

MHOS120000672024



Received on : 17.01.2024

Registered on : 18.01.2024

Decided on : 10.08.2026

Duration : Ys. : Ms. : Ds.

02 : 06 : 23

**IN THE COURT OF JT. CIVIL JUDGE SENIOR DIVISION,
BHOOM, TALUKA – BHOOM, DISTRICT – OSMANABAD**

(Presiding Officer – R. D. Dange)

CNRNOMHOS120000672024**R.C.S. No. 36-2024****Exhibit- 51**

1. Lahu Dina Ware,
Age – 49 years, Occu. – Agri.
R/o – Chincholi, Taluka – Bhoom
District – Dharashiv.
2. Ramesh Dina Ware,
Age-53 years, Occu.-Agri.
R/o As above.
3. Dattatray Soma Ware,
Age-49 years, Occu.-Agri.
R/o As above.
4. Baban Soma Ware,
Age-54 years, Occu.-Agri.
R/o As above.

Plaintiffs

Vs.

1. The Tahasildar,
Tahasil Office, Bhoom, Tq. Bhoom,
Dist. Dharashiv.
2. Kuldip Changdeo Shinde (Ware),
Age-40 years, Occu- Agri.
R/o Chincholi Tq. Bhoom, Dist.Dharashiv.
3. Vasudeo Pandharinath Ware,
Age-45 years, Occu- Agri.
R/o As above.
4. Avinash Rama Ware,
Age-52 years, Occu- Agri.
R/o As above.
5. Shivaji Rama Ware,
Age-48 years, Occu- Agri.
R/o As above.
6. Rajendra Hanumant Ware,
Age-38 years, Occu- Agri.
R/o As above.
7. Sunil Dashrath Ware,
Age-46 years, Occu- Agri.
R/o As above.
8. Annasaheb Ashruba Salunkhe,
Age-42 years, Occu- Agri.
R/o As above.
9. Dnyanoba Ankush Salunkhe,

- Age-47 years, Occu- Agri.
R/o As above.
10. Sunita Bapurao Ware,
Age-40 years, Occu- Agri.
R/o As above.
11. Ashok Chandrabhan Ware,
Age-39 years, Occu- Agri.
R/o As above.
12. Shivaji Baburao Ware,
Age-48 years, Occu- Agri.
R/o As above.
13. Ladabai Dadasaheb Ware,
Age-37 years, Occu- Agri.
R/o As above.
14. Bharat Baburao Ware,
Age-45 years, Occu- Agri.
R/o As above.
15. Arun Kisan Ware,
Age-55 years, Occu- Agri.
R/o As above.
16. Khanderao Kisan Ware,
Age-45 years, Occu- Agri.
R/o As above.
17. Kiran Suresh Ware,
Age-40 years, Occu- Agri.
R/o As above.
18. Dipak Suresh Ware,
Age-37 years, Occu- Agri.

R/o As above.

19. Chandrakant Babasaheb Ware,
Age-48 years, Occu- Agri.

R/o As above.

20. Shashikant Babasaheb Ware,
Age-45 years, Occu- Agri.

R/o As above.

21. Ishwar Rama Ware,
Age-72 years, Occu- Agri.

R/o As above.

22. Maruti Rama Ware,
Age-68 years , Occu- Agri.

R/o As above.

23. Yogesh Bharat Ware,
Age-35 years, Occu- Agri.

R/o As above.

Defendants

Suit for Perpetual Injunction.

For plaintiffs - **Adv. C. B. Dambare.**

For Defendants - **Adv. P. D. Khsirsagar.**

J U D G M E N T

(Delivered on 10-08-2026)

Nature of Suit:

1. This is suit for perpetual injunction.

Suit Property:

2. Description of suit property

Sy. No.61 Adm.02H:17R bounded as follows –

Eastern side – Field road (*wani wat*).

Western side – Bhoom to Ieet Road.

Southern side – Land of Sunil Choudhari, Dhananjay Choudhari,
Kumbhar and others.

Northern side – Land Sy. No.59 of Trimbak Khandagale.

