


MHGO010019502025 	<p style="text-align: center;"><u>IN THE COURT OF PRINCIPAL DISTRICT JUDGE, GONDIA.</u></p> <p style="text-align: center;"><u>REG.CIVIL APPEAL NO.01/2026</u></p> <p style="text-align: center;">Motiram Bahekar & Ors. .vs. Netram Kawade & Ors.</p>
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ORDER BELOW EXHS.20 & 24
(Passed on 18.03.2026)

By way of the present application under Order XXXIX Rules 1 and 2 read with section 151 of the Code of Civil Procedure (CPC), the temporary injunction is claimed by the appellants/original plaintiffs against the respondent No.1/original defendant No.1 with a prayer to restrain him from constructing permanent construction with expansion of the constructed area as described in the application, till the final disposal of the appeal.

2. Heard learned advocate Miss. B. T. Turkar for the appellants and learned advocate Shri. N. R. Machade for respondent No.1. In view of submissions, perused the application, reply at Exh.25 along with the record on the basis of which following points arise for my determination.

<u>Sr.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether appellant is entitled for injunction, as prayed ?	<u>In the negative.</u>
2.	What order ?	<u>Application Exhs.20 & 24 stand rejected.</u>

3. The contentions in the present application, as well as in the main suit are to the effect that, Regular Civil Suit No. 36/2013 was filed by the plaintiffs/appellants contending that, the land bearing Gat No.418, admeasuring 0.77 H.R., situated at village Kalimati is jointly owned by the original plaintiff Nos.1 to 6 and defendant Nos. 2 to 7. That, the defendant No.1 was granted land admeasuring 230 sq.mtr. and his mother was granted land admeasuring 226.62 sq.mtr. from Gat No.30 of the same village.

4. The further case of the plaintiff before the Trial Court is to the effect that, on the western side of Gat No.418 there is Kalimati to Bhosa road and to the western side the road there is Gat No.30, in which the above two lands of defendant is situated. However, the defendant illegally encroached on 0.50 acre of land from the western side of the Gat No.418 belonging to the plaintiffs and defendant Nos.2 to 7 , upon which he made construction (which is the suit property). Therefore, the suit was filed for mandatory injunction for removal of the construction, for removal of encroachment and possession along with permanent injunction before the Trial Court.

5. The Trial Court was pleased to dismiss the suit of the appellants/plaintiffs, though, held that Gat No.418 is jointly owned by the plaintiffs and defendant Nos.2 to 7 by answering issue No.1 in favour of the plaintiffs, however, answering issue Nos.2 and 3 against the plaintiffs as to, whether plaintiffs prove that, defendant No.1 has made encroachment upon the suit

property Gat No.418 and constructed house, temple, lavatory and compound wall upon the suit property Gat No.418.

6. In the present application, in appeal, it is contended that, the subject matter of the suit is **0.20 H.R.** land out of 0.77 H.R. land. The boundary description in the application shows the subject matter of the land that, towards east is the remaining land of Gat No.418, which is not disputed and towards west there is Kalimati to Bhosa road and thereafter, Government land of Gat No.30, which is a disputed boundary. Towards north remaining land of Gat No.418 and then canal, which is not disputed, towards south land of Gat No.419 of the applicant adjoining to the encroached land of Gat No.418 by defendant No.1. It is further contended that, as per the pleadings of the defendant/respondent No.1, he received along two plots one in his name and another in name of his mother, out of Abadi land of government in Gat No.30 and constructed temporary house of tin shed for his vegetable shop.

7. The further contention in application (Exh.20) before this Court is that, in between the land of Gat No.418 and Gat No.30 as per revenue map, there is Kalimati to Bhosa road. Further in para 4, it is mentioned that, the respondent has encroached upon the land of applicant admeasuring 0.50 acres of the south-western part of Gat No.418 and has constructed house of tin shed, temporary compound of Subabul and bamboo trees, lavatory, symbolic temple by placing stone on his land and the pleading of defendant No.1 is otherwise mentioning that his

construction is in Gat No.30. It is further claimed that, as per Exh.22 written statement, the claim of plaintiff is based on wrong revenue map of 1975-76 is the pleading of defendant/respondent No.1. It is the further pleading that, the plaint map is without dimensions with length and width in feet or meter. The suit is barred by limitation on the basis of notices exchanged. The non-applicant also claimed ownership on the alleged encroachment on the land of Gat No.418 by adverse possession. It is further contended that, as the application Exh. 28 for appointment of Commissioner before the Trial Court was rejected, the land was measured by private measurer who is examined.

