

CNRNo.MHLA010001752-2026



Received on : 13.01.2026

Registered on : 16.01.2026

Decided on : 23.07.2026

Duration : Y M D

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**IN THE COURT OF AD-HOC DISTRICT JUDGE-1 AT
LATUR, DISTRICT LATUR.**

(Presided over by: P.I. Mokashi)

Misc.Civil Appeal No. 04/2026

Ext. No. 35

1) **Dnyaneshwar Vyankatrao Chitte,**

Age- 35 years, Occ: Service,

2) **Dnyaneshwar Raghunath Chitte,**

Age- 65 years, Occ: Ex-Army & Agri.

R/o. Bokangaon, Tal. Latur.

...

Appellants.

(Orig.Defendant

Nos.1 and 2)

Versus

1) **Rajendra Khanderao Khirekar,**

Age- 47 years, Occ: Agri.

R/o. Bokangaon, Tal. Latur.

2) **Tahasildar,**

Tahasil Office, Latur.

3) **Circle Inspector,**

Circle Inspector Office,

Babhalgaon, Tal. Latur.

4) **Mahadev Khanderao Khirekar,**

Age- 42 years, Occ: Agri.

5) **Khanderao Satwaji Khirekar,**

Age- 70 years, Occ: Agril.

6) **Balwant Khanderao Khirekar,**

Age- 38 years, Occ: Agril.

- 7) **Anusaya Satwaji Khirekar,**
Age- 72 years, Occ: Agril.
- 8) **Laxman Vithoba Shinde,**
Age- 65 years, Occ: Agril.
- 9) **Balaji Laxman Shinde,** ... **Respondents**
Age- 35 years, Occ: Agril. (Orig. Defendant
R/o. Bokangaon, Tal. Latur. Nos.3 to 10)

Appearance

Mr. S.V. Tapadia, Advocate for Appellants
Mr.M. B. Gurme, Advocate for Respondents Nos. 1 and 6.
Appeal proceeded Exparte against Respondent Nos.2 to 5, 7 to 9.

J U D G M E N T

(Delivered on 23rd day of July, 2026)

Appellants (Original defendant Nos.1 and 2) have challenged the impugned order passed by learned 3rd Joint Civil Judge, Senior Division, Latur, below Exh.5 in RCS No.684/2025 dated 15.12.2025.

2. **Brief facts of the application vide Ext.5 in RCS No.684/2025 are as under:-**

Plaintiff (Respondent No.1) has filed suit against defendants Nos.1 and 2 (Appellants) seeking relief of setting aside the order passed by defendant No.3- Tahasildar Latur dated 17.11.2025 in File No.2024/JAMA-1/Raste /KAVI-447 under Section 143 of Maharashtra Land Revenue Code 1966 and perpetual injunction restraining them from causing interference and obstruction to the peaceful possession of the plaintiffs over the suit land and creating way through common bandh situated in between land Gat No. 43, 37 and 36.

3. It is the contention of plaintiff that he is resident of Bokangaon, Dist. Latur and he is agriculturist. He is in possession of ancestral and earns his livelihood from the work of agriculture. The plaintiff has self acquired land situated in Gat No. 43 and 37. Defendant Nos. 1 and 2 are having lands situated in Gat No.39 and 36. Gat No.39 is situated towards Northern side of land of plaintiff and Gat No.36 is situated Southern of the land of plaintiff. Defendant Nos.5 to 10 are also resident of Bokangaon Tal. Dist. Latur. They are owners and possessors of Gat No.37 and 43. Defendant Nos.1 and 2 had filed application under Section 143 of the Maharashtra Land Revenue Code, 1966 (In short, MLR Code).