(Hereinafter referred to as the ‘Suit property’)

Brief contentions in the plaint:

3. Plaintiff No.1 to 4 belongs to one family. They are owner and possessor of the suit property. The suit property is ancestral property of them. Defendants have no concerned with the suit property. They reside out of station to earn their livelihood. By taking disadvantage of this fact, defendant No. 2 to 23 have started to use the suit property to carry cattle, tractor and agricultural equipments behind back of plaintiffs. They are causing loss to the plaintiffs by use of suit property. Defendant No. 2 to 23 had made an application with defendant No.1 for making free the way. It was allowed. Defendant No.1 had pleased to order to make free the way from bandh of suit property and land Sy. No.62. Actually there was no road in existence between bandh of suit property and land Gat No.62. Plaintiff's requested defendants not to carry the vehicles from the suit property. However, defendants did not honour their request. Defendant No.1 has granted status quo regarding right of way available from bandh of suit property and land Gat No.59. There was no public way available from bandh of suit property and land Sy. No.59. Defendants have ancestral way i.e. waniwat to reach their field. However, they are not using the same. On

30.12.2023, defendant No.2 to 23 made new way from suit land and caused loss to the plaintiffs. Hence, this suit.

Stand of Defendants:

4. Defendant No.1 did not appear despite service of summons on him. So, the suit has been proceeded ex-parte against him. Defendant No.2 to 23 have filed their written statement upon Exh.31. They have contended that, plaintiffs have not arrayed other land owners from land Sy. No.61 and 59 in the suit. They have asserted that suit is bad for non-joinder of necessary parties. They have been granted right of way by the defendant No.1 under Section 143 of Maharashtra Land Revenue Code between bandh of land Gat No.61 & 59. So, the suit is not tenable in the eyes of law. They will face grate loss if the injunction is granted against them. They have denied ownership of plaintiff over the suit property. Defendant No.1 has also ordered to make free the way situated on the bandh between Gat No.69 & 70. Plaintiffs have challenged said order by way of revision before Sub-divisional Officer, Bhoom and it is pending. They have made an application with defendant No.1 to correct the technical error in his order dated 22.10.2023. They have lastly prayed to dismiss the suit with compensatory costs of Rs. 10,000/-.

Argument:

5. Heard argument of Shri. C. B. Dambare advocate for plaintiffs. He has argued on the line of contentions in the plaint. He has argued that, defendant No.1 has granted right of way over bandh between Gat No.61 & 62. He has also submitted that defendants are not using the bandh but are using the suit field to approach their land. He also canvassed submission that, there are only four owner in land Gat No.61 and they all have filed the suit. He has also made submission that, defendants did not

lead any evidence. He has prayed decree the suit. No argument was advanced by advocate for defendants.

Issues and findings:

6. My learned predecessor has framed issues at Exh.34 by perusing rival contention of both parties. I have framed additional issues also. I reproduce here the same and record my findings thereon for the reasons mentioned below therein:

Issue No.	Issues	Findings
1	Whether plaintiffs prove their settled possession over the suit property ?	Yes.
2	Whether plaintiffs prove that defendants obstructed their peaceful possession over the suit property ?	Yes.
2/A	Whether the defendants prove that the Tahasildar, Bhoom has granted right of way to them from boundary of suit land and land Gat No.59 to approach their field?	Yes.
3	Whether suit is barred bad for non-joinder of necessary parties ?	No.
4	Whether suit is maintainable ?	Yes.
5	Whether plaintiffs are entitled for relief of perpetual injunction against defendants as prayed?	Yes.
6	Whether defendant No.2 to 23 are entitled for compensatory cost from plaintiffs as prayed?	No.
7.	What order and decree?	Suit is decreed with the cost.

Reasons

7. Plaintiffs have examined himself at Exh.34 by filing his affidavit of examination in chief. He has also examined witness by name Trimbak as PW-2 at Exh.38 by filing his affidavit of examination in chief. They have closed their evidence vide pursis at Exh.40. They have relied upon following documents to support their contentions in the plaint:

Sr. No.	Exhibit Number	Description of document	The Witness who proved or attested the document.
1	Exh.43	Certified copy of 7/12 extract of land Gat No.61	Public document proved by PW-1
2.	Exh.44	Certified copy of letter of Tahasildar dt 28.12.2023	Public document proved by PW-1
3.	Exh.45	Certified copy of report prepared by Circle Officer and submitted to Tahasildar, Bhoom.	Public document proved by PW-1
4.	Exh.46	Certified copy of Toch map of Gat No.61	Public document proved by PW-1
5.	Exh.49	Certified copy of order of Tahasildar in proceeding No.2023/Jama-2-Kavi-298 dated 06.10.2023.	Public document Proved by PW-1

