



**ORDER PASSED BELOW EXH.5**  
**IN REGULAR CIVIL SUIT NO.67/2026**

[ CNR No.MHKO090001632026 ]

The present temporary injunction application has been filed by the plaintiffs under Order 39 Rules 1 and 2 of the Civil Procedure Code, 1908.

**In nutshell, the case of the plaintiffs is as under :**

2. The plaintiffs are the owners and cultivators of agricultural lands bearing Gat Nos.574, 576, 404 and 380/1 situated at Mouje Channekuppi, Tal. Gadhinglaj, Dist. Kolhapur. The said lands are irrigated sugarcane fields and the plaintiffs' families are entirely dependent upon the income derived from these lands.

3. It is the contention of the plaintiffs that, the defendant nos.3 to 14 had initially filed an application before defendant no.2 Tahsildar, Gadhinglaj bearing No.SR/2/2023 under Section 143 of the Maharashtra Land Revenue Code, seeking creation of a new 8 feet wide road through the suit lands. However, the said application was subsequently withdrawn by defendant nos.3 to 14 themselves, without the knowledge of the plaintiffs. This withdrawal itself is an admission on their part that no such road existed over the suit lands. Thereafter, defendant nos.3 to 14 filed a fresh application before defendant no.2 under Section 5(2) of

the Mamlatdar Courts Act claiming existence of a customary/ prescriptive right of way (पूर्वापार वहीवाटीचा रस्ता) through the suit lands. The plaintiffs appeared in the said proceedings through their Advocate and filed their written say on record denying the existence of any such road.

4. It is further unfolded by the plaintiffs that, despite this, defendant no.2 Tahsildar, Gadhinglaj passed an illegal, arbitrary and without jurisdiction order dated 12/02/2026 in proceeding No.RTS/Rasta/Section 5(2)/SR/26/2024, directing removal of a tin shed and water cock erected by plaintiffs on their own land and ordering opening of an alleged road without properly appreciating evidence, without following the procedure prescribed under the Mamlatdar Courts Act, and in flagrant violation of the principles of natural justice.

5. The said order is *void ab initio*, as there is no road shown on the village map over the suit Gat Nos.574, 576, 404 and 380/1. Defendant nos.3 to 14 have not produced any legal evidence to prove existence of any customary right of way. All holders of the suit lands were not made parties to the proceedings before defendant no.2, thereby denying them the right to be heard. Defendant no.6 Shamrao Tukaram Lohar had already expired before the impugned order was passed, and his legal heirs were never brought on record, rendering the order passed against a dead person, which is null and void in law. Defendant no.2 gave

no opportunity to the plaintiffs to lead proper evidence and passed the order without giving any reasoning on the issues framed. Defendant nos.3 to 14 have an alternative road available to them, which they are already using. Taking undue advantage of the said illegal order, defendant nos.3 to 14, who are politically influential persons, are threatening to forcibly open a road through the plaintiffs' suit lands. The plaintiffs apprehend that if defendants are not restrained by this Court, they will cause irreparable loss and damage to the standing crops and the plaintiffs' peaceful possession, which cannot be compensated in terms of money.

6. The plaintiffs, therefore, pray for a temporary injunction restraining defendant nos.3 to 14, their men and agents, from interfering with the plaintiffs' possession and cultivation over the suit lands, and wrongfully executing or implementing the order dated 12/02/2026 passed by defendant no.2 pending the final disposal of the suit.

**In brief, the case of the defendants is as under :**

7. The defendants denied the contention of the plaintiffs in toto. The defendant nos.3 to 14 are the owners and cultivators of agricultural lands bearing Gat Nos.382, 383, 387, 388, 580, 402/3, 402/2, 402/1, 577/B and 574 situated at Mouje Channekuppi, Tal. Gadhinglaj, Dist. Kolhapur. The said lands are irrigated agricultural fields, wherein the defendants grow sugarcane, soybean, jawar, groundnut, chilli and other crops

throughout the year. The defendants' lands bearing Gat Nos.382 to 376 are situated one adjacent to the other in a North-South direction. Defendant no.1 has a farm house and cattle shed in Gat No.582 since 1969, defendant no.3 has a farm house and cattle shed in Gat No.387 since 1965, and defendant no.11 has a farm house and cattle shed in Gat No.576 since 1965. Thus establishing their longstanding physical presence and use of the said land.

