

**ORDER BELOW EXH.05 IN REGULAR CIVIL SUIT NO.27/2024**  
**( Shobha Vs. State & others )**  
**(Order Passed On the Day of 20<sup>th</sup> January, 2025)**  
**CNRNO.MHLA170001342024**

The plaintiff has filed application under Order XXXIX Rule 1 and 2 of the Civil Procedure Code for grant of interim injunction. It is submitted by the plaintiff that, she has filed suit against defendants for grant of permanent injunction against the Judgment and Order passed by defendant No.2. It is further contended by the plaintiff that, she and defendants No.3 to 5 are relatives of each other. Defendants No.3 and 5 are husband and wife. Defendant No.4 is the son of defendant No.3 and 5. Defendant No.2 is the Thasildar and defendant No.1 is the appellate authority of defendant No.2 and is representing the state.

2. Land ad-measuring 7H 30R including Potkharab out of 81R land situated in Gat No.196/A at Sarola, Tq. AUSA is owned and possessed by the plaintiff. Its four boundaries are as follows:-

Towards eastern side :- Land of Dinkar Nivruti Lande.

Towards western side :- Kanehri Sarola Road.

Towards southern side :- Land of defendant No.3.

Towards northern side :- Sarola Kanehri road.

Henceforth known as disputed land.

3. The original owner of the suit land is husband of the plaintiff. The plaintiff and her husband were in need of money for the purpose of marriage of their daughter. Therefore, they had obtained hand loan from one Vithal Kale and had transferred the property to Vithal Kale without possession only for the name sake.

Thereafter, the plaintiff and her husband returned amount of hand loan to Vithal Kale and again transferred the suit land in the name of plaintiff from Vithal Kale by way of registered sale deed bearing No.2865/2021 dated 07.07.2021. Accordingly name of plaintiff is entered in the record of rights of 7/12 extract by way of M.E.No.4270. Thus, the plaintiff became owner and possessor of the suit land. There is one south to north Nalha situated towards eastern side of the suit land. The said Nalha is 6 to 7 feet deep. There is no road in existence from the suit land of the plaintiff. Whole of suit land of the plaintiff is agricultural land. The Government has created road for agriculturist and they have strengthen the said road. The Government has also strengthened Irandi to Kanehri road. The said road is 20 feet wide. Irandi to Kanheri road is passing through the survey numbers of Gat No.207 and 208, Gat No.200 and 199, Gat No.201 and 197, Gat No.194 and 196, Gat No.194 and 195, Gat No.185 and 184, Gat No.185, 183, Gat No.186 and 182.

The plaintiff and defendants No.3 to 5 are taking benefit of said road since long time from their foefathers. The land of defendants No.3 to 5 is situated in S.No.196/B and land of defendant is situated towards southern side of the suit land. The 20 feet wide south to north Irandi to Kanehri road is created by the Government and it is passing through survey number bandh of S.No.196 and 195. There is road in existence to approach lands of plaintiff and defendants No.3 to 5, therefore, there is no question for defendants or plaintiff to pass through the agricultural land of each other. Therefore is one road situated towards eastern side of Gat No. 196 and there is also road situated towards western side of

Gat No.196. Therefore, there are two road to approach Gat No.196 which are in existence.

4. Though there is no road in existence from the suit land. Defendants in collusion with each other and in collusion with officials of revenue department behind back of plaintiff have created false documents and with ill intention are taking their tractors and bullock carts from the suit land. They are causing destructions to crops and causing loss to the plaintiff, though there is road created by the Government towards western side of the land of defendants No.3 to 5. Defendants No.3 to 5 are purposefully approaching suit land from the northern side and passing through Nalha by taking their Tractor, bullock carts and their animals. Defendants are trying to create new cart road from the suit land.

