

MHGA090019872025

**IN THE COURT OF JT. CIVIL JUDGE (JUNIOR DIVISION), CHAMORSHI**

(Presided Over by S.A. Bhaisare)

Reg. Civil Suit No. 84/2025**Bhaurao Shravan Nikhade****... Plaintiff****-VERSUS-****Gajanan Maroti Nikhade +5****... Defendants****Appearance**

For Plaintiff :- Learned Advocate Shri. K. T. Satpute

For Defendants :- Learned Advocate Shri. N. U. Lodaliwar

ORDER BELOW EXH. 05(Passed on 13th March, 2026)

The present application is moved by the plaintiff under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908 seeking temporary injunction restraining the defendant no.1 to 5 or any person on their behalf from removing the wire compound surrounding the suit property bearing survey no. 204/2 admeasuring 1.90 HR situation at mouza Laxmanpur, Tq.-Chamorshi, Dist.-Gadchiroli (in short 'suit property'). The defendants opposed the application by filling their say at Exh.24.

2. Perused the application and reply thereon. Heard the Ld. Counsels for both the sides.

3. Learned counsel for the plaintiff Shri. K.T. Satpute has argued as per his pleadings. He contented that the plaintiff has left 05 feet road for conveyance. He has built permanent wire compound in the year 2022. Defendant no.1 to 5 had made an application before the Tahasildar, Chamorshi to remove the said wire compound. The Tahasildar vide order dated 13-11-2025 directed to remove the said wire compound and thus, acting beyond the jurisdiction under section 143 of the Maharashtra Land Revenue Code. The Tahasildar only has power to decide the claim of a right of way and not to remove any construction. Thus, the order of the Tahasildar is *ultra vires*. The defendant no.1 to 5, taking disadvantage of the order of Tahasildar, are in process to remove the said wire compound. He also argued that defendants are trying to construct permanent road. There is prima-facie case, balance of convenience and irreparable loss in favour of the plaintiff. Hence, the application may kindly be allowed.

4. To support his contention, he relied upon the judgment of Hon'ble Bombay High Court in *Akshay Soma Abhivant -Versus- The State of Maharashtra, Writ Petition No. 7844 of 2023* wherein the Hon'ble Court has observed that,

“ The provisions of Section 143 of the MLRC governs the right of way over boundaries and is propelled by the needs of cultivators for reasonable access to their fields. Where the material on record demonstrates that the case of Respondents is of obstruction on existing right of way, the appropriate remedy is under Section 5 of the Mamlatdar's Courts Act. Therefore, I find considerable force in the submissions of the learned counsel for the Petitioner that the

application is itself not maintainable under Section 143 of the MLRC.”

5. *Per contra*, learned counsel Shri. N.U. Lodalliwar appearing for the defendants has urged that there is no document on record to show that the plaintiff has left 05 feet land for conveyance. The said wire compound is not a permanent structure. It is merely a barbet fencing. Thus, no irreparable loss which cannot be compensated in terms of money would be caused to the plaintiff if the application is rejected. No photograph, whatsoever is produced by the plaintiff. If the way is obstructed, it would caused greater hardship to the defendants as compared the plaintiff. The Moka Panchanama shows obstruction on the way at the hands of plaintiff. The plaintiff has not come before the Court with clean hands. As per section 143 of the Maharashtra Land Revenue Code, the Tahasildar has power to remove obstruction to confer a right of way in a meaningful manner. It is not the case of plaintiff that alternate road is available to the defendants for conveyance. There is no prima-facie case, balance of convenience and irreparable loss in favour of the plaintiff. To buttress his contention, he relied upon the judgments of Hon'ble Bombay High Court in *Pandurang Bauche -Versus- Jalindhar Tupe, Second Appeal No. 375 of 2006* and *Durga Thaware Versus Parasram Marskole*, Writ Petition No. 6930 of 2022 wherein the Hon'ble Lordship has observed that;

“Sub Section 1 of section 143 of the Code empowers a Tahsildar to inquire into and decide claims made by persons holding land in a survey number to a right of way over the boundaries of

other survey numbers.”

Lastly, he prayed to reject the application.