As to Issue No.1 :

8. PW-1 has reiterated all the contention of the plaint in his affidavit of examination in chief. He has affirmed that, suit property

belongs to all plaintiffs and it is their ancestral property. He has given evidence that, they are the owner and possessor of the suit property. PW-2 has given evidence that, he knows plaintiff and defendants of this suit. He has asserted that, he is adjacent land owner of suit property. It his evidence that, plaintiff are owner and possessor of the suit property and it is their ancestral land. Evidence of PW-1 & 2 have remained unchallenged for the want of cross-examination on the part of defendants. Evidence of PW-1 that, he and other plaintiffs are owner and possessor of the suit property is corroborated by 7/12 extract (Exh.43) and evidence of PW-2. The entries in cultivation column shows that crop of Soyabeen was sown in the suit property in the year 2023-24. Name of plaintiffs are appearing in the 7/12 extract as a cultivator of the suit property. Entries in 7/12 extract have presumptive value unless rebutted.

9. From unchallenged evidence of PW-1 & 2 coupled with the documentary evidence, it is proved that, plaintiffs are in settled possession of the suit property. Therefore, I find that, plaintiffs have proved issue No.1 So, I answer the same as “Yes.”

As to Issue No.2 & 2/A:

10. PW-1 has given evidence that, defendant No.2 to 23 have started to make the use of suit property to approach their lands and have caused loss to the extent of 10 to 15 R of the suit property. It is his evidence that, defendant No.1 has granted right of way to defendant No.2 to 23 to approach their land. He says that, there is no way in existence in between bandh of land Gat No.61 & 62. According to him, defendant No.1 subsequently has granted status-quo to allow defendant No.2 to 23 to make the use of way bandh between Gat No.61 & 59. It is his evidence that there was no such way in existence in between land Gat No.61 & 59. He has

affirmed that, defendants have ancestral way by name Wani vat to approach their field. PW-2 has given evidence on the line of PW-1.

11. Evidence of PW-1 and 2 have remained unshaken. Defendants have come with the defence that, defendant No.1 as per his last corrected order under Section 143 of Maharashtra Land Revenue Code has granted right of way from bandh between land Gat No.61 & 59 to them. They have right to use the said way to approach their field. It is not in dispute that defendant No.1 has granted right of way to defendant No.2 to 23 to make the use of way situated in between land Gat No.61 & 62 and had prevented present plaintiffs from causing obstruction to the defendants from using the said way. It is also not in dispute that, he had also directed to make free the way situated on land Gat No.69 & 70. Said fact gets corroboration from the certified copy of order (Exh.49) passed by defendant No.1. It is evident from copy of order Exh.44 passed by defendant No.1 that he had granted status-quo against plaintiff not to cause any obstruction to defendant No.2 to 23 from using the way situated on bandh between land Gat No.61 & 59.

12. It transpires from certified copy of order Exh.49 that the right of way was granted over the bandh between land Sy. No.61 & 62. It further appears that, way situated on bandh between land Gat No.69 & 70 was ordered to be made free. The right of way was not granted over the suit land. Even from the corrected order (Exh.49) of defendant no. 1 it emerges that, the right of way was granted over the bandh between land Gat No. 61 & 59.

13. It is evidence of PW-1 & 2 that, defendant No.2 to 23 have started using the cultivable suit land adjoining the bandh to approach their field. It becomes clear that, defendant No.2 to 23 have started to make use of a route different from the one granted by defendant No.1.

14. Considering the aforesaid discussion I am of the considered opinion that plaintiffs have proved that defendant no. 2 to 23 have obstructed their peaceful possession over the suit property. Defendant No.2 to 23 have also proved that defendant No.1 has granted of right of way to them from bandh between suit land and land Gat no.59 to approach their field. So, I answer issue No.2 and 2/A as “Yes”.