8. The defendants contend that there exists a well established customary right of way (पूर्वापार वहीवाटीचा रस्ता) of 8 feet width running in a North-South direction through the suit lands, which has been in existence and use by all the farmers of the area by mutual consent for agricultural purposes including tractor movement, bullock-cart, transportation of sugarcane, fertilizers and farm implements.

9. The defendants further contend that their lands are situated to the South of the Gadhinglaj-Nool main road, and the suit lands of the plaintiffs bearing Gat Nos.574, 576 and 404 lie between the defendants' lands and the said main road. The defendants have no other alternative road to reach the main road except through the plaintiffs' suit lands. If the said road is blocked, the defendants will be compelled to leave their agricultural lands uncultivated.

10. The defendants specifically state that it is the

plaintiffs, who are the aggressors in this dispute. On 15/12/2023, plaintiff no.1 created an obstruction to the customary road in Gat No.380/1 by placing stones and tree branches across the road. On 16/12/2023, plaintiffs destroyed and dug up the 8 feet customary road in Gat Nos.576 and 574 using a tractor, brought the road under cultivation. On 27/12/2023, plaintiffs erected a tin shed in Gat No.576 and installed a water-cock in the middle of the customary road, thereby completely blocking the said road.

11. Despite repeated requests made personally and through mediators on 15/12/2023, 16/12/2023 and thereafter, the plaintiffs refused to remove the obstruction. It was only thereafter that the defendants were compelled to file an application before defendant no.2 Tahsildar, Gadhinglaj under Section 5(2) of the Mamlatdar Courts Act bearing No.RTS/Rasta/Section 5(2)/SR/26/2024.

12. The defendants submit that defendant no.2 Tahsildar passed the order dated 12/02/2026 after conducting a thorough inquiry, local inspection and site visit, and on merits directed the plaintiffs to remove the obstruction from the customary road. The said order is perfectly legal, proper and in accordance with law.

13. The defendants, therefore, oppose the interim injunction application on the grounds that the defendants have a legal right under the law of easement and customary right of way

to use the said road for accessing the main road. As per various Government Resolutions issued by the Maharashtra Government from time to time, no person has the right to block customary agricultural roads. If the interim injunction is granted, the defendants will suffer immense and irreparable hardship, they will be unable to harvest their standing *rabbi* crops, carry out tillage, transport farm produce and sugarcane, or carry fertilizers and seeds to their fields. If the interim injunction is refused, the plaintiffs will suffer no loss whatsoever. Balance of convenience clearly lies in favour of the defendants. The defendants, therefore, pray that the interim injunction application filed by the plaintiffs be dismissed with costs.

14. Following points arise for my determination and my findings there on, with reasons, are as under -

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1)	Do plaintiffs prove that they have prima facie case in their favour ?	.... Yes
2)	Do plaintiffs prove that they have balance of convenience in their favour ?	.... Yes
3)	Whether irreparable loss would cause to the plaintiffs, if injunction is refused ?	.... Yes
4)	What order ?	.... As per final order

15. Ld. Advocate for the plaintiffs has relied on following case-law :-

- [i] Vishnu Sukhdev Ghanvat V/s. The Collector, Ahmednagar – (2017) 1 MhLJ 811 ;
- [ii] Gaurakshan Sansthan V/s. State of Maharashtra – (2019) 3 All MR 849 ;

16. Ld. Advocate for the defendant nos.3 to 14 has relied on following case-law :-

- [i] *Seema Arshad Zaheer & Ors. V/s. Municipal Corpn. Of Greater Mumbai & Ors. -- (2006) 3 All MR (SC) 159;*
- [ii] *Gurram Sanjappa V/s. Gurram Pedda – (2007) AIR (AP) 112;*
- [iii] *Vishnu Sukhdev Ghanvat V/s. The Collector, Ahmednagar – (2017) 1 MhLJ 811;*
- [iv] *Alimoddin Faizuddin V/s. Siddi Mumtaz Ahmed Siddi Ahmed Kadar – (2010) AIR (Bombay) 59.*

