



Bhagwan Ganpat Shinde

Vs.

Krushu Utpann Bajar Samiti Manchar

Tarfe Chairman Nilesh Vilas Thorat

### ORDER BELOW EXH. 5

The plaintiffs have filed the present application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 to restrain defendants from taking the possession of property by the order of Tahsidar and Circle officer in BND case 31/2022 and inward No.250/205 respectively which is in the possession of plaintiffs and stay that proceeding till final decision of the suit.

#### **Case of plaintiffs in short is as follows :**

2. The present suit is instituted for permanent injunction. The subject-matter of the suit is land bearing Block Nos. 132 and 124 admeasuring 02 H 30 R and 03 H 05 R respectively situated at Taleghar, Tal. Ambegaon and Dist. Pune boundaries and description specifically described in the Para. No.1 A and B of the plaint. ("Suit Property 1A/1B".)

3. He further submitted that the suit property 1 A is the ancestral property of plaintiffs and defendant Nos.3 to 12 and it is in their possession. Defendants do not have any relation with the suit property 1 A. The plaintiffs have constructed a hotel on suit property 1 A and it is having village property No. 453. The suit property 1 B is of Krushi Utpanna Bajar Samiti Machar and defendant No. 1 is chairperson and defendant No. 2 is secretary of it. Both properties are adjacent to each other. Suit property 1 B is a wasteland and not in use. Therefore defendants don't know the actual boundaries of it. Hence they are obstructing the plaintiffs by any reason.

4. Recently defendant No.2 measured the suit property 1 B by मोजणी रजिष्टर नं.३७३/२०२२. They showed with the help of measurement officers that the plaintiffs have encroached from the south side of suit property 1 A. While measuring the land they have not sent a notice to plaintiffs, though he is the owner of adjacent land. They measured the land incorrectly in absence of plaintiffs. Therefore plaintiffs have filed complaint regarding the same. Afterwards the defendant No.2 has filed a BND application No. 31/2022 before the Tahasildar under section 138 of Maharashtra Land Revenue Code. The application is decided on 28/05/2025 by influencing the officers. There was no legal proceeding followed while deciding that application. Defendant Nos. 1 and 2 with the help of a Circle officer trying to take the possession of south side of suit property 1 A before expiry of 60 days appeal period. No action can be taken until the map is proven. The said proceeding of taking encroached land is illegal and not binding on plaintiffs. Hence plaintiffs have filed this suit for permanent injunction.

5. For the decision of suit, a lot of time is required. So till the decision of suit, defendant Nos.1 and 2 will take possession from the circle officer on the basis of the decision of Tahsidar in BND application No.31/2022 then the subject matter of the suit will frustrate and plaintiffs will suffer irreparable loss. The plaintiffs have a prima facie case. Hence they prayed to grant the temporary injunction till the decision of suit.

6. Defendant Nos.1 and 2 (“defendants”) filed their say and strongly objected to the application. The Ld. Adv. for defendants submitted that the prayer of temporary injunction is not maintainable. The suit is barred by non-joinder of necessary parties. On 10/03/2022 in the government measurement it is shown that the plaintiffs have encroached upon suit property. The BND application No. 31/2022 filed by defendants was allowed by Tahasildar and by

that decision possession of encroached land be given to plaintiffs this order is passed. Therefore plaintiffs cannot file the present application.

7. Plaintiffs and other co-owners are the owners of suit property 1 A. The partition of said property did not take place till date. The suit property 1 B is of defendants and it is adjacent to suit property 1 A from the north side. The name of defendants was recorded on the 7/12 extract of said property. The plaintiffs are trying to encroach on the suit property 1 B by taking advantage of defendants is a co-operative body. Therefore on 21/12/2021 defendants filed an application for measurement of suit property 1 B. On 18/02/2022 D.S.L.R completed the work of measurement of block No.124 as per मोजणी रजिष्टर नं.३७३/२०२२ by giving notice to the adjacent land holders i.e plaintiffs and other defendants. On 12/06/2022 the boundaries were fixed and the map of said property was prepared and given to the defendants. On perusal of said map it appears that the plaintiffs have encroached from south side admeasuring 31 R upon the property of defendants.

8. The plaintiffs have never given the possession of encroached property. Therefore defendants filed the BND application No. 31/2022 towards Tahsildar for recovery of possession of encroached property. The Tahsildar followed the whole proceeding and on 28/05/2025 gave the decision. By this decision he gave the order to remove the encroachment of 31 R from the south side of suit property 1 B. On 13/06/2025 as per the direction of Tahsildar, the circle officer gave the notice of taking possession of encroached property to the plaintiffs. The plaintiffs did not have any relation with the suit property 1 B. They have illegally encroached upon it. In the said BND case the plaintiffs were present and they have filed their say. They were aware of the क प्रत of the measurement map. Still they have not filed any appeal against the said measurement towards S.L.R.

9. The defendants are the chairman and secretary of the Krushi Utappan Bajar Samiti. To remove the encroachment made by the plaintiffs is very important from the point of view of farmers. The suit property 1 B is the name of defendants and the name of it is recorded on 7/12 extract. The decision of Tahsildar shows that plaintiffs have made encroachment. Therefore defendants have prima facie case. If the application is allowed then defendants will suffer irreparable loss. Hence they prayed to reject the application.

10. Heard the learned advocate for the plaintiffs Shri. N. R. Nighot. He submitted that the suit property 1 A is of plaintiffs and suit property 1 B is of defendants. Both are adjacent land holders. Defendants have measured the suit property 1 B. The measurement carried out is incorrect. It is shown that the plaintiffs have made encroachment from the south side admeasuring 31 R. Therefore defendants have filed BND application 31/2022. On 28/05/2025 the Tahsildar allowed the said application and on 13/06/2025 circle office started the proceeding of giving possession of encroached property. To file an appeal there was a 60 days limit but they before expiring the said limit started the proceeding of giving possession.

