

MHBU20-000375-2025
Judgment

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Vividh Karyakari Sanstha + 1 Vs. Damodhar Sitaram Surushe+10

M.C.A. No. 6/2025



Received on : 09.05.2025

Registered on : 09.05.2025

Decided on : 29.04.2026

Duration : 00 Years 11 Months 20 Days

IN THE COURT OF THE DISTRICT JUDGE - 1, MEHKAR
(Presided over by Mr. Sagar K. Mungilwar)

Miscellaneous Civil Appeal No. 6 / 2025
Exh. 38

- [01] **Vividh Karyakari Sanstha,**
Ltd. Sultanpur R. No. 1144, through president
Wamanrao Shriram Zore, age - 60 years,
R/o Sultanpur, Tq. Lonar, Dist. Buldhana.
- [02] **Vividh Karyakari Sanstha,**
Ltd. Sultanpur R. No. 1144, through secretary
Vijay Ramkrushna Chankhore, age - 55 years,
R/o Sultanpur, Tq. Lonar, Dist. Buldhana.

..... **APPELLANTS**
(Original Defendant Nos. 1 and 2)

.. V/s ..

- [01] **Damodhar Sitaram Surushe,**
Age - 62 years, Occupation - Cycle Stores.
- [02] **Madhukar Sheshrao Khetre,**
Age - 57 years, Occupation - Hotel.
- [03] **Pandurang Sahebrao Gadekar,**
Age - 76 years, Occupation - Laundry Shop.
- [04] **Baban Sakharam Bidwe,**
Age - 45 years, Occupation - Saloon Shop.

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[05] **Gajanan Kisan Zore,**
Age - 50 years, Occupation - Electric repairing shop.

[06] **Santosh Uttam Surushe,**
Age - 45 years, Occupation - Electric repairing shop.

[07] **Pradip Sukhahari Gadekar,**
Age - 41 years, Occupation - Electric Repairing.

[08] **Rajesh Devidas Patil,**
Age - 37 years, Occupation - Laundry Shop.

[09] **Fulchand Dashrath Shirale,**
Age - 48 years, Occupation - Shoe store.

Respondent Nos. 1 to 9 R/o Sultanpur,
Tq. Lonar, Dist. Buldhana

[Original Plaintiffs]

[10] **Sarpanch,**
Grampanchayat Office, Sultanpur,
Tq. Lonar, Dist. Buldhana.

[11] **Deputy Sarpanch,**
Grampanchayat Office, Sultanpur,
Tq. Lonar, Dist. Buldhana.

[Original Defendants Nos. 3 and 4]

..... **RESPONDENTS**

.....
Miscellaneous Civil Appeal Under Section 104 Order 43 Rule 1 of the
Civil Procedure Code.

.....
Mr. Kishor S. Dhondage, Advocate for Appellants
Mr. G. D. Dongardive, Advocate for Respondents
.....

J U D G M E N T

(Delivered on this the 29th day of April, 2026)

01] The defendant Nos. 1 and 2 in R.C.S. No. 17/2025 have preferred this appeal against the order (below Exh. 5) of the learned Civil Judge Jr. Dn., Lonar, Dist. Buldhana, who passed order of temporary injunction against them (For the sake of convenience, parties are referred as per their nomenclature before the learned trial court.)

02] It is contended that plaintiffs are small shop owners and they are running their businesses on suit property as described in para No. 1 of the plaint. The plaintiffs are in peaceful possession of suit property since last 35 to 40 years. Suit property in the possession of the plaintiffs is situated on block No. 926 of village Sultanpur. The defendants have no concern what so ever with suit property. However, defendant Nos. 1 and 2 have issued notice (Dt. 06.02.2025) to the plaintiffs and directed them to vacate the possession of suit property.

03] It is further contended that plaintiffs got knowledge that defendant Nos. 1 and 2 have hand in gloves with defendant Nos. 3 and 4 and have obtained construction permission and they are about to carry out construction over the F-class land, which does not belong to them. The plaintiffs are threatened that in case they failed to vacate the possession of suit property, defendants will forcefully remove them from the possession of suit property. Therefore, plaintiffs constrained to file suit along-with application for temporary injunction restraining defendants or anybody on their behalf from causing obstruction to their peaceful possession over the suit property.

04] The defendant Nos. 1 and 2/ appellant appeared and filed their written statement-cum say to this application at Exh. 16. The defendant Nos. 3 and 4 did not appear, therefore, suit as well as application for temporary injunction are proceeded ex-parte against them.