## **REASONS**

**As to point no.1 :-**

17. Before advertng to the merits of the application, it is necessary to define the scope of this Court's jurisdiction. This Court is not sitting as a Court of Appeal over the order passed by

defendant no.2 Tahsildar, Gadhinglaj under Section 5(2) of the Mamlatdar Courts Act, 1906. The Act provides its own hierarchy of Appeal and Revision. However, the Civil Court retains inherent jurisdiction to examine whether a Statutory Authority has acted without jurisdiction, in violation of natural justice, or has passed an order which is *void ab initio*. The present suit seeks exactly such a declaration. The jurisdiction of this Court to entertain the suit and grant interim protection pending its disposal is therefore not in doubt.

18. At the interim stage, this Court is not required to re-examine whether a customary road exists over the suit lands that determination belongs to the Mamlatdar. What requires examination is, whether the plaintiffs have made out a prima facie case that the impugned order suffers from jurisdictional or legal infirmities warranting its suspension, and whether the triple test for grant of interim injunction is satisfied. The merits of the road dispute are left entirely open for trial.

19. The plaintiffs have urged several grounds to challenge the impugned order dated 12/02/2026. Each is considered hereunder.

20. **Inconsistency in Defendants' Stand** : The defendants had initially filed an application under Section 143 of the Maharashtra Land Revenue Code dated 28/11/2023, wherein the

prayer clause specifically sought grant of a new road of 8 feet width over the suit lands. However, thereafter they filed an application under Section 5(2) of the Mamlatdar Courts Act claiming existence of a pre-existing customary road which was being obstructed. It is well-settled that the prayer clause defines the true nature and character of the relief sought. A prayer seeking creation of a new road prima facie raises a substantial question about whether any existing road was available at all. These two positions are prima facie difficult to reconcile and create an inconsistency in the defendants' stand, which raises a substantial triable issue requiring examination at full trial.

21. **Absence of Supporting Public Record** : The 7/12 extracts of Gat Nos.574, 576 and 404 do not show any *pot kharab* Class-B entry for any road or right of way. The village map does not show any road over the suit lands. No mutation entry, revenue record or survey document evidencing any customary right of way has been produced by the defendants. A customary road allegedly in continuous use by multiple farmers for agricultural purposes would ordinarily find reflection in at least one public document. The prima facie absence of any such record raises a triable issue in favour of the plaintiffs. As held by the Hon'ble Bombay High Court in *Vishnu Sukhdev Ghanvat (cited supra)*, weak pleading and absence of material regarding existence of the road is insufficient to sustain a claim under Section 5(2) of the Mamlatdar Courts Act.

22. **Spot Panchanama dated 12/09/2024** : The panchanama has been carefully perused. It is a document prepared by a Competent Authority after actual site inspection in the presence of both parties, panch witnesses and the Talathi of village Channekuppi and therefore carries evidentiary value. However, on a careful reading, it does not unequivocally establish the existence of a pre-existing unobstructed customary road. It records that the tin-shed was constructed approximately 10 months prior to the date of panchanama. It further records that while a path-way of 8 to 10 feet width from Gat Nos.577, 404, 403 and 402 towards the South is in use, the Northern passage along the Western side of Gat Nos.574, 575 and 576 is obstructed. The defendants' offer during the panchanama to allow passage subject to a condition regarding an alternative route, and both parties' willingness to explore mutual settlement, further indicate that the factual position on the ground is genuinely disputed and not one-sided. The panchanama, therefore, prima facie supports existence of a triable issue rather than conclusively resolving the dispute in favour of either side.

23. **Self Serving Sketch Map** : The defendants have filed a hand drawn sketch map, wherein the alleged road route has been highlighted with yellow and black sketch pen by the defendants themselves. Even after discounting these markings, the underlying document shows a disputed passage, whose nature and legal

character remains contested. A document modified by a party in his own favour, particularly in the absence of any supporting public record, cannot be accepted as prima facie proof of the existence of a customary road at the interim stage. Thus, this map is also not helpful to the defendant.