11. According to section 138(4) of Maharashtra Land Revenue Code plaintiffs have the right to file a suit in civil court. Until the measurement is proven in the court it will not be accurate or proper. According to section 83 of Indian Evidence Act 1860 the maps or plans made for the purposes of any cause must be proved to be accurate. Therefore the measurement map made in this case must be proved to be accurate. He submitted the remaining as per application. In support of his contention he has filed following citations.

- 1) *Rajani Madhukar Rankhambe and Ors. Vs. Muktabai Ramchandra Pund and Ors. (Writ Petition No.1757 of 2016, Bombay High Court)*

- 2) *Shamrao Dattu Patil and Anr. Vs. State of Maharashtra (Writ Petition No.1353 of 2022, Bombay High Court)*
- 3) *Rambhau Ganapati nagpure Vs. Ganesh Nathuji Warbe and Ors. (2019 ALL SCR (Online) 856)*

12. He further submitted that the plaintiffs have a prima-facie case. The possession of plaintiffs should be protected otherwise the purpose of suit will frustrate. If the application is not allowed then the plaintiffs will suffer irreparable loss. The balance of convenience tilts in favour of the plaintiffs. Therefore, he prayed to allow the application.

13. Heard the learned advocate for the defendants Shri. S. D. Arvikar. He submitted that the suit is barred of non-joinder of necessary party. Plaintiffs have not submitted the map of block No. 132. The said block is not partitioned yet. The location of village panchayat property is not mentioned. The procedure of measurement was completed on 10/03/2022. Since then plaintiffs have not filed any appeal and they have not measured both blocks jointly. If the measurement procedure was incorrect or not proper then plaintiffs have not filed any complaint regarding that. The plaintiffs have no title to file the present suit. The plaintiffs cannot claim that the defendants should not take the possession of encroached land. The circle officer is given possession of encroached land by following legal procedure. During the proceedings of BND application, the chief and cross examination of land surveyor was conducted and the same was mentioned in the decision also. Hence the map needs not to be proved to be accurate again, on the contrary there is presumption under section 83 of Indian Evidence Act 1860 regarding the same. Therefore the prima facie case is with the defendants. If the injunction is granted in favour of plaintiffs the defendants will suffer irreparable loss. Hence he prayed to reject the application.

14. I consider the following points for determination and record findings thereon with reasons mentioned as under : -

Sr. No.	Points	Findings
1.	Whether the plaintiffs have made out prima-facie case to grant temporary injunction ?	No
2.	Whether the plaintiffs prove that balance of convenience lies in his favor ?	No
3.	Whether the plaintiffs prove that they will suffer irreparable loss if temporary injunction is not granted ?	No
4.	What order ?	Application is rejected.

### REASONS

15. In support of averments, the plaintiffs have produced following documents:

- Digital copy of 7/12 extract of block Nos. 132 and 124
- Original copy of assessment list of village property No.00/011/453.
- Verified copy of measurement map of Block No.124.
- Verified copy of decision of Tahsildar in BND application No.31/2022.
- Original copy of notice given by circle officer regarding the giving possession.

16. Defendants have not filed any documents in support of their averments.

**AS TO POINT NOS. 1 TO 3 :-**

17. Point Nos. 1 to 3 are interlinked to each other. Therefore, they are discussed together to avoid repetitions.

18. The plaintiffs have filed present application under Order XXXIX Rule 1 of the Code which provides as follows:

Cases in which temporary injunction may be granted -

Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

19. It is well settled that the Court is required to consider three ingredients while deciding an application of temporary injunction namely the existence of prima-facie case, irreparable loss and balance of convenience. There are well settled rules which govern the exercise of power of granting

temporary injunction. It is, therefore, obvious that the power under rules 1 and 2 of order XXXIX of the Code cannot be mechanically exercised unless the existence of three ingredients are established.

20. Perused the pleadings, documents filed on record and citations.

21. ***Rajani Madhukar Rankhambe and Ors.*** the facts of this citation is different from present suit. This citations speaks about the limitation and in the present case there is no question of limitation. Therefore, with due respect this citation is not squarely applicable to the present application.

22. ***Shamrao Dattu Patil and Anr. and Rambhau Ganapati Nagpure*** these citations speaks about the maintainability of the suit under section 138 of Maharashtra Land Revenue Code. Perused the ratio of these citations and section 138 (4) of Maharashtra Land Revenue Code. This section is very much clear about where any person has been ejected or is about to be ejected from any lands under the provisions of sub section 2, he may within a period of one year from the date of ejectment or the settlement of the boundaries, institutes a civil suit to establish his title thereto. Therefore, the present suit is maintainable.

23. It is an admitted fact that the block No. 132 and 124 are in the name of plaintiffs and defendants respectively. Also both of them are adjacent land holders. According to plaintiffs, defendants made an application for the measurement of block No. 124. On 10/03/2022 the procedure of measurement was completed. The measurement map shows that the plaintiffs encroached upon suit property 1 B from the south side admeasuring 31 R. Therefore defendants filed BND application towards Tahsildar and said application was allowed. The circle officer issued the notice to plaintiffs for taking possession of said land. Perused the original copy of notice given by the circle officer regarding the giving possession. It appears that the notice was

issued to the south side's adjacent land holder of block No. 124. The क प्रत of measurement map of block No. 124 is on record. On perusal of said notice and क प्रत of measurement map it prima facie appears that procedure of measurement carried out by D