

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION RAMTEK,  
TAHSIL-RAMTEK, DISTRICT-NAGPUR.**

MHNG130037742023



**Reg.Civil Suit No. 171/2023**

(Wasudeo and others Vs. State of Maharashtra)

(Appearance for Plaintiffs Ld. Advocate Shri. S. A. Deole  
Appearance for defendant no.2 Ld. Advocate Shri. Yerpude)

**ORDER BELOW EXH. 5.**

(Passed on this 7<sup>th</sup> day of April, 2026)

This is an application filed by plaintiffs under Order 39 R(1)(C) of Code of Civil Procedure (CPC) for restraining defendants from interfering with their possession and staying the order of defendant no.1 dated 15/01/2019 until the decision of suit.

02. The case of the plaintiffs in short as follows-

The plaintiffs have instituted the present suit seeking declaration and permanent injunction in respect of agricultural lands bearing Survey No.114/2 admeasuring 1.42 Hectares and Survey No.114/1 admeasuring 1.41 Hectares situated at Mouza Charbha, Tahsil Mouda, District Nagpur. Hereinafter, it is referred to as suit properties.

03. It is their case that the suit lands are ancestral properties which came to be partitioned between plaintiff No.1 and plaintiff No.2, whereby the northern portion fell to the share of plaintiff No.1 and the southern portion to plaintiff No.2. Though the revenue entries reflect such bifurcation, the revenue map has not been correspondingly updated. Plaintiff No.3 is stated to be assisting in the management of the said agricultural properties.

04. It is contended that defendant No.2 had initiated proceedings before defendant no.1 i.e. Tahasildar, seeking grant of an approach way to his field bearing Survey No.113, alleging existence of an old access route in the earlier revenue map and encroachment thereupon by adjoining landholders. In that proceeding, the defendant no.1 i.e. Tahasildar granted approached way to the defendant no.2 without affording any opportunity of hearing to the plaintiffs. The plaintiffs were not party to the proceeding to before the Tahasildar.

05. The said order was challenged in appeal by defendant no.5, resulting in remand by the Sub-Divisional Officer for fresh inquiry. Despite such remand, the plaintiffs were again not impleaded nor heard, and ultimately an order dated 15/01/2019 came to be passed granting new approach way through the plaintiffs' land. The plaintiffs contend that the said order is vague, does not specify the width or exact alignment of the proposed way, and has been passed in gross violation of the principles of natural justice, thereby rendering it illegal and unsustainable.

06. The plaintiffs further aver that they became aware of the impugned order only in June 2023 when the defendants attempted to act upon the same. Upon obtaining certified copies, they discovered that the proceedings were conducted behind their back and without due notice. The impugned order dated 15/01/2019 is arbitrary, contrary to the factual position on the spot, and violative of principles of natural justice. It is further contended that, if said order maintain and implemented, plaintiff suffered great loss and therefore, under these circumstances, the present plaintiff is constrained to file present application.

07. The defendant no.2 has filed his written statement at Exh.26 and same has been adopted as a reply. It is contended that, the defendant No. 2 had preferred an application before the Tahsildar, Mouda, seeking

grant of a pathway to access his agricultural field bearing Survey No. 113. Pursuant thereto, proceedings bearing Revenue Case No. 105/M.R.C-81/2016-17 were duly initiated, and notices were issued to the concerned landholders. It is further asserted that Plaintiff No. 2, along with Defendant Nos. 3 and 4, actively participated in the said proceedings, their statements were recorded, and Plaintiff No. 2 had also remained present at the time of spot panchanama conducted on 17/03/2017, thereby negating the allegation of absence of opportunity.

08. It is further contended that, upon remand, the Tahsildar directed the Revenue Inspector to conduct a spot enquiry, and accordingly, a detailed “mouka choukashi” was undertaken in the presence of the parties, culminating in a report dated 10/10/2018. Thereafter, the Tahsildar, Mouda, passed a reasoned order on 15/01/2019 in accordance with due procedure of law. The allegations made by the plaintiffs are categorically denied as false and concocted. It is further contended that the plaintiffs were fully aware of the proceedings and the order passed therein, and the plea that knowledge of the order was acquired only in June 2023 is wholly untenable. The defendant further asserts that the statutory remedy of appeal under the Maharashtra Land Revenue Code, 1966, was available; however, the plaintiffs failed to avail the same. It is further contended that, defendant No. 2 is lawfully using the pathway granted therein for ingress and egress to his field. Under these circumstances, the defendant no.2 has prayed for the rejection of the application.