8. Now after receipt of the notice of the appeal, the respondent No.1 has started construction, for which he has collected materials and started digging pits on the open land adjoining to the Kachha house and constructing permanent structure by taking advantage of the dismissal of the suit, despite the knowledge of pendency of the appeal.

9. It is contended that, the appellant has got good case on merits and therefore, the encroachment is to be removed and such encroacher cannot be allowed to erect further construction. Learned advocate Miss. B. T. Turkar for the appellants further argued that, as the respondent No.1 has started making Pakka construction, it will create complication and he should not be allowed to continue the construction and prayed to allow the application.

10. On the other hand, learned advocate Shri. N. R. Machade for respondent No.1 argued that, the appeal sans merits. In fact, according to him, Gat No.418 is in fact carved out and prepared from Gat No.419/1 and 419/8. Yet, the area shown is 0.77 H.R. which is the same in Gat No.418. However, even after land admeasuring 0.18.21 H.R. is acquired by the Sub-Divisional Officer and Special Acquisition Officer, Gondia in Bagh Project (Itiyadoh) for canal, the area cannot be same but it is shown as same area which itself is illegal.

11. He also placed on record the documents, which according to him, touching the Gat No.418 the road goes to Tekdi and not to village Bhosa and if the contention about the boundary on western side is the road proceeding to Bhosa and not Tekdi, then the Gat No.418 will include Gat No.30 also along with the road proceeding to Tekdi.

12. Perusal of the record and impugned order shows that, the order as has been passed by learned Trial Court in the impugned judgment seems to be, not so very happily worded in para Nos.21, 23, 24 and 25, considering the observations and conclusion drawn therein. Yet, fact remains that Gat No.418 itself is formed from Gat No.419/1 and 419/8 out of which some land is acquired for a project Bagh project (canal), yet, the total land is shown to be 0.77 H.R. as was prior to the land acquired, which has to be actually reduced after acquisition. Apart from that, if at all the plaintiffs/ appellants are in position to succeed in the appeal, the mandatory injunction can be

granted to remove not only the temporary structure, but also the subsequently constructed Pakka structure, which fact being subsequent event during pendency of the appeal can always be considered at the time of final judgment. Therefore, at this stage, when the respondent is constructing a house and it is not clear as to on which particular portion of land he is constructing the house particularly in view of fact that the parties are disputing as to the location of Gat No.30 and Gat No.418 and the measurer did not show the existence of constructed house of tin shed, temporary compound of Subabul and bamboo trees, lavatory, symbolic temple by placing stone as claimed by plaintiffs/appellants in view of the further fact that the respondent No.1/defendant No.1 came with a plea that his construction is on Gat No.30 on the plots granted by Government on Aabadi land. When the construction is not proved on Gat No.418, such an injunction cannot be granted, particularly when the finding is to the effect that, the plaintiff failed to prove the encroachment of the defendant No.1/respondent No.1. Neither the extent nor the measurements of the alleged encroachment are given by the plaintiff nor proved before the Trial Court, which is the main reason for dismissal of the suit. Therefore, the prima-facie case and balance of convenience does not lie in favour of the appellants. As regards irreparable injury, the same can be taken care of on final decision of the appeal. Further if it is established that the construction of respondent No.1/defendant No.1 is on the land of plaintiffs/appellants, then he is taking the risk of demolition of the same, as the construction would be subject to

the decision in appeal.

13. Furthermore, it is necessary to mention here itself that, as it was pointed out that respondent No.1 has expired. It was argued that, there is no prayer in the application against the respondent No.2 or the legal representatives of the respondent No.2. The prayer is only against the respondent No.1. She would bring the legal representatives of the respondent No.2 on record and take necessary steps. However, she wanted to proceed further with the arguments on interim injunction application. As there is no prayer against the respondent No.2, the application is decided.

14. Further as an application for maintaining the status-quo is also filed below Exh.24, same is disposed by the present order. However, it is made clear that, the respondent No.1 shall produce on record the permission obtained from the concerned authority for construction, photographs showing present position on the spot from all four sides of the present construction including boundaries on 23rd of March,2026, so that the present position is brought on record which would be necessary to understand as to what are the the subsequent changes on spot made by respondent No.1, if at all the appellant succeeds in the appeal. The construction shall be subject to decision of this appeal and will not amount to construction without objection of the appellants/plaintiffs. The matter is fixed on 25.03.2026, till then the parties to maintain the status-quo. In above terms the application is disposed of.

Hence, order:-

ORDER

1. Application Exh.20 and Exh.24 stand rejected in terms of observations in paragraph 14 of the order.
2. The matter fixed on 25.03.2026 till then the parties to maintain the status-quo.

Sd/-

Dated : 18.03.2026.

(R. N. Joshi)
Principal District Judge,
Gondia.