6. Perused the record with the able assistance of both the learned counsels. Considered the submissions made by both the parties. I have read carefully the judgments relied upon by both the parties. Following points arise for determination, to which findings are recorded alongwith reasons given below :-

Sr.No.	POINTS	FINDINGS
1.	Whether plaintiff has made out prima facie case in their favour ?	No
2.	Whether he proves that balance of convenience lies in their favour ?	No
3.	Whether he proves that they will suffer irreparable loss, if no interim relief granted to him ?	No
4.	What order ?	As per final order

:: REASONS ::

AS TO POINT NOS. 1 TO 4 :-

7. **The case of the plaintiff is as under :**

He has left 5 feet road for conveyance of defendants no.1 to 6 and constructed his wire compound. The defendants have alternate sufficient road available for conveyance. The defendants are, taking disadvantage of order of Tesildar dated 13/11/2025, in process to remove the wire compound. Hence, the suit.

8. **The case of defendants is as under :**

There is a road between the agricultural land of plaintiff bearing Survey no. 204/2 and Survey no.205. The said road is the only way used by the defendants no.1 to 5 for ingress and egress to their respective fields. If it is obstructed, it would cause irreparable loss to the defendants. Hence, the suit is liable to be dismissed with cost.

9. The grant or refusal to grant interim relief is covered by three well established principles viz. 1) whether plaintiffs has made out prima facie case; 2) whether plaintiffs would suffer irreparable injury in the absence of interim relief; and 3) whether balance of convenience lies in his favour. The burden to prove these three necessities lies on the person seeking interim relief. The court has to see whether the claim is bonafide and whether there is a fair and substantial question to be tried.

10. While determining whether a prima facie case had been made out all that the court has to see is that on the face of it the person applying for an interim relief has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. In arriving at the balance of convenience, the court has to weigh the mischief likely to be caused to the applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted. So also the court has also to consider as to whether grant or refusal to grant interim relief will cause any irreparable injury to party to the proceeding. The injury means a legal injury. On the

backdrop of this settled legal principles, facts of present matter must be scrutinized.

11. The present suit is filed for declaration and perpetual injunction. It appears that the plaintiff has constructed a wire compound. As per the pleading of both the parties, the only dispute before me is whether the wire compound is on the agricultural land of plaintiff or on the road used by the defendants no.1 to 5 to access to their agricultural fields. The exact location of wire compound of plaintiff is a subject matter of trial to be determined by leading evidence. Whether there is an alternate sufficient road available to defendant to access to their field is also a subject matter of trial.

12. According to first and second prayer clauses of the plaintiff, he has directly challenged the order of Tahasildar without adding him as a party.

13. So far as obstruction or disturbance to the wire compound of the plaintiff is concerned, there is no pleading in the plaint that the defendant no.1 to 6 has disturbed or obstructed the wire compound structure. There is no document to strength the claim of plaintiff. Merely because the Tahasildar has passed an order directing the plaintiff to remove his wire compound, it would not amount to disturbance or obstruction at the hands of defendant no.1 to 6. The Tahasildar has not directed the defendant no.1 to 6 to remove the wire compound of the plaintiff. Hence, there seems no apprehension at all that the defendant no.1 to 6 would remove the wire compound of plaintiff. Also, the law relating to grant of permanent injunction is

well-settled that injunction cannot be granted merely on speculative apprehensions. So also, the plaintiff has not placed on record the statements of adjoining holders or local residents to strengthen his apprehension. In this premise, no prima facie case lies in favour of the plaintiff. Hence, I answer point no.1 in negative.

14. The Court has already made a finding that there exists no *prima facie* case in favour of plaintiff. The plaint is *prima facie* silent on the point of obstruction at the hands of defendant no.1 to 5. Thus, there is no question of undue hardship to the plaintiff as compared to the defendants. In this premise, it cannot be said that balance of inconvenience and irreparable loss would be caused to the plaintiff which cannot be compensated adequately in terms of money than the defendants. Hence, I answer point no.2 and 3 in negative.

15. Resultantly, in answer point no.4, I pass the following order

ORDER

1. The application below Exh.5 is rejected.
2. Parties to bear their own costs.
3. Both the parties are directed to expedite the proceedings of the case and ensure its disposal at its earliest.

Sd/-

Place:- Chamorshi
Date:- 13/03/2026.

(S. A. Bhaisare)
Jt. Civil Judge, (Jr.Dn.),
Chamorshi