4. It is further submitted by plaintiff that defendant No.3 illegally closed the alternative available ways and granted 12 feet wide way to defendant Nos.1 and 2 from the common bandh situated in between Gat Nos.37 and 43 according to the order dated 17.11.2025. Defendant No.4 is illegally trying to implement said order though there was no such way in existence from the common bandh situated in between Gat No.37 and 43. It is clear from the panchnama dated 03.12.2024 that defendant Nos. 1 and 2 have asked for the way from the village. The said case is pending before the Hon'ble High Court. It was requested by Balwant Khirekhar that first defendant Nos. 1 and 2 shall ask for the way from the village and thereafter the order passed by defendant No.3 dated 22.08.2011 shall be executed. It is found in the panchanama dated 13.06.2025 done by Nayab Tahasildar that there is 7 to 8 feet wide path-way in existence in some portion on the common bandh situated in between Gat No.37 and 43. There are 4 electric poles and water pipe-line and water-tap on the said common bandh. There is

road available from Bokangaon to Talegaon road to approach Gat No. 34, 27, 35 and it continues further from South-North common bandh from Gat No.83 and 84 and Gat No.27, 34 from East to West common bandh according to the order passed by Tahasildar dated 22.08.2011.

5. Lateron, according to the application filed by defendant Nos.1 and 2 the matter was transferred to defendant No.3. At that time defendant No.3 visited the spot on 12.07.2025 and had drawn panchanama which is not binding on the plaintiff according to Section 143 of MLR Code. The panchanama drawn by defendant No.3 is not according to Section 143 of the MLR Code and it is illegal. Due to which loss is caused to plaintiff and other defendants. It is observed in the panchanama that defendant Nos.1 and 2 are having temporary 4-meter-wide road from the common bandh situated in between Gat No.37 and 43 from North to South in direction to approach Gat No.36. However, Dnyaneshwar Venkatrao Chitte, Raghunath Chitte, Mahadev Khirekar, Khanderao Khirekar, Balwant Khirekar, Rajendra Khirekar, Anusaya Khirekar, Laxman Shinde, Balaji Shinde were included as party as they are having land in Gat No.76 and 75 and it was agreed that they will file application before the Tahasildar, Latur for way, till then defendant Nos.1 and 2 are granted said road from the common bandh situated in between Gat No.37 and 43 for a period of 2 years.

6. Three different panchanamas were done by defendant No.3 on the application filed by defendant Nos.1 and 2 and defendant No.3 has granted road from the common bandh situated between Gat No.37 and 43 to approach Gat No.36, though there were alternative roads available to defendant Nos.1 and 2 to approach Gat No.36 which is not considered by defendant No.3 while passing order dated 17.11.2025 though, it is not proved by defendant Nos.1 and 2 that no alternative road

was available to them to approach their land Gat No.36 except the North-South road available from the common bandh between Gat No.37 and 43. If the order passed by defendant No.3 dated 17.11.2025 is implemented, it will cause huge loss to the plaintiff which cannot be compensated in terms of money. According to the spot panchanamas balance of convenience goes in favour of the plaintiff. Thus, plaintiff has proved his *prima facie* case. Hence, it is prayed by plaintiff that defendant Nos.1 to 4 be restrained from creating road from common bandh situated between Gat No. 37 and 43 as per the order passed by defendant No.3. The application filed by plaintiff is partially allowed by the learned trial Court granting stay to the order passed by defendant No.3 and further rejected the prayer of not to interfere and obstruct the pathway by defendant Nos.1 to 4 from the bandh situated in between Gat Nos.37 and 43.

7. Defendant Nos.1 and 2 have filed their say at Exh.23 objecting the application of plaintiff. They have denied contents of the application of plaintiff. It is alleged by defendant Nos.1 and 2 that only to stop the execution of order passed by defendant No.3, the plaintiff has filed this suit. Defendant No.3 has rightly drawn panchanamas dated 12.07.2025, 26.08.2024, 13.06.2025 and 03.12.2025 by visiting the spot and rightly granted road from the common bandh situated in between Gat No.37 and 43. The brother of plaintiff has filed RCS No. 471/2025 only to create hurdle in the execution of order passed by defendant No.3 dated 17.11.2025. The plaintiff cannot obstruct the road from the common bandh as per the order passed by defendant No.3. Hence, it is prayed by defendant Nos.1 and 2 to reject the application with costs.