05] By way of specific defence defendant Nos. 1 and 2 came with a defence that they are registered society. The land Survey No.626, Nazul Sheet No.03, plot No.626 ad-measuring 760 sq meter is allotted to the said society by revenue department. The society is working for the benefit of the agriculturist of the vicinity. Old building of the society is in dilapidated condition, therefore, society is going demolish its old building and has taken all the necessary permissions to construct new structure at the property belonging to the society. It has been falsely mentioned by the plaintiffs, in the plaint, that the defendants are about to dispossess them. In fact, there is no concern of the defendants over the suit property.

06] It is admitted to the defendants that they have issued notices to the plaintiff Nos. 1, 2, and 5 to 8. It is admitted that defendants have no concern with the land block No. 926, therefore, there is no question of dispossessing the plaintiffs from land block No. 926. It is submitted that the plaintiffs have no locus to file this suit. It is specifically submitted that in case injunction as claimed by the plaintiffs is granted in favour of them, then the plaintiffs may take undue advantage of the same to disturb the construction of the defendants

over the land belonging to them. Therefore, defendant Nos. 1 and 2 prayed to reject the application.

07] Having considered pleadings of both side, documents on record, the learned trial court came to the conclusion that the plaintiffs have proved their prima-facie possession over the suit property by virtue of notice and they are running their small businesses thereon, therefore, if they are dispossessed, they will suffer irreparable loss to them. Therefore, the learned trial Court granted temporary injunction in favour of the plaintiffs. Said order of temporary injunction is under challenged before this Court.

08] Following points arise for my determination and my findings against each of them for the reasons are as under ;

Sr. No.	P O I N T S	FINDINGS
[01]	Whether the plaintiffs are entitled for temporary injunction as sought ? In the Negative
[02]	Are the findings and order passed by the learned trial court, below Exh. 5 in R.C.S No. 17/2025 dated 16.04.2025 just and proper ? In the Negative
[03]	What order ? As per final order

- R E A S O N S -

09] I have heard learned Advocate Mr. Kishor S. Dhondage for appellants / defendants Nos. 1 and 2 and learned Advocate Mr. G. D. Dongardive for respondents/ plaintiffs at considerable length. Learned

counsel for appellants vehemently argued that plaintiffs have encroached upon their land on Survey No. 626, Nazul sheet No. 03, ad-measuring 760 square meter of village Sultanpur. Entries to that effect is in map of measurement, but the learned trial Court ignored this important document and gave wrong findings on the basis of notice issued by the appellants. He further submitted that appellants have a registered society and their old building was in dilapidated condition. The society obtained necessary permission and demolished its old building in order to construct new building thereon. It is further submitted that plaintiff Nos. 7 and 8 have suo-moto vacated their encroachment and gave relinquishment on affidavit in favour of the society. He further submitted that society has not issued notice to plaintiff Nos. 3 to 8. The learned trial Court has not considered documents on record and passed evasive order on the basis of presumption and surmises. Taking disadvantage of the order of learned trial Court, plaintiff Nos. 1 to 6 and 9 are obstructing the construction of defendants over their own land. Therefore, learned counsel prayed to set aside the order of temporary injunction passed by the learned trial Court.

10] Per contra, learned Advocate for respondents / plaintiffs strongly opposed the argument advanced on behalf of the appellants. He submitted that the order passed by the learned trial Court is legal and proper. The learned trial Court rightly came to the conclusion that the plaintiffs are in peaceful possession over the suit property from last 30 to 40 years and therefore, the learned trial Court gave

protection to their possession by an order of temporary injunction. He further submitted that there is no need to interfere in the order of the learned trial Court and prayed to reject the appeal with cost.

11] In the context of rival submission of either side, I am appreciating pleadings and documents filed by the either side to decide this appeal.

AS TO POINT NOS. 1 TO 3 -

12] The relief of temporary injunction is an equitable relief and to get the equitable relief, the plaintiffs have to establish their prima-facie case, balance of convenience in their favour and irreparable loss to them, in case their application for temporary injunction is rejected. This means that the entire burden lies on the shoulder of plaintiffs to prove their prima-facie case, balance of convenience in their favour and irreparable loss to them. It is settled principle of law that plaintiffs should come before the Court with clean hands. As such it is settled principle of law that plaintiffs have to prove their case on their own strength and they cannot take benefit of the weakness of the defendants.