09. Heard both the learned advocates at length. I have perused documents filed on the record.

10. Considering the nature of controversy, the following points arise for my determination and I have recorded my findings thereon with reasons as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether there is a prima facie case in favour of plaintiffs ?	In the affirmative
2.	Whether there is balance of convenience in favour of plaintiffs ?	In the affirmative
3.	Whether plaintiffs would suffer irreparable loss, if interim relief is refused ?	In the affirmative
4.	What order ?	Application is allowed.

### REASONS

#### AS TO POINT NO. 1 TO 3 :-

11. All points are interconnected to each other, therefore, they are required to be taken up together. In order to seek interim injunction, plaintiff must show that he has prima facie case and balance of convenience in his favour. In addition to this, plaintiff must further show what hardship would be caused to him if injunction is not granted.

12. Before considering prayer of plaintiff, the settled position of law on this point, needs to be mentioned herein. The cardinal principles for grant of temporary injunction are spelt out by the Hon'ble Apex Court in landmark judgment of **Dalpat Kumar vs. Pralhad Singh [(1992) 1 SCC 719]**, wherein it has held that-

*“It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court’s interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial;*

*and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it”.*

13. It is pertinent to note here that the party is not entitled to an order of injunction as a matter of right. The Hon’ble Apex Court in the case of **Shiv Kumar Chadha Etc. Etc. vs. Municipal Corporation of Delhi [1993 SCC (3) 161]** reiterated the said dictum and held that;

*“It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit”.*

14. On the aforesaid legal position, the case of both parties is required to be considered. It is the contention of the plaintiffs that the order dated 15/01/2019 passed by defendant No.1 is illegal and contrary to the principles of natural justice, as they were not afforded any opportunity of being heard. On the other hand, defendant No.2 has contended that the plaintiffs had participated in the proceedings and were fully aware of the order passed by the Tahasildar.

15. Upon consideration of the rival submissions advanced on behalf of both sides and upon perusal of the documents on record, particularly the 7/12 extract of the suit property, it appears that plaintiff Nos.1 and 2 are the owners and in possession of the suit properties. It is further evident from the plot report that both the survey numbers, i.e., 114/1 and 114/2, are not bifurcated in the revenue map.

16. It is significant to note that the present plaintiffs were not parties to the proceedings held before the Tahasildar, as is evident from the order dated 15/01/2019. Thus, it is apparent that the said order cannot be made binding upon the present plaintiffs, who were not parties to the said proceedings.

17. Further, it is revealed that the order passed by the Tahasildar does not specify the length and width of the road. Apparently, the said order is ambiguous and lacks certainty.

18. It is also to be noted that the spot inspection report cannot be relied upon, inasmuch as the present plaintiffs were not parties to the proceedings conducted before the Tahasildar.

19. In view of the aforesaid discussion, I hold that the order dated 15/01/2019 passed by the Tahasildar is in violation of the principles of natural justice, as the same was passed behind the back of the present plaintiffs. Consequently, I am inclined to hold that the plaintiffs have established a prima facie case and that the balance of convenience lies in their favour at this stage. Therefore, in my considered opinion, the interest of the plaintiffs deserves to be protected by restraining the defendants from acting upon the said order dated 15/01/2019, and further restraining them from obstructing the possession of the plaintiffs over the suit property until the final disposal of the suit. If interim injunction is not granted, the plaintiffs would suffer irreparable loss and injury which cannot be adequately compensated in terms of money. Hence, I answer Point Nos.1 to 3 in the affirmative and in favour of the plaintiffs.

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

20. In view of the findings recorded on Point Nos.1 to 3, the present application deserves to be allowed. Hence, I proceed to pass the following

order:

**ORDER**

- 1] The application is hereby allowed.
- 2] The defendants, their agents, servants, or any person claiming through or under them, are hereby restrained from implementing the order dated 15/01/2019 passed in proceedings bearing No. M.R.C. 81/2016-2017, until the final disposal of the suit.
- 3] The defendants, their agents, servants, or any person claiming through or under them, are hereby further restrained from obstructing the possession of the plaintiffs over the suit property, as described in the plaint, until the final disposal of the suit.
- 4] Costs shall be in the cause.

Nagpur.  
Dated : 7/04/2026

(S. M. Sarode)  
Civil Judge Senior Division,  
Ramtek.

**CERTIFICATE**

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

Name of Stenographer :

R. J. Khobragade, Stenographer  
(Grade II)