8. Defendant Nos. 3 and 4 have filed their written statement vide Exh. 40 and filed pursis Exh. 41 to read contents of their written

statement as say to the application. It is submitted by defendant Nos.3 and 4 that, it is admitted by the plaintiff that defendant No.3 has granted 12 feet wide road from the common bandh situated in between Gat No.37 and 43. Remaining contents of the say of defendant Nos.3 and 4 is of denial. They further contended in their say that defendant No.3 has rightly passed the order for 12 feet wide road from the common bandh. The owner and possessor of Gat No.35 namely Hanmant Shinde has filed his affidavit on 14.10.2025 before defendant No.3 in the proceedings of application filed by defendant Nos.1 and 2 and agreed to give road from Gat No.35 to approach Gat No.36. It is further submitted by defendant Nos.3 and 4 are representatives of State, therefore the plaintiff was bound to issue notice U/s.80 of the Code of Civil Procedure prior to filing of the suit. Hence, the suit is not tenable in the eyes of law. Therefore, defendant Nos.3 and 4 prayed to reject the application.

9. The learned trial Court partly allowed the application filed by plaintiff granting stay to the order passed by defendant No.3 and further rejected the prayer of not to interfere and obstruct the pathway by defendant Nos.1 to 4 on common bandh situated in between Gat Nos.37 and 43.

10. Considering the nature of appeal, following points arise for my determination. I have recorded my findings against them for the reasons stated below -

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff has made out a <i>prima-facie</i> case for grant of temporary injunction?	Yes.

Sr. No.	POINTS	FINDINGS
2.	Whether the plaintiff has proved that the balance of convenience lies in his favour ?	No.
3.	Whether the plaintiff proved that he will suffer irreparable loss, if the injunction is not granted ?	Yes, to the extent of pipeline and land which would be acquired in construction of road.
4.	Whether interference by this Court is necessary in the impugned order, passed by the learned Trial Court?	No.
5.	What order ?	Appeal is dismissed with costs.

REASONS

AS TO POINT NOS. 1 TO 3 :-

11. The learned counsel for the appellants/original plaintiffs argued that though plaintiffs are already in physical possession of suit lands, defendants are interfering and obstructing plaintiffs in their possession over the suit lands by taking disadvantage of the order passed by defendant No.3. The order passed by defendant No.3 is not according to panchnamas conducted by defendant No.3. It is clear from panchnamas dated 12.07.2025, 26.08.2024, 13.06.2025 and 03.12.2025 that there are alternative roads available to defendant Nos.1 and 2 to their lands. Defendant No.3 cannot create road from the common bandh situated in between Gat No.37 and 43. If such road is created from the said common bath some portion from Gat No.37 and 43 will be acquired without awarding compensation to the plaintiff thereby plaintiff will

suffer huge loss. Therefore, the plaintiff has proved his *prima facie* case. Balance of convenience also lies in favour of plaintiff. If the application is not allowed the plaintiff will suffer huge loss which cannot be compensated in terms of money. Hence, the learned counsel for respondent No.1 submits that the order passed by the learned trial Court is proper and in accordance with law. Therefore, he prayed to reject the application of appellants.

12. The learned counsel for appellant argued that, it is necessary to see the convenience of the parties to approach their agricultural lands. The road granted by defendant No.3 from the common bandh situated in between Gat Nos. 37 and 43 is more convenient than any other road to the plaintiff. Now it is rainy season. It will be very difficult to the plaintiff to use any other road other than the road granted by defendant No.3 from the said common bandh situated in between Gat Nos.37 and 43. It is settled law that the convenience of neighboring agriculturist is to be seen to approach his agricultural land while granting road to said agriculturist. Defendant No.3 has authority to grant the road even if there is no road in existence for the convenience of such agriculturist as per provisions under section 143 of the MLR Code. Therefore, order passed by defendant No.3 dated 17.11.2025 is legal and proper. Hence, it is prayed by the learned counsel for the plaintiff that, the impugned order passed by the learned trial Court be quashed and set aside.

