



ORDER BELOW EXH.05
(Passed on 11.07.2025)

This is an application filed by plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for grant of temporary injunction. The defendant nos.6 and 9 filed their reply vide Exh.24. The defendant nos.7 and 8 adopted reply filed defendant nos.6 and 9 by filing pursis vide Exh.27. The suit is proceeded ex-parte against defendant nos.1 and 2, whereas defendant nos.3 to 5 failed to file their reply.

02. Heard learned advocate for plaintiff and defendant nos.6 to 9. Perused the record. Following points arise for my determination and I have recorded my findings thereon for the reasons to be followed.

Sr. No.	POINTS	FINDINGS
1.	Whether the prima facie case lies in : favour of plaintiff ?	Yes
2.	Whether the balance of convenience : lies in favour plaintiff ?	Yes
3.	Whether the plaintiff will suffer : irreparable loss if injunction as prayed is not granted ?	Yes
4.	What Order ?	: Application is allowed.

REASONS

03. As these points are intermingled with each other they are discussed together for the sake of convenience and to avoid repetition.

04. The plaintiff has contended that Gut no.646 is owned by him. That there is no way from his land to approach Gut no.653 owned by defendant nos.6 to 9, but by taking advantage of order passed by Mamlatdar, defendants are trying to create new way from Gut no.646. On the other hand the defendant nos.6 to 9 have contended that there is road in existence since long from Gut nos.646 and 647 to approach land of defendants and defendants are using the same peacefully since long. However, the plaintiff has obstructed use of said way. Hence defendants were constrained to apply for removal of obstruction before Mamlatdar, who had given the way from Gut nos.646 and 647. Said order of Mamlatdar is also confirmed by Sub-Divisional Officer, Jalna. In spite of that plaintiff is obstructing use of the way.

05. If the documents filed on record are perused it can be seen that the defendant nos.6 to 8 had filed application under the Mamlatdar Court Act on 12.07.2022 for removal of obstruction in the use of way from Gut no.646. It is in the subject matter of the application that there is a Government road to approach their land which was obstructed by present plaintiff. It can be seen that both the parties were heard and their statement were recorded and thereafter Mamlatdar/Naib-Tahsildar passed order dated 02.08.2023

directing for removal of obstruction from Gut nos.646 and 647 and use of road as earlier. It can be seen that the plaintiff had challenged said order before Sub-Divisional Officer, Jalna, who by its order dated 11.04.2025 dismissed the appeal thereby confirming order passed by Naib-Tahsildar.

06. If the order passed by Naib-Tahsildar and Sub-Divisional Officer is perused it reveals that, prior to passing of order Circle Officer was directed to conduct the panchnama. Accordingly, on 20.09.2022, 23.11.2022 and 08.11.2024 panchnama/report was filed by concerned Circle Officer. If the panchnama dated 20.09.2022 is perused, it is only mentioned therein that spot inspection was done and statement of applicant and non-applicant was recorded. From this panchnama it nowhere reveals that there was any road in existence from Gut no.246. If the report of Circle Officer dated 23.11.2022 is perused, it can be seen that after spot inspection it is suggested by the Circle Officer that it will be proper to give road from the West side Nala towards North-south direction i.e. adjacent to the Nala situated towards west side of Gut no.646 and 647. It is thus evident from this report that there was no road in existence from Gut nos.646 and 647 to approach to the land of defendant nos.6 to 9 and thus there arise no question of alleged obstruction.

07. On the contra, it appears from the panchnama dated 25.10.2024 that Gut nos.646 and 647 are partitioned between present plaintiff and his family members and there is dyke (बांध) in between these Gut numbers whereon there are houses and well.

Thus, this Panchnama also makes it clear that there are houses and well situated on the dyke and thus, from this also it cannot be said that there was any road in existence from Gut nos.646 and 647. It is evident that without taking into consideration the panchnama and report given by Circle Officer, it was presumed that there was road in existence since long from Gut no.646 and 647. Thus, the order passed by Naib-Tahsildar does not appear to be proper. The above documents supports the case of plaintiff. Thus, in my view prima facie case certainly lies in favour of plaintiff. The balance of convenience also tilts in his favour. If injunction is not granted there is possibility of obstruction to the possession of plaintiff over Gut no.646. Thus, the plaintiff will suffer irreparable loss if possession is not protected. The application, therefore deserves to be allowed. Hence I answer point nos.1 to 3 in affirmative and in answer to point no.4 pass the following order:

ORDER

1. Application Exh.05 is hereby allowed.
2. The defendants or anybody claiming through them are hereby restrained from creating any new way from Gut nos.646 and 647 till final disposal of the suit.
3. Cost in cause.

Jalna
Date: 11.07.2025

(S.M.Padolikar)
2nd Jt.Civil Judge (S.D),
Jalna

CERTIFICATE

I affirm that, this PDF file is word to word as per original
Order/Judgment.

Name of Stenographer : Pratiksha B. Magare
Name of Court : 2nd Jt. Civil Judge (Sr.Dn.), Jalna.
Date of PDF : 15.07.2025.

Sd/-
Signature.