


MHJN020024082025 	R.C.S. No.711/2025 Suresh Vs. State & ors.
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ORDER BELOW EXH.05

Plaintiffs moved an Application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure (in short CPC). Defendant Nos.4 and 5 filed their Say vide Exh.15. Defendant No.6 though filed W.S. vide Exh.14 but, failed to file Say.

2] According to plaintiffs, defendant No.6 moved an Application to the office of defendant No.3 (Tahsildar – Partur). As per section 05 of the Mamlatdar’s Courts Act, 1906 (in short Mamlatdar’s Act), defendant No.3 has passed Order dated 05.01.2024 in Suit No.04/2021. It is in view of aforementioned Order, defendant No.3 has granted relief in favour of defendant No.6. The relief is in terms of removal of obstruction upon “Approach Way” passing from Gat No.02 to Gat No.03.

3] Plaintiffs contended that, plaintiffs are the owners and possessors of the agricultural land bearing Gat No.02 total admeasuring 06 H 16 R situated at village Kandari, Tq. Partur, Dist. Jalna. Defendant No.6 is the owner of the adjoining land bearing Gat No.03. In spite of the existence of alternate “Approach Way” to the defendant No.6, he has filed false Application before defendant

No.3. No such "Approach Way" passing from Gat No.02 to Gat No.03 exists. Thus, there is no question of obstruction and its removal.

4] Plaintiffs further contended that, defendant No.3 erred in passing Order as per section 5 of the Mamlatdar's Act. It is due to the afore-mentioned illegal Order, plaintiffs felt aggrieved. Plaintiffs preferred revision before defendant No.2 (Sub-Divisional Officer, Partur) [in short SDO]. The revision was rejected by Order dated 29.05.2025. Plaintiffs are under apprehension that, the execution of aforementioned Order would cause damage and irreparable loss to the plaintiffs. Thus, plaintiffs filed present suit for declaration and permanent injunction. Plaintiffs are praying for temporarily restraining defendant No.3 through his officers from executing Order dated 05.01.2024 and also, for restraining defendants from creating obstruction to the possession of plaintiffs.

5] Matter proceeded Exparte against defendant Nos.1 to 3 by Order dated 03.02.2026 vide Exh.01.

6] Defendant Nos.4 and 5 filed their Say and W.S. vide Exh.15. According to these defendants, the Order dated 05.01.2024 passed by defendant No.3 is legal. Defendant No.3 has followed due procedure of law. Spot Inspection Panchanama dated 30.09.2021 is relied upon. These defendants drawn the afore-mentioned Panchanama after issuing Notice to the plaintiffs and defendant

No.6. As per Panchanama it appears that, "Approach Way" exists and it was obstructed as traced out. Hence, prayed for rejecting the Application.

7] Defendant No.6 resisted the plea of plaintiffs by filing Written Statement vide Exh.14. Though defendant No.6 has filed W.S. but, failed to file Say. Sufficient opportunity was available to the defendant No.6 but failed to avail the same. Thus, Application to proceed "Without Say" against defendant No.6.

8] Heard Mr. B. M. Kulkarni, the learned advocate for plaintiffs. Defendant Nos.4 to 6 remained absent and failed to advance argument.

9] After hearing and on the basis of pleading, the points that arise for my determination are as follows and I have recorded my findings against each of them for the reasons discussed below :-

Sr.No.	<u>Points</u>	<u>Findings</u>
1]	Whether their is prima facie case ?	... Yes.
2]	Whether balance of convenience lies in favour of plaintiffs ?	... Yes.
3]	Whether plaintiffs shall suffer irreparable loss ?	... Yes.

4] What order ?

... Application is
allowed.

REASONS

As to Point No.1 :-

10] Plaintiffs have come up with the case that, defendant No.3 has passed Order dated 05.01.2024 illegally. The aforementioned Order has been challenged before SDO. The revision has been rejected by Order dated 29.05.2025.

11] According to plaintiffs, no “Approach Way” exist passing through their agricultural field Gat No.02. Plaintiffs tried to establish fact by relying upon 7/12 extract (document No.7 of the list Exh.04) ; the Panchanama dated 30.09.2021 (document No.6 of the list Exh.04) ; Map (document No.5 of the list Exh.04), Roznama of the Office of defendant No.3 (document No.4 of the list Exh.04).

12] According to defendant Nos.4 and 5, they had been to the spot and drawn Spot Inspection Panchanama dated 30.09.2021 in the presence of plaintiffs and defendants. According to these defendants, “Approach Way” exists from Gat No.02 to Gat No.03. On the basis of Spot Inspection Panchanama, defendant No.3 has passed Order dated 05.01.2024 which is legal. These defendants are bound to comply with the afore-mentioned order.

13] The crux of the matter is the Order dated 05.01.2024 passed by defendant No.3 as per Section 5 of Mamlatdar's Act. In this regard, it is necessary to look into the original Application filed by defendant No.6 before the office of defendant No.3. A copy of afore-mentioned Application dated 27.05.2021 has been placed on record (document No.1 of the list Exh.17). From this point of view, the provision of Mamlatdar's Act, are to be considered.

