

RCS No.70/2025  
Milind Vs. Rajkumar

**ORDER BELOW EXH.05**  
**(Passed on : 24/03/2026)**

The plaintiffs have filed present suit for declaration and permanent injunction. They have filed present application under Order 39 Rule 1 & 2 r/w. 151 of the Code of Civil Procedure for temporary injunction against defendants and thereby restraining them or any person on their behalf from entering into portion shown in Marathi letters as “T, Th, Da Dh” in the plaint map of the agriculture field bearing S. No.130/2 till final disposal of the suit.

**Suit property as described in Schedule of the plaint:**

Agriculture field bearing survey no.103/2 in Mauza Kiranpur, P. H. N. 21, 2 H 50 R, Tah. Ramtek, Dist. Nagpur. (Hereinafter called as ‘suit property’)

**Case of Plaintiffs:**

2] It is the case of plaintiffs that, they are real brothers and sisters. Their father’s name is Motiram Damdu Pantavane and grandfather’s name is Damadu Jago Pantavane. They both have died. Defendant no.4 is mother of defendant nos.1 to 3. Damadu has purchased the agriculture field S. No.126 from Tarachand Gulba Harode on 04/04/1952 vide registered sale deed no.145/1952. Thereafter, his name was recorded in revenue records and he was in possession and cultivation of the said agricultural field. In

consolidation, the said field got renumbered as S. No.152/b. It was again renumbered in re-survey as S. No.130/2. The suit property is ancestral property.

3] Defendants owns the agriculture field bearing S. No.130/1 which is adjacent to the suit property. Names of defendants have been recorded in revenue records of S. No.130/1. But, by what documents and how their names are recorded in revenue records is not mentioned in that. The actual boundaries of the S. No.130/1 and boundaries of S. No.130/1 as per map issued by Talathi is different. Near village of Kiranpur-Chokhala, agriculture field S. No.124 bears the path way. Defendants used to come and go from the field S. No. 107/2 and joint road of S. No.130/1 and S. No.120. Also, plaintiffs and their father used to come and go from the same road from 1952 to 2000.

4] Defendant no.1 had created obstacles for the plaintiff to come and go from the aforesaid path way. When plaintiffs tried to explain, the defendant no.1 abused the plaintiff and threatened to beat him to death. Defendants have already another way to come and go into their field. Father of defendant nos. 1 to 3 had old path way to come and go into his field therefore, he never demanded the new path way. But defendants even after having old path way, demanded new path way by filing false application to the Tahsildar, Ramtek. But Tahsildar without following due process and without issuing notice to the owners of S. No.119/2, passed wrong order. Therefore, the said order of the Tahsildar Ramtek is not binding upon the plaintiff.

5] Defendants taking undue advantage of the said order of Tahsildar, tried to create new path way. Therefore, the plaintiff immediately filed application for grant of stay with SDO Ramtek. But none orders were passed. If the defendants are allowed to create new path way in the suit property, then it will decrease the area of the suit property and will cause irreparable loss. Moreover, defendants are abusing and threatening and causing obstruction to the plaintiff on the basis of the order of Tahsildar, Ramtek. The plaintiff are wholly dependent upon the earnings of the suit property. Therefore, it is necessary to restrained the defendants. Hence, this application.

6] Plaintiffs have relied upon the following documents:

- i) Order of Tahshildar, Ramtek dt. 25/06/2025.
- ii) 7/12 extract of suit property.
- iii) Maps
- iv) Registered sale deed dt. 04/04/1952.
- v) Nistar Patrak dt. 22/08/1955.
- vi) Application to SDO Ramtek.
- vii) 7/12 extract of S. No.130/1, 124, 125/1, 118, 119/2, 122, 123/1, 127 and 100/1.
- viii) Appeal application filed to Additional District Collector, Nagpur.

**Case of Defendants:**

7] The suit is ex-parte against the defendant no.3. Defendant nos. 1, 2 and 4 have reply at Exh.14. They have submitted that, the path leading to the defendant's agriculture field is not new but an old

one and which has been actually used since years. Defendants and their ancestors have used the said path way peacefully without any objection. The said path is in actual use for agricultural purposes and its length is approximately 100 meters. All the tenants in the village and nearby are aware of the said path way and it is in common use. Tahsildar, Ramtek has passed the proper order after following due process. Before passing the order, site inspection, inspection of revenue records, giving opportunity to the concerned parties and examination of available documents have been done.

