of possession of plaintiffs over the suit property and their dispossession by the defendants without following due process of law.

08. While assailing the said order, defendants/appellants contended that the Learned Trial Court failed to exercise its discretion in lawful manner. The Learned Trial Court failed to appreciate the absence of title of the plaintiffs over the suit property. Neither the fact of encroachment by the plaintiffs over the *gavthan* road of the Gram Panchayat was taken note of by the Learned Trial Court nor the absence of their possessory title was considered in proper perspective. Therefore they

prayed for interference in the said order by allowing the appeal.

09. The original plaintiffs supported the order of the Learned Trial Court by contending that the defendants are trying to dispossess the plaintiffs from the suit property without following due process of law and therefore the Learned Trial Court correctly exercised the discretionary jurisdiction for relief of temporary injunction in favour of plaintiffs which need not be interfered by this Court in appeal. Accordingly, they prayed for dismissal of the appeal.

10. Considering the rival contentions of both the parties following points arise for determination to which I record my findings thereon for reasons to follow.

Sr. No.	Points for determination	Findings
01.	Whether the plaintiff is having prima facie case in his favour ?	No.
02.	Whether the balance of convenience lie in favour of plaintiff ?	No.
03.	Whether the plaintiff would suffer irreparable loss in case of refusal of injunction ?	No.
04.	Whether the order passed by the	

	Learned Trial Court is just and proper, in the facts and circumstances of the case ?	No.
05.	What order and decree ?	As per final order.

REASONS

11. Heard learned counsel for plaintiffs and defendants.

12. Perused the documents (in the paper book) placed on record of the Learned Trial Court by the plaintiffs as well as defendants.

13. At the outset, it must be stated that grant or refusal of temporary injunction is an equitable relief based on the principles of justice, equity and good conscience. It is also settled position of law that a person seeking equitable relief must approach the court with truthful facts so as to establish his entitlement to the discretionary relief of temporary injunction. A person seeking equity must do equity. In this background, the point which deserves consideration is as to whether the Learned Trial Court had exercised its such jurisdiction in proper manner or not.

AS TO POINT NO.1 TO 4 -

14. The facts of the case lie in very narrow compass. The

plaintiffs have approached the court for grant of relief of temporary injunction with the contention that they are in possession of the suit property to the extent of 4 R on the basis of ownership of their father on 2 R land and remaining 2 R land belonging to deceased Vshwanath Kashiram Patil. They contended that the defendant No.01 i.e. Gram Panchayat is acting at the behest of defendant No.02 Sarpanch, out of political rivalry and trying to dispossess them from the suit property. The defendants challenged the said contention by contending that the plaintiffs are not having title over the suit property and they have encroached on the *Gavthan* road belonging to the Gram Panchayat and using the same for garbage dumping, which they have sought to remove by issuing notices to the encroachers including plaintiffs.

15. The Learned Trial Court while granting temporary injunction observed that the Gram Panchayat had applied to the Tahsildar Motala for removal of encroachment from the *Gavthan* road however no action was initiated by the concerned authority. The possession of the plaintiffs on the suit property was acknowledged and it was noted that the defendant Gram Panchayat had acquiesced in the act of garbage dumping by the plaintiffs over the *Gavthan* road and accordingly the injunction was granted.

16. While considering the prima facie case, it is important to notice that there must be either lawful title or the legal right of the plaintiffs over the suit property and its

infringement by the defendant. In the present case, even though the plaintiffs contended that they are the owners of 2 R land in Gut No.02 they have not produced any document showing their title to the same. Besides this, they contended that they are in possession of 2 R land belonging to deceased Vishwanath Kashiram Patil, sans any legal right. Moreover, the plaintiffs contended that the plaintiff No.01 has been given in adoption to his uncle prior to 30 years, who, admittedly has no right over the suit property and accordingly the right of the plaintiff no.1 to own the same is also questionable.