As to Issue No.3:

15. Defendant No. 2 to 23 have come with defence that, plaintiffs have not added other land owner of Sy. No.61 and 59 as a party defendant to the suit. They have further taken a stance that suit is bad for non-joinder of necessary parties. None of the defendants have entered into witness box and led evidence to support their defence stand. From 7/12 extract of suit property Exh.43, it reflect that there are only 4 owners of land Gat No.61.They all have filed the suit. It is not the case of plaintiffs that, the land owners from Gat No.59 obstructed their possession over the suit property. Present suit is for perpetual injunction. Necessary party is a party whose presence in the suit is necessary for complete and effectual adjudication of dispute between the parties. Plaintiffs have come with the case that, it is the defendant No.2 to 23 who have illegally started to make the use of suit land to approach their field and as such has filed suit against them. Considering the nature of the suit and contentions in it, it appears that the suit is not bad for non-joinder of necessary parties. As such, I answer issue No.3 as “No.”

As to Issue No.4:

16. In present suit plaintiff has contended that, the right of way granted by defendant No.1 is wrong one. They have also come with case that, defendant No.2 to 23 have started to make the use of suit land in contravention of the order (Exh.49 & 45) passed by defendant No.1. As

per section 143 (1) of Maharashtra Land Revenue Code, Tahasildar is empowered to decide the claims regarding right of way over the boundaries of other survey number, having regard to reasonable access required by the cultivators. Section 143(4) of the M.L.R.C. provides that any person aggrieved by the Tahasildar's decision may within one year from the date of the decision, institute civil suit to have it set-aside or modified. So, it becomes clear that person aggrieved by the order of Tahasildar passed under Section 143(1) of M.L.R.C. can approach the Civil Court. The order (Exh.49) appears to be passed on 06.10.2023 and present suit is filed on 16.01.2024 i.e. within one year of the limitation. It is also evidence of PW-1 that defendant No.2 to 23 are not using the way granted by defendant No.1 from bandh between suit property and are using the same through suit land. It is also his evidence that, defendants are making use of different route than granted by the defendant No.1. Considering this aspect, the suit appears to be maintainable. So, I answer issue No.4 as "Yes."

As to Issue No.5:

17. Plaintiffs have established that they are in settled possession over the suit property. They have also established that defendants are making use of different route than granted by defendant No.1. They have proved that defendant no. 2 to 23 are passing through the suit land and causing loss to them. Defendant No.2 to 23 have no right to pass through the suit land to approach their field. So, plaintiffs have right to protect the the suit property from loss at the hands of defendant No. 2 to 23. Plaintiffs have not challenged the order passed by defendant no.1 in present suit. Resultantly, plaintiffs are entitled for perpetual injunction against defendants as prayed only to the extent of suit land and not regarding the bundh situated in between suit land and land gat no. 59. So, I answer issue No.5 as "Yes".

As to Issue No.6:

18. Defendant No.2 to 23 have claimed compensatory costs of Rs. 10,000/- from plaintiffs for filing false and vexatious claims against them. None of the defendants graced the witness box to support their stand. On the contrary from the evidence led by plaintiffs, their claim appears to be true and genuine. Therefore, defendants are not entitled for compensatory cost as prayed. Therefore, I answer issue No.6 as “No”.

As to Issue No.7:

19. In view of finding recorded against issue No.1 to 6 suit deserves to be decreed with costs. In the result I pass following order:

Order

1. The suit is decreed with the costs.
2. Defendants are perpetually restrained from carrying any vehicles, bullock cart and passing through the suit property by making new way in it except the way granted by the defendant No.1 by order Exh.44 and causing obstruction and interference in the peaceful possession of the plaintiff over the suit land Sy. No.61 ad-measuring 02H:17R R situated at village Chincholi, Tq. Bhoom, Dist. Osmanabad.
3. Decree be drawn up accordingly.
(Dectated and pronounced in open Court)

Date – 10.08.2026

Place – Bhoom.

(R. D. Dange)

Jt. Civil Judge Senior Division, Bhoom.

CERTIFICATE

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

Name of Stenographer	---	Mr. Sayyad R.M., Stenographer G-II
Court	---	Mr. R.D. Dange Jt. Civil Judge, Senior Division, Bhoom, District - Osmanabad.
Date	---	10/08/2026
Order signed by the Presiding Officer on	---	10/08/2026
Order uploaded on	---	11/08/2026