5. Therefore, the plaintiff requested defendants No.3 to 5 not to proceed from the suit land and not to take their tractors, bullock carts and animals from the suit land. However, defendants No.3 to 5 did not listen to her. Defendants No.3 had filed application before defendant No.2 according to section 5 of the Mamlatdars' Court Act for removal of obstruction caused on the cart road passing through S.No.196/A towards western side of the Nalha to approach S.No.196/B. Accordingly defendant No.2 had passed Judgment on 03.05.2023 and allowed the application of defendant No.3 which is incorrect though there is no such road is in existence from the eastern side of the Nalha passing through the suit land. Defendant No.2 has passed Order creating cart road from the suit land at the time of rainy season. Taking disadvantage of the said

Judgment and Order passed by defendant No.2, defendants No.3 to 5 are trying to create road in the suit land and causing destruction to the crops of the plaintiff in the suit land and loss to the plaintiff.

6. It is further submitted by plaintiff that, in the Order before the defendant No.2 under section 5 of the Mamlatdars' Court Act, it is clear that, panchanama was drawn on 24.03.2022 and it is clearly mentioned in the said panchanama that, there is no south to north Sarola Kanehri road available to approach agricultural land and there one road (वहीवाट) seen in the land S.No.196/A next to the Nalha towards western side from the Potkharab area towards S.No.196/B. However, there is walk way of width of 3 feet is not seen on the said land. Defendants No.3 to 5 told the circle officer that, there is east west Sarola Kanheri road, from which they are approaching to their agricultural lands. Therefore, the Judgment and Order passed by defendant No.2 is not accordance to the panchanama drawn by the Circle Officer at the spot. Hence the plaintiff prayed to grant interim injunction against the Order passed by defendant No.2 for creating road from the suit land.

7. Defendants No.1 and 2 failed to appear though served with summons. Hence, the matter is proceeding ex-parte against defendants No.1 and 2.

8. Defendants No.3 to 5 have filed their written statement at Exh.35 alongwith prusis Exh.35/1 to consider their written statement (Exh.35) as their say to the application below Exh.5. Defendants No.3 to 5 have denied all the allegations of the plaintiff.

They also denied the map filed by the plaintiff alongwith plaint. It is contended by defendants No.3 to 5 that, the panchanama was drawn on 24.03.2022. Thereafter, the panchanama was drawn during the rainy season on 19.10.2022, it reveals that, the Sarola Kanehri road cannot be used during the rainy season. Therefore, there is one another road situated towards western side of the Nalha in the S.No.196/A from the Potkharab area to approach land of defendants No.1 to 3 situated in S.No.196/B. Accordingly defendant No.2 has passed judgment and Order considering the situation during the rainy reason. Though defendants No.2 has granted road from the Potkharab area of S.No.196/A the plaintiff has closed the road restraining defendants to use the same during the rainy season. The road granted by defendant No.2 to defendants No.3 to 5 is to be used only in the rainy season and which is from the Potkharab area situated in S.No.196/B and which is not in the suit land of plaintiffs. Hence, defendants No.3 to 5 prayed to reject the application of the plaintiff with compensatory cost.

9. In view of averments made by the plaintiff and denied by defendants No.3 to 5 following points arose for my determination along-with my findings thereon are as under:-

<u>POINTS</u>	<u>FINDINGS</u>
1. Does plaintiff prove <i>prima-facie</i> case in her favour?	No.
2. Does plaintiff prove balance of convenience in her favour ?	No.

**POINTS**

3. Does plaintiff prove that, she will suffer irreparable loss, if temporary injunction is not granted in her favour?
4. What order ?

**FINDINGS**

No.

The application is rejected.

**:- REASONS :-**

10. The plaintiff has produced certified copy of 7/12 extract of Gat No.196/A at Sr.No.1, copy of 7/12 extract of S.No.196/B at Sr.No.2, copy of Order passed by defendant No.2 at Sr.No.3, copy of panchanama at Sr.No.4 and 5, application given by Bankat Lande to defendant No.2 at Sr.No.6 with list Exh.No.4. Map of Sarola village with list Exh.13.