17. Be that as it may be, it is apparent that the notices issued by the Gram Panchayat show that they are in respect of using Gut No.208 as a dumping ground. The said Gut number is not falling within the area of the suit property. The plaintiffs are trying to protect their said encroachment by mentioning the suit property in Gut No.02. It is not their case that the defendants are trying to dispossess them from said suit property. In other words, the notices challenged by the plaintiffs are in respect of different property i.e. Gut No.208 whereas the suit property is in Gut No.02.

18. In this background, let us consider the power of Gram Panchayat to issue the notices for removal of encroachment vis-a-vis the due process. It is clear from the pleadings that the defendants i.e. the Gram Panchayat and its Sarpanch, being the statutory authorities have issued the notices to the encroachers to remove the same from the *Gavthan* road.

They have not tried to forcefully evict them. In fact, repeated issuance of notices by them goes to suggest that they are trying to follow the law i.e. the provisions of Maharashtra Village Panchayat Act. It is not case that they have not power to issue such notices. There is no prima facie material to read any ulterior motive in their action of issuing notices. Such issuance of notices is in pursuance of due process of law. In such view of the matter, the observations of the Learned Trial Court about the acquiescence in illegal activities of the plaintiffs on the part of statutory authority are perverse and not according to law.

19. The Learned Trial Court neither considered the absence of prima facie material to show the legal right of the plaintiffs over the suit property nor the statutory competence of the defendants to remove the encroachment over the land situated within the area of Gram Panchayat. Accordingly, neither there is prima facie case in existence in favour of plaintiffs nor the balance of convenience lie their favour or they would suffer irreparable loss in case of refusal of injunction. In this sense the order of Learned Trial Court is not tenable in the eyes of law.

20. In an attempt to save the order from interference, the learned counsel for the plaintiffs / respondents relied on the following judgments.

(i) Laws (SC) /2024/11/81 Civil appeal No.13001 of 2024 (@ special leave petition Civil) No. 252 of 2023 Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi,

(ii) Writ petition No.6907 of 2022 Ravindra Onkar Patil and others Vs. Shilabai Uttambhai Patil and others dated 05/07/2022 (Hon'ble Bombay High Court Bench At Aurangabad).

21. The Ramakant Ambalal Choksi's case lays down the principle that the appellate court cannot interfere in the order of Learned Trial Court merely on the basis of a possible view while exercising its appellate powers against the order of interim injunction. Similarly, the Ravindra's case is based on the reversal of grant of injunction in favour of plaintiffs granted by the Trial Court and instead allowing the application of the defendants for such injunction. It is based on the expositions of Order 39 Rule 1 (a) to (c) of the Civil Procedure Code.

22. Both the authorities are of no assistance to the respondents for the simple reason that the findings of the Learned Trial Court are not based on correct appreciation of law governing the facts. The Learned Trial Court disregarded the identification of the properties i.e. the suit property and encroachment of the plaintiffs on the *Gavthan* land and the statutory powers of the defendants to remove the same. Even the absence of legal right or lawful ownership of the plaintiffs over the suit property and the non production of documents showing the same are also not considered by the Learned Trial Court in proper perspective.

23. For the reasons noted above I answer point Nos.1 to

4 in negative and proceed to pass the following order. -

ORDER

- 1] M.C.A. No.22/2022 is allowed.
- 2] The order of the Learned Trial Court below Exh.5 dtd. 10/01/2022 in R.C.S. No.26/2021 is quashed and set aside.
- 3] The application of the plaintiffs for grant of temporary injunction below Exh.05 stands rejected.
- 4] Costs in cause.
- 5] Inform the Trial Court accordingly.

Dictated and pronounced in open court.

Malkapur.
Date - 13/03/2026.

(R. B. Giri)
Adhoc District Judge – 1,
Malkapur.

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CERTIFICATE

I certify that this order in P.D.F. upload is a true and correct copy of original signed order.

Name of Court : Adhoc District Judge – 1 & Additional
Sessions Judge, Malkapur.
Name of Stenographer : Shri. V. S. Jadhav. (Junior Clerk)
Date of order : 13.03.2026
Date of signed on order
by Judicial Officer : 13.03.2026
Date of uploading : 16.03.2026