

MHNG100017602025



Reg. Civil Suit No.118/2025
Rajiv Vs. Collector + 2

ORDER BELOW EXH.5

(Passed on this 27th April, 2026)

Plaintiffs have filed this application seeking temporary injunction to restrain defendants from disturbing their possession over the suit land.

2] Suit land is the land bearing Gat No.703 admeasuring 1.01 H.R., of village Bela, Tah. Umred, Dist. Nagpur.

3] Plaintiffs contend that they are owner in possession of the suit land. They received the notice dated 10.03.2025 issued by defendant No.2. By such notice, they were directed to remain present in the office of defendant No.2 and they were informed that in case of their failure to do so, adverse order would be passed. Notice does not carry any revenue case number or outward number. In pursuant to it, when they visited the office of defendant No.2, they came to know that such notice had been issued on the basis of application dated 14.10.2024 submitted by defendant No.3 in the office of defendant No.2. Such application indicates the prayer seeking way through the suit land.

4] Plaintiffs contend that defendant No.3 and his brother are not permanent resident of village Bela. They are cultivating their land bearing Gat No.702 of village Bela through other villagers. Road / way to approach their such land, is available through the land bearing Gat No.704/3 belonging to Sachin Deshmukh. In fact defendant No.3 and owner of Gat No.704, have a common well on their common field dhura / boundary for the purpose of cultivating their agricultural fields. Since last 60 years, there has not been any issue in respect of the approach way. However after the death of parent of plaintiffs, defendant No.3 has

started such act to harass the plaintiff.

5] Plaintiffs contend that they apprised the defendant No.2 about all this and have requested to drop the proceeding. But defendant No.2 has ignored such request. Therefore plaintiffs issued notice under section 80 of Code of Civil Procedure on date 04.08.2025 to the defendants. Despite service of the notice, defendants have not complied with it. Therefore plaintiffs apprehend that defendant No.3 with the help of defendant Nos.1 and 2, will disturb the peaceful possession of the plaintiffs over the suit land. Therefore the main suit has been filed on 26.08.2025. First prayer is to declare that notice dated 10.03.2025 issued by defendant No.2, is illegal and bad in law. Second prayer is to declare that application dated 14.10.2024 filed by defendant No.3 in the office of defendant No.2, is bad in law and is not binding on the plaintiffs. Third prayer is for permanent injunction to restrain the defendants from disturbing peaceful possession of the plaintiff over the suit land. Fourth prayer is for perpetual injunction to restrain the defendant No.3 from committing any act like disturbing the possession of the plaintiffs over the suit land and like creating any type of way from the suit land and like forcefully entering into the suit land. Fifth prayer is to direct defendant Nos.1 and 2 to drop the proceedings before it.

6] The prayer clause in the present application reads as - "Grant the temporary injunction in favour of plaintiffs against the defendants, their agents, servants and relatives of respondent No.3 to the effect that not to disturb the peaceful possession of plaintiffs on the Gat No.703."

7] Despite service of summonses, defendant Nos.1 and 2 have not appeared. Thus as per the order dated 16.12.2025 Exh.1, suit is proceeding ex-parte against them.

8] Defendant No.3 has filed WS cum reply vide Exh.22 to oppose the suit claim and the present application. He admits the ownership and possession of plaintiffs over the suit land. He has denied all the adverse allegations made against

him. It is contended that land bearing Gat No.702 admeasuring 1.21 HR of village Bela, is in possession of defendant No.3. He is cultivating it with the help of some villagers. Right from the cultivation of such land even by his parent, way / road is available to them to reach their such land and such way is along dhura / boundary of Gat No.703 i.e. suit land. On date 14.01.1971 there was partition and in such partition, father of defendant No.3 has got way passing along eastern side boundary / dhura of old Gat No.88/2. Since then above way passing along eastern side dhura / boundary of the suit land, has been available to the defendant No.3 to reach the land bearing Gat No.702. However plaintiffs have obstructed the use of such way. Therefore with the consent of other legal heirs, defendant No.3 has filed application before defendant No.2 seeking way / road through the suit land. In view of that, defendant No.2 had simply issued the notice. Defendant No.2 has not yet granted any way. Defendant No.2 has authority to entertain such application and conduct the proceeding. However instead of filing reply there, plaintiffs have filed the false suit. Therefore this court has no jurisdiction to entertain and file the suit. If no step is taken on the application moved by defendant No.3 before defendant No.2, it will become difficult for defendant No.3 to cultivate his land. On the other hand, plaintiffs will not face any loss. Therefore it is requested to reject this application.

9] I have heard oral arguments of Ld. Advocate Shri. Bangadkar for plaintiffs and Shri. Bhombe for defendant No.3. None has appeared for defendant Nos.1 and 2.

10] Points which arise for consideration are as under along with finding and reasons :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiffs have made-out prima-facie case ?	Yes.

2. Whether plaintiffs would suffer an irreparable loss in case of the rejection of this application ? **Yes.**
3. Whether balance of convenience lies in favour of above plaintiffs ? **Yes.**
4. What order ? **As per final order.**

REASONS

As to Points Nos. 1 to 4 :-

11] These points are considered together to avoid repetition of discussion.

12] It is not in dispute that plaintiffs are owner in possession of suit land Gat No.703. 7/12 extract of it is at serial No.3 vide list Exh.4. 7/12 extract of land Gat No.702 of village Bela is at serial No.5 vide list Exh.4. It shows that 1.21 HR area of it jointly stands in the name of defendant No.3, his two brothers and two sisters. 7/12 extract of Gat No.704/3 of village Bela is at serial No.7 vide list Exh.4. It shows that 0.90 HR area of it stands jointly in the name of Sachin Gulabrao Deshmukh and three Ors.

13] Original copy of the notice dated 10.03.2025 issued by defendant No.2 to plaintiffs is at serial No.1 vide list Exh.4. It shows that it has been issued under section 227 of Maharashtra Land Revenue Code. It is mentioned in the notice that approach way / road to land Gat No.702 of village Bela has become narrow, because adjacent land holders have made encroachment. Thus it has become difficult to approach such land. Therefore land holder applicant Avinash i.e. defendant No.3 has filed application to get such way vacated. Therefore plaintiffs have been called upon to remain present in the office of defendant No.2

on 21.03.2025 to file their say.

14] Thus above notice shows that approach way to land belonging to defendant No.3 has become narrow since adjacent land holders have allegedly made encroachment on it and application is filed by defendant No.3 to get that way open / vacant.

15] Photo copy of application dated 14.10.2024 filed by defendant No.3 before defendant No.2, is at serial No.2 vide list Exh.4. It carries the signature of defendant No.3 alone. It is nowhere mentioned in it that remaining co-owners i.e. two sister and two brother had authorized him to file such application. Further it shows that it is mentioned in the application that it is necessary to get the way through the land bearing Gat No.703 of plaintiffs, to approach the land bearing Gat No.702. However plaintiffs are refusing to give such way.

16] Thus in the above application dated 14.10.2024, defendant No.3 has contended that it is necessary to get the way passing through the suit land, but plaintiffs are refusing to give such way.

17] Above application does not show that already there is approach way and such approach way has been encroached upon by the adjacent land holder and as such it has become narrow and therefore the application is filed to make it open / vacant. Thus above notice is not consistent with the above application.

18] Section 143 of Maharashtra Land Revenue Code provides that Tahasildar has the authority to give right of way over the boundaries of the agricultural lands. Section 5 of Mamlatdars' Courts Act provides that Mamlatdar has the authority to remove the impediment on already existing way to the agricultural land. Above application dated 14.10.2024 shows that way is claimed

passing through the suit land. Whereas the notice shows that already existing way has been encroached upon and application is filed to make it open in the sense of removing impediment on it. However the number of revenue matter is not mentioned on the notice. It is not clear from the notice as to whether defendant No.2 has registered the revenue matter in view of the application moved by defendant No.3.

19] Plaintiffs apprehend that defendant No.3 with the help of defendant No.2 may disturb their possession over the suit land. The fact that without registering the revenue matter, above notice has been issued, itself provides ground to infer that there is some substance in the above apprehension of the plaintiffs.

20] Plaintiffs contend that defendant No.3 already has an approach way to his land, through the land Gat No.704/3 belonging to Shri. Sachin Deshmukh. Such way is shown in the plaint map by red colour. This fact has been denied by the defendant No.3. Two other maps at serial No.4 and 6 of list Exh.4 do not indicate the existence of such approach way.

21] Defendant No.3 has filed WS vide Exh.22 on 16.12.2025. In such WS, it is specifically contended that in between father of plaintiffs and father of defendant No.3, there was partition on 14.01.1971 and in such partition, father of defendant No.3 has been given right of way to pass along eastern side dhura / boundary of the land which has been given to the share of father of plaintiffs and since then such way has been in use. Copy of such WS was received on behalf of plaintiffs on the same date i.e. 16.12.2025. However plaintiffs have not filed even the affidavit to deny such way.

22] On the other hand defendant No.3 has placed on record copy of

partition deed at serial No.1 vide list Exh.28. It shows that father of plaintiff Champatrao and father of defendant No.3 Vayankatrao were the real brothers. Smt. Indirabai was their mother. Lands bearing Survey No.224 and 225 were given to the share of Smt. Indirabai. Lands bearing Survey No.88/2 and 384 have been divided in between Shri. Vyankatrao and Shri. Champatrao. It further shows that out of the total 5.50 Acre area of Survey No.88/2, northern side 2.50 Acre portion was given to the share of Shri. Champatrao. Whereas remaining southern side 3 Acre portion was given to the share of Shri. Vyankatrao. It is specifically mentioned below the share of Champatrao that “व्यंकटराव यांच्या हिश्यातील वाहीजुपी करण्यास दोन बैल जाण्यापुर्ता रस्ता या हिश्यातील पुर्वेकडील धुन्यावरून राहिल.” This partition deed carries date 14.01.1971. It bears the signature of Shri. Vyankatrao And Champatrao and others also.

23] Thus above document is consistent with the pleadings in the WS. It shows that father of defendant No.3 had been given right of way to pass along eastern side dhura / boundary of the land which was given to the share of father of plaintiffs.

24] It is true that as per the above document, defendant No.3 has no right of way passing through the suit land. However this document shows that defendant No.3 has the right of way passing along eastern side dhura / boundary of the suit land. Therefore though it is necessary to protect the possession of the plaintiff over the suit land, yet it is necessary to take care of above right of defendant No.3 also while passing the order. Thus I come to prima facie conclusion that plaintiffs have made out prima facie case to protect their possession. However while protecting their possession, right of defendant No.3 to pass along the eastern side dhura of suit land also needs to be protected. It is in this context, I hold that plaintiffs have made out prima facie case and have shown

balance of convenience to protect their possession. But as I have observed earlier above right of defendant No.3 also needs to be kept in consideration while passing the order. Therefore for the above reasons, I answer above points accordingly. With this I proceed to pass following order.

ORDER

1. Defendants and any person claiming through them shall not disturb the possession of plaintiffs over the suit land, till the disposal of the suit.
2. However it is made clear that this order shall not stand in the way of defendant No.3 in using eastern side dhura / boundary of suit land as way to approach the land bearing Gat No.702.
3. Application is accordingly allowed with cost in cause.

Umred.
Dated : 27/04/2026.

[S. G. Landge]
Civil Judge Sr. Dn., Umred,
Dist. Nagpur.

Certificate

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

Name of Stenographer : Shri. C.D. Gahukar
Stenographer (Grade II)