13] Pursuant to record it appears that plaintiffs are claiming their long standing possession over block No. 926 of village Sultanpur. The learned trial Court drawn inference on the basis of notice issued by appellants that the plaintiffs are in possession over the suit property. However the order of temporary injunction passed by the learned trial Court nowhere discloses that on which of the document

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the plaintiffs have proved their prima-facie possession over the land block No. 926 of village Sultanpur. Ad-interim order of the learned trial Court speaks that plaintiffs have filed 7/12 extract of block No. 926 of village Sultanpur, which is 'F'-Class land. There is no documents on record to show that plaintiffs are in possession of 'F'-Class land. Moreover, the plaintiffs have not cleared their status in entire plaint, whether they are in possession of suit property being owner, tenant, encroacher or trespasser etc. The order of learned trial Court is also silent on which of the document, plaintiffs have proved their prima-facie possession over the suit property.

14] On the other hand defendants / appellants have filed measurement sheet in which plaintiff Nos. 1, 2, 5, 7 and 8 are shown as an encroacher upon the land of defendants i.e. Survey No. 626 of village Sultanpur. It is relevant to note here that the plaintiffs have filed suit on 23.02.2025 and after two days plaintiff Nos. 7 and 8 have vacated their portion of suit property on 27.02.2025 stating therein that they are encroacher on the land of defendant Nos. 1 and 2. Plaintiff Nos. 7 and 8 filed their say below Exh. 23 and thereby admitted that they have vacated land of society and they have already given relinquishment to that effect. Report of circle officer and map of block No. 926 also supported to the defence of society. However, the learned trial Court ignored map of survey No. 626, remarks therein about encroachment of some plaintiffs, relinquishment and say of plaintiff Nos. 7 and 8 and report of circle officer. The learned trial Court did not consider these documents and came to conclusion that

plaintiffs are in possession over block No. 926. In fact, the plaintiffs have concealed material facts from the Court and claimed their possession over block No. 926 without support of documentary evidence. Consequently, the plaintiffs failed to prove their prima-facie case.

15] In view of foregoing discussion it is crystal clear that the plaintiffs are encroacher upon the land of defendant Nos. 1 and 2 and therefore, defendants were trying to vacate their land by issuing legal notice. On the other hand, the plaintiffs have not come before the Court with clean hand and succeeded to get the order of temporary injunction from learned trial Court, therefore, balance of convenience tilt in favour of defendant Nos. 1 and 2.

16] It is pertinent to note here that society came with a fair defence that they have no concern with block No. 926, but they wanted to construct their new building on their own land of Survey No. 626. The defendant No. 1 and 2 are office bearers of registered society formulated for the benefit of agriculturist within the vicinity of village Sultanpur. They are doing activities for the benefit of agriculturist and they are constructing new building for that purpose. In such a circumstance, if they are restrained from constructing their own building on their own land, they would suffer irreparable loss, which could not be compensated in terms of money.

17] In my considered opinion the learned trial Court has not considered documents of title and possession of the plaintiffs over the

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suit property and passed erroneous order on the basis of averments in written statement and notice of defendants. Therefore, there is need to interfere in the order of learned trial Court. Resultantly, I record my findings as to **point Nos. 1 and 2 in the “Negative”**.

With this, I proceed to pass following order.

:: ORDER ::

- [01] M.C.A. No. 6/2025 is allowed with cost.
- [02] The impugned order dated 16.04.2025 passed in Regular Civil Suit No. 17/2025, Damodhar Vs. President Wamanrao Zore, passed by the learned Civil Judge (Jr. Dn.), Lonar is set aside.
- [03] The application for temporary injunction (Exh. 5) is rejected.
- [04] Inform to the learned Civil Judge (Jr. Dn.), Lonar.
(Dictated and Pronounced in the open court.)

Place : Mehkar
Dated: 29.04.2026

(Sagar K. Mungilwar)
District Judge - 1, Mehkar

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C E R T I F I C A T E

I affirm that the contents of this PDF file Order / Judgment are correct word to word as per the original.

Name of Court : Shri. Sagar K. Mungilwar
District Judge - 1,
Mehkar, Dist. Buldhana.

Name of Steno : Shaikh Imran Abdul Rauf,
Stenographer, Grade-1, Mehkar.

Date : 29.04.2026