24. **Non-joinder of Necessary Parties** : The 7/12 extracts show multiple land-holders over the suit Gat numbers. Passing an order affecting these lands without hearing all the holders is prima facie contrary to the principles of natural justice and the mandatory procedure under the Mamlatdar Courts Act. The defendants have relied upon *Alimoddin Faizuddin (cited supra)* to contend that non-joinder does not entirely negate a declaration of right of way. This proposition is noted. However, in that case, both Courts below had independently found in favour of the right of way after full trial on merits. In the present case, the very existence of the alleged path-way is yet to be adjudicated. The ratio of that Judgment, therefore, cannot be directly imported to the present stage of proceedings and it would be pre-mature to draw any analogy therefrom without the benefit of full trial.

25. **Proceedings Against a Dead Person [Section 18(3) of the Mamlatdar Courts Act]** : The plaintiffs have contended that defendant no.6 Shamrao Tukaram Lohar had expired prior to the passing of the impugned order and his legal heirs were never brought on record. The 7/12 extract of Gat No.574 shows his

name as a recorded land-holder. Section 18(3) of the Mamlatdar Courts Act specifically provides that, if a party dies during pendency of proceedings and no substitution application is made, the proceedings shall abate to that extent. This is not merely a natural justice argument, it is a specific statutory mandate under the very Act, under which the Mamlatdar assumed jurisdiction. Passing an order in proceedings, which had prima facie abated to the extent of a deceased party without addressing this statutory requirement prima facie affects the validity of the order and raises a substantial triable issue, which cannot be ignored at this stage.

26. **Procedural Violations** : The plaintiffs have relied upon *Gaurakshan Sansthan (cited supra)* to contend that the Mamlatdar failed to comply with mandatory requirements of Sections 7, 9, 10, 11, 18, 19, 20, 21 and 22 of the Mamlatdar Courts Act regarding particulars of the plaint, examination on oath and proper verification. While procedure is the handmaid of justice and irregularities do not automatically vitiate proceedings, the cumulative effect of alleged non-compliance with multiple mandatory provisions is a prima facie challenge to the validity of the proceedings, which cannot be ignored at this stage.

27. After careful examination of all the objections, it appears that the grounds urged by the plaintiffs are not merely arguable procedural points, but they include a prima facie inconsistency in the defendants' own stand arising from the

Section 143 prayer clause, prima facie absence of any supporting public document, a mixed and inconclusive panchanama, non-joinder of necessary parties, proceedings against a dead person in prima facie violation of Section 18(3) of the Mamlatdar Courts Act and alleged non-compliance with mandatory procedural requirements. Taken individually, some of these grounds raise only triable issues. Taken cumulatively, however, they constitute a prima facie case that the impugned order suffers from legal and jurisdictional infirmities, that cannot be ignored at this stage. Therefore, point No.1 is accordingly answered in favour of the plaintiffs.

**As to point no.2 :-**

28. The defendants have strongly urged that balance of convenience favours them on the ground that they have no alternative route to access their agricultural fields. This argument has been carefully considered. It is not disputed that the defendants' lands are under sugarcane cultivation and that sugarcane requires heavy vehicular access for harvesting and transportation. The Court takes judicial notice of this agricultural reality and the hardship likely to be caused to the defendants has been duly considered.

29. However, the prima facie inconsistency in Section 143, prayer clause seeking a new road raises a substantial question about whether the defendants' claim of deprivation of a pre-

existing road is itself well founded. The very foundation of their balance of convenience argument, existence of a customary road is prima facie inconsistent with their own earlier stand. Further, the plaintiffs are in actual possession and cultivation of the suit lands. The tin-shed and water-cock directed to be removed, are existing structures on the plaintiffs' own land. If demolished and the road physically opened during pendency of the suit restoring the original position, would be extremely difficult if the plaintiffs ultimately succeed. The panchanama prima facie indicates existence of a path-way from the Southern side though its adequacy and usability are matters for trial suggesting the defendants are not entirely without access.

30. The defendants have relied upon ***Seema Arshad Zaheer (cited supra)*** for the proposition that Courts should not perpetuate unauthorized structures through interim injunctions. While the underlying principle is of general application, this Judgment arose in the context of unauthorized construction and is not directly applicable on agricultural path-way dispute. In the present case, the structures in question are on the plaintiffs' own land. Thus, cases cited are not applicable due to different set of facts.