13. The learned counsel for respondent No.1 and 6 argued that the learned trial Court has rightly passed the order below Exh.5. The plaintiff is required to prove his case on the basis of oral and documentary evidence. Presently no harm is caused to the plaintiff has

the learned trial Court has granted r existing road from the common band situated in between Gat Nos.37 and 43 considering the *prima facie* case of the plaintiff. Hence, the learned counsel for respondent No.1 prayed to dismiss the appeal.

14. Order XXXIX Rule-2 of Code of Civil Procedure require plaintiffs to prove *prima-facie* case on the basis of affidavit and concerned record. Perused documents filed on record. It is held by the learned trial Court that, defendant No.3 has passed the order which shows that there is difficulty to defendant Nos.1 and 2 to approach Gat No.36. There is no evidence recorded to show that there are alternative roads to approach Gat No.36. Therefore, it is held by the learned trial Court that, the order passed by defendant No.3 dated 17.11.2025 is without inquiry and without considering necessary provisions of the law. It is also held by by the learned trial Court that, if defendant Nos.1 and 2 are denied the road to approach Gat No.36 they will also suffer loss. Hence, balance of convenience does not go in either in favour of the plaintiff or defendant Nos.1 and 2. Hence, the learned trial Court has stayed the execution of order passed by defendant No.3 and granted the existing road from the common bandh situated in between Gat Nos.37 and 43.

15. The learned counsel for the appellant relied on the following case laws:-

i) ***Subhash Baburao Chakrupe and others Vs. Suresh s/o Shankarrao Ronge and others, 2022 DGLS (Bom.) 3917***, wherein the Honourable High Court has held that The Tahasildar while allwoign the application of petitioners has taken into consideration the fact that, the

petitioners are from village Bhoisamudraga and both the alternate ways which are suggested by respondents, are of longer distance and are inconvenient for the way to the petitioners from the common boundary of the respondents gat numbers. While ordering so, the Tahasildar has taken into consideration the needs of the petitioners and he has come to a conclusion that, for reasonable access to the fields of the petitioners, both alternate ways suggested by the respondents are of a longer distance and inconvenient. The access from the common bandh of the respondents is required to be granted. The said order is passed by the Tahasildar having regard to the site inspection and the situation of the agricultural lands of the petitioners and respondents. Therefore, the Tahasildar was justified in passing the said order. The Sub-Divisional Officer was right in confirming the order passed by the Tahasildar.

In the present matter the Tahasildar defendant No.3 has granted road from the common bandhs situated in between Gat Nos.37 and 43. However, the road granted is more than the existing way, which would cause loss to the plaintiff as lands situated in Gat No.37 and 43 are owned and possessed by plaintiff. Hence, the above discussed case is not applicable to the present appeal.

ii) ***Sanjay Uttam Dhangar and another Vs. Tukaram Bhika Patil and others, Writ Petition No.1752 of 2022 with CA/14226 of 2022 Bombay High Court Aurangabad Bench***, decided on 23.03.2023, wherein the Honourable High Court has held that inherent powers of Court under Section 151 of the Code of Civil Procedure cannot override express powers of Law. Orders staying implementation of Tahasildar's decision as it contradicted established legal principles and caused prejudice to defendants.

In the present matter the learned trial Court has considered *prima-facie* facts and interest of both the parties while passing order below Exh.5 and has granted path-way which is 7-8 feet wide according to the panchanama dated 13.06.2025. The civil suit is yet to be decided after recording of oral evidence and further considering documentary evidence on record. Therefore, the above discussed case is not applicable to the present appeal.

iii) ***Shri.Suryabhan and others Vs. Shri. Shrikrishna, SecondAppeal No.406 of 2022, Bombay High Court Nagpur Bench,*** decided on 02.05.2025, wherein the Honourable High Court has held that Tahasildar is empowered to claims for right of way through boundaries of agricultural lands under Section 143 of the Maharashtra Land Revenue Code, 1966. Such power is not dependent on proof of easementary rights or pre-existing user. Tahasildar can grant way for access even if the way was not earlier in existence.