Defendants No.3 to 5 have filed copy of application filed before defendant No.2 at Sr.No.1, 7/12 extract of S. No.196/A at Sr. No.2 and 3, copy of 7/12 extract of S.No.196/B at Sr.No.4, panchanama at Sr.No.5 and 6, copy of application given to police station at Sr.No.7, village map of Sarola at Sr.No.8, copy of order passed by SDO at Sr.No.9 and Judgment and Order passed by defendant No.2 at Sr.No.10 with list Exh.40.

11. Heard learned counsels for both the parties. The learned counsel for plaintiff argued that, on the basis of Judgment and

Order passed by defendant No.2, defendants No.3 to 5 are trying to create road from the land of plaintiff by destroying crops and causing loss to the plaintiff though, there are two roads to approach the land of defendants No.3 to 5 in S.No.196/B, defendants No.3 to 5 in collusion with defendant No.2 have obtained the Order from defendant No.2 to create new road from the suit land of the plaintiff. There is no such road in existence and therefore, defendant No.2 has no authority whatsoever to pass Order under section 5 of the Mamlatdars' Court Act. As per section 5 of the Mamlatdar Courts Act defendant No.2 has only right to remove the obstruction from the existing road which is not the case in the present suit. Hence, the Order passed by defendant No.2 is incorrect. Therefore, the learned counsel for plaintiff prayed that, judgment and Order passed by defendant No.2 be temporarily stayed.

12. The learned counsel for defendants No.3 to 5 argued that, the panchanama dated 07.04.2021 reveals that, there is road (वहीवाट रस्ता) in existence to which Vithal Kale has given consent. The said (वहीवाट) road is passing through S.No.196/A from the Potkharab area which is for approaching the agricultural lands of defendants No.3 to 5. The panchanama dated 19.10.2022 also reveals that, there is water logging in the land of defendants No.3 to 5. Thereby, the road to approach agricultural land of defendants No.3 to 5 is submerged in the water. Hence, for the said reason defendant No.2 has allowed defendants No.3 to 5 to use the existing road from the Potkharab area of Gat No.196/A to approach their agricultural lands. Hence, the Order passed by defendant No.2 is proper and correct. Therefore, it is prayed by the learned counsel

for defendants No.3 to 5 that, the application filed by the plaintiff be rejected.

**AS TO POINTS NO.1 TO 3:-**

13. Perused the record and documents produced by both the parties to the suit. The village map produced on record by the plaintiff with list Exh.13 reveals that, there is Nalha passing through eastern side of S.N.196 and goes towards southern side. There is also walkway from eastern side of the Nalha passing through S.No.196. There is another cart way situated towards western side of S.No.196 passing through the Gairan in S.No.155. According to the panchanamas produced on record by both the parties to the suit it is crystal clear that, the land of defendant No.3 to 5 is submerged during rainy season and there is no other road to approach their agricultural land. Hence, defendant No.2 has granted permission to defendants No.3 to 5 to use existing road from the Potkharab area situated in S.No.196/A. Therefore, use of the said road from Potkharab area to approach the agricultural lands of defendants No.3 to 5 does not cause any harm or destruction to the crops of plaintiff situated in the suit land as the road is passing from Potkharab area which is approximately north to south in direction. Therefore, the plaintiff failed to prove her *prima-facie* case. Balance of convenience goes in favour of defendants No.3 to 5. No irreparable loss will be caused to the plaintiff if injunction is not granted in favour of plaintiff. Hence, I answer point Nos. 1 to 3 in the negative.

**AS TO POINT NO.4:-**

14. In view of facts and circumstances discussed in points No.1 to 3 plaintiff failed to prove *prima-facie* case in her favour. The balance of convenience does not go in favour of plaintiff. No irreparable loss would be caused to plaintiff, if the application is rejected. Therefore, the application filed by plaintiff is liable to be rejected. Thus, in answer to point No. 4, I pass following order:-

**ORDER**

1. The application is rejected.
2. No order as to cost.

Date :-20.01.2025.

(P. I. Mokashi)  
Civil Judge Senior Division,  
Ausa.