31. The defendants have also relied upon **Gurram Sanjappa (cited supra)**, wherein it was held that where lower forums have found in favour of right of way, superior Courts

should not casually interfere. However, this principle applies, where the lower forum's findings rest on proper and legally sustainable proceedings. In the present case, the very sustainability of the Mamlatdar's proceedings is prima facie questionable on the grounds already discussed. The Mamlatdar's finding is, therefore, a relevant factor but not a conclusive foundation for the balance of convenience analysis. Thus, in the result of above discussion, I answer point no.2 in the affirmative.

**As to point no.3 :-**

32. This is a decisive factor. If the injunction is refused and the Mamlatdar's order is executed during pendency of the suit, the tin-shed and water-cock will be demolished, a road will be physically carved out through the suit lands, standing crops will be damaged and the physical condition of the suit lands will be permanently altered. Even if the plaintiffs ultimately succeed, the practical utility of the declaration would be severely compromised since the road will have already been physically established on the ground. Restoring the original position would be extremely difficult. The entire object of the suit would stand defeated before it is tried. This is a loss not adequately compensable in money.

33. On the other hand, the loss to the defendants if injunction is granted temporary inability to use the disputed Northern passage is of a lesser character. The panchanama prima facie indicates some access from the Southern side. Any genuine

hardship to the defendants during pendency of the suit is compensable and adjustable at final disposal.

34. **As to Government Resolutions :** The defendants have placed on record Government Resolutions dated 29/10/2025 and 14/12/2025 directing removal of obstructions on customary agricultural roads. These reflect the State's policy position and have been duly considered. However, Government Resolutions are general policy directions and cannot over-ride the need for proper judicial determination of whether a customary road exists at all over the suit lands which is precisely the triable issue in the present suit. These Resolutions are, therefore, considered but are not determinative of the present application. Thus, I answer point no.3 in the affirmative.

**As to point no.4 :-**

35. Upon consideration of the material on record, including the documents, spot panchanama and the rival submissions, this Court finds that the plaintiffs have made out a prima facie case raising serious questions regarding the legality and sustainability of the impugned order. The balance of convenience tilts in their favour, particularly in view of the disputed nature of the defendants' claimed right and the need to preserve the suit property. If the injunction is refused, execution of the Mamlatdar's order is likely to bring about irreversible changes to the suit lands and may render the suit itself infructuous.

36. Though no specific prayer for maintenance of status quo has been made, this Court finds it necessary, in exercise of its equitable jurisdiction under Order XXXIX Rules 1 and 2 read with Section 151 of the Civil Procedure Code, to issue appropriate protective directions. The core dispute pertains to the existence and nature of the alleged path-way, which is seriously contested by both sides. In such circumstances, any unilateral change in the existing physical condition of the suit property during pendency of the suit is likely to complicate the dispute and prejudice the final adjudication. The purpose of interim relief is to preserve the subject matter so that effective relief, if warranted, can be granted at trial.

37. It is also important to mention that it is clarified that all observations herein are purely prima facie and tentative, and shall not influence the trial on merits. All issues of fact and law are kept open for adjudication at the final stage. Accordingly, I pass the following order in answer to point no.4 :-

### **ORDER**

- 1] Defendant nos.3 to 14, their men, agents and representatives are hereby restrained from obstructing and interfering with the possession of the suit property and also hereby restrained from implementing or executing the order

dated 12/02/2026 passed by defendant no.2 Tahsildar, Gadhinglaj in proceeding No.RTS/Rasta/Section 5(2)/SR/26/2024 pending final disposal of the suit.

- 2] The plaintiffs are hereby directed to maintain status quo with respect to the existing physical features and condition of the suit lands bearing Gat Nos.574, 576, 404 and 380/1 and shall not create any fresh or additional obstruction or alter the existing physical condition of the passage alleged to be a customary road by the defendants pending final disposal of the suit.
- 3] Both parties shall maintain the present physical condition of the suit lands, as it exists today and shall not take any unilateral action to alter the ground reality pending disposal of the suit.
- 4] Cost in cause

Place : Gadhinglaj.  
Date : 01/04/2026.

( N. S. Puri )  
Civil Judge Senior Division,  
Gadhinglaj