14] **Sec.7 of the Mamlatdar's Court's Act, provide :-**

All the suits under this Act shall be commenced by a plaint, which shall be presented to the Mamaltdar in open Court by the Plaintiff and which shall contain the following particulars -

- a. The name, age, religion, caste, profession and place of abode of plaintiff:*
- b. The name, age, religion, caste, profession and place of abode of the defendant:*
- (bb) The nature and situation of the impediment erected and the situation of the lands which are adjacent to each other and nature of the relief sought:*
- c. The nature and situation of the property of which possession for use is sought or the nature of the injunction to be granted, as the case may be:*

- d. the date on which cause of action arose :*
- e. the circumstances out of which the cause of action arose:*
- f. A list of the plaintiff's documents, if any, and of his witnesses, if any, showing what evidence is required from each witness, and whether such witnesses are to be summoned to attend or whether the plaintiff will produce them on the day and at the place to be fixed under Section 14.*

15] **Sec. 8 of the Mamlatdar's Court's Act, provide :-**

Where a petition not in the form of plaint is presented to the Mamlatdar and the subject matter thereof appears to fall within the scope of section 5, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by this Act and shall inquire whether the Petitioner desires to obtain relief thereby. If the Petitioner expresses a desire to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall thereupon be deemed to be a plaint presented under section 7.

16] Original Application dated 27.05.2021 by defendant No.6 appears that, it is not in the form of plaint. But, it has taken the form of plaint, as per provision contemplated under section 8 of the Mamlatdar's Act. Though, the Application is treated as plaint and decided like suit but, it appears that, defendant No.3 failed to give

opportunity of final argument to the plaintiffs. The said aspect appears from the roznama dated 28.09.2022 of the Office of defendant No.3 (document of No.3 of the list Exh.03). Defendant No.3 proceeded with the matter and Order dated 05.01.2024 came to be passed.

17] Defendant No.3 failed to appear in the matter and failed to clarify whether the due process was followed, on the receipt of Application under section 5 of the Mamlatdar's Act. Plaintiffs alleged that, Spot Inspection Panchanama was not properly appreciated. It discloses that, there was no dispute as to "Approach Way" till the land was barren. Even otherwise also, Order passed by defendant No.3 does not disclose the detail description as to the existence of "Approach Way". Considering the afore-mentioned aspect as to opportunity of hearing and appreciation of Spot Inspection Panchanama, the cause of action exist in favour of plaintiffs.

18] It appears that, Order dated 05.01.2024 passed by defendant No.3 is in existence. The execution of the said order would cause prejudice to the civil remedy of the plaintiffs. In view of this, prima facie case has been made out for grant of temporary injunction. For all the aforementioned reasons, I have answered Point No.1 in affirmative and recorded my finding accordingly.

As to Point No.2 :-

19] In view of affirmative finding as to Point No.1, the dispute is required to be determined in view of evidence. As the plaintiffs have right to put up their case, defendants too have the opportunity to cross examine the plaintiffs. As such, balance of convenience lies in favour of plaintiffs. For this reason, I have answered Point No.2 in affirmative and recorded my finding accordingly.

As to Point No.3 :-

20] As already discussed in Point Nos.1 and 2 that the Order passed by defendant No.3 appears to have deprived opportunity of hearing to the plaintiffs. Plaintiffs have availed remedy before Civil Court. Under such circumstance, if order dated 05.01.2024 passed by defendant No.3 is executed in view of the action initiated by defendant No.6 then, the very purpose of filing suit shall stand frustrated. Plaintiffs shall suffer irreparable loss. No prejudice would be caused to defendants as every opportunity to prove the defence is available to the defendants. For this reason, I have answered Point No.3 in affirmative and recorded my finding accordingly.

As to Point No.4 :-

21] In the result following order is passed :-

ORDER

- 1] Application (Exh.05) is allowed.
- 2] Defendant Nos.1 to 6 or anyone on their behalf are hereby temporarily restrained from carrying out the execution of Order dated 05.01.2024 passed by defendant No.3 in Suit No.04/2021, till disposal of the suit.
- 3] Further, defendant Nos.1 to 6 either by themselves or on behalf of their legal representatives, agents, Power of Attorney or any authorized persons or anyone claiming rights through them are hereby temporarily restrained from creating obstruction in any form, to the plaintiffs possession upon Gat No.02, till disposal of the suit.
- 4] Parties to bear their own costs.

Date : 24.03.2026

[Smt. Priti D. Taru]
2nd Jt. Civil Judge Senior Division,
Jalna.

CERTIFICATE

I am affirm that the contents of this P.D.F, file Order are same, word to word, as per the original order.

Name of the Stenographer :- Amar R. Gadade (Steno Grade-III)
Court :- 2nd Jt. Civil Judge Senior Division, Jalna

Date :- 24.03.2026

Order signed by the
presiding officer on :- 24.03.2026

Judgment/order uploaded on :- 24.03.2026