In the present matter the Tahasildar defendant No.3 has granted 12 feet wide road from the common bandh which is likely to cause damage to the pipeline laid down by original-plaintiff in Gat No.43 and mango tree situated next to the common bandh. Therefore, the learned trial Court has granted the existing pathway to the plaintiff for the access to his agricultural land situated in Gat No.36. Therefore, there is no loss as such caused to the either of the parties to the suit in view of order passed below Exh.5 by the learned trial Court. Hence, above discussed case law is not applicable to the present appeal.

16. It is clear from contents of panchnama drawn on 26.08.2024 it is brought on record that 0H 84R land in Gat No.36 is not in

cultivation. Therefore, applicants have prayed for temporary road to approach 0H 84R land in Gat No.36 for cultivating the said portion of land and there is cart-road available in the Gat No.39 to applicants. Panchnama dated 13.06.2025 reveals that, there is 7 to 8 feet wide path-way which is in use from the common bandh situated in between Gat No.37 and 43. There are 4 electric poles of Electricity Department and 4 outlets of water pipeline on the said common Bandh. There is one mango tree situated near the said common band in Gat No.43. The land of applicants is situated 300 meters away from the Bokangaon road towards eastern side. There is no road available to applicants to approach Gat No.36. According to the panchnama dated 13.06.2025 there is road in existence from Gat No.39 to approach Gat No.36, which is obstructed.

17. According to the panchnama dated 12.07.2025 the road given to applicants from the common band situated in between Gat No.37 and 43 is temporarily granted for the period of 2 years, which is admitted by both the parties. Thereafter, defendant No.3 granted 12 feet wide road from the common bandh situated in between Gat Nos.37 and 43 to approach the land situated in Gat No.36. However, only 7 days period is given for creating the road. It is the fact brought on record in the panchnama dated 13.06.2025 that there is 7 to 8 feet path-way in existence from the common band situated in between Gat Nos.37 and 43. Therefore, according to the order passed by defendant No.3 dated 17.11.2025 granting 12 feet road from the said common bandh will result in damage to the pipeline, trees and some portion of land from Gat Nos.37 and 43, which will be acquired and will not be compensated to the plaintiff.

18. Therefore, considering these facts brought on record, there is *prima facie* case established by the plaintiff. The order passed by defendant No.3 is rightly stayed by the learned trial Court. Considering above discussed facts and granted permission to use the existing pathway on the common bandh situated in between Gat Nos.37 and 43 which is 7 to 8 feet wide as per the pachnama dated 13.06.2025. Therefore, the learned trial Court has considered interest of both the parties and has passed the order below Exh.5. The question whether to grant permanent road from the common band situated in between Gat Nos.37 and 43 will be decided after recording evidence of both the parties and giving opportunity to them to prove their case. Thus, presently no harm will be caused to either of the party to the suit if the impugned order of the learned trial Court below Exh.5 is implemented. Hence, I answer point Nos. 1, 3 in the affirmative and 2 in the negative.

AS TO POINT NO. 4 :-

19. On perusal of the impugned order passed by the learned trial Court, it shows that the learned trial Court has rightly appreciated *prima-facie* evidence on record and partly allowed the application below Exh.5. Considering the facts and circumstances of the case, there are no substantial grounds to interfere in the order passed by the learned trial Court. Hence, I answer point No.4 in the negative.

AS TO POINT NO. 5 :-

20. In view of above discussed facts, circumstances, observations and findings in point Nos.1 to 4, the appeal deserves to be dismissed. Hence, I pass following order :-

ORDER

The appeal is dismissed with costs.

(Dictated and pronounced in open Court).

Date : 23.07.2026.

(P. I. Mokashi)
Ad-hoc District Judge-1, Latur.

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE
ORIGINAL SIGNED JUDGMENT/ORDER".

(H. R. Shinde)
Stenographer (Grade-1)
NAME OF STENOGRAPHER

Name of the Judge(With Court Room No.) :	P. I. Mokashi, Adhoc District Judge-1, Latur.
Date for pronouncement of Judgment/Order:	23.07.2026
Judgment/Order signed by P.O. on:	23.07.2026