8] The plaintiff has filed the present suit with intent to harass the defendants and obstructing their legal rights. The plaintiff has filed the said suit by deliberately hiding important facts and has belatedly objected to the path way which has been in use for many years. Defendants and their families are completely dependent on agriculture and it is essential to use the said path way for agriculture work. If defendants are obstructed in using the said path way, their agriculture work will be disturbed and they will suffer serious financial and livelihood losses. Defendants are using the said path way for years and no objection was taken by the plaintiff till now. The sudden objection is made with the intention of creating a dispute and harassing the defendants. The said path is allowed for the defendants, then plaintiff do not cause any loss. Hence, they prayed to reject the application.

9] Plaintiffs have relied upon the following documents:

i) Nistar Patrak dt. 22/08/1955.

**10]** Perused the record. Heard Ld. Advocates for both the sides. From the rival pleadings, following points arises for my determination and I have recorded my findings for the reasons stated herein-below :

<b>POINTS</b>	<b>FINDINGS</b>
1. Whether prima facie case lies in favor of plaintiffs ?	No
2 Whether balance of convenience lies in favour of plaintiffs ?	No
3. Whether plaintiffs will suffer irreparable loss if injunction is refused ?	No
4. What order ?	Rejected as per final order.

### **REASONS**

#### **As to Point Nos. 1 to 3:**

**11]** All these points are interconnected with each other, hence to avoid repetition of reasons all are discussed together.

**12]** Plaintiffs have relied on sale deed of 1952, 7/12 extracts, maps and revenue records. In the present case, ownership and possession of the plaintiffs over the suit property is not disputed by the defendants. Only dispute pertains to the existence of pathway rights. Ownership and possessions of plaintiffs over the suit property is prima facie established. Defendants claim long-standing use of the pathway. Moreover, the order of Tahsildar dated 25/06/2025 prima facie indicates recognition of pathway of the defendants over the portion of the suit property. Though the said order of Tahsildar is challenged, it

cannot be ignored at this interim stage. The existence of pathway is disputed question of fact, which can be decided at the time of trial. In **Anathula Sudhakar Vs. P Buchi Reddy, AIR 2008 SC 2033**, it is held by the Hon'ble Supreme Court of India that disputes involving easementary rights require evidence and cannot be conclusively decided at the interim stage. Therefore, prima facie case is not entirely in favor of plaintiffs alone, but indicates a triable issue.

**13]** Plaintiffs have contended that, if the defendants are allowed the pathway from their field, then it will cause reduction of the land area of the suit property and there is fear of encroachment to them. On the contrary, defendants have contended that, the aforesaid pathway is essential for access for the defendants and to work on their field and to perform agricultural operations. Therefore, if the injunction is granted then, defendants may lose access to their field and if the injunction is refused, then plaintiff's land may be affected, but the rights can be restored after the entire trial. Therefore, the balance of convenience lies in maintaining the status as it is. Plaintiffs have failed to show that, the balance of convenience lies completely in their favor.

**14]** Plaintiffs have contended that, they will suffer irreparable loss if the injunction is not granted on the ground that, there will be reduction of land. On the contrary, defendants have contended that, they will suffer irreparable loss if injunction is granted because they will not have access to their field and it will impact directly on their livelihood. Therefore, in the present case, it prima facie appears that,

defendants would cause greater hardship as compared to the plaintiffs. Therefore, irreparable loss is more likely to be caused to defendants if injunction is granted. The order of Tahsildar is in operative as on today. Therefore, it cannot be ignored in entirety.

**15]** After considering the available material on record at this pretrial stage it appears that plaintiffs failed to establish clear prima facie exclusive right, balance of convenience in their favor and irreparable loss. On the contrary, long standing usage of path way is in favor of defendants. Therefore, holding the same accordingly in the interest of justice, I proceed to pass the following order:-

**ORDER**

The application below Exh.5 is hereby rejected.

Sd/-

Date:- 24/03/2026  
Ramtek

(Smt. D. G. Vorani)  
2<sup>nd</sup> Jt. Civil Judge, Jr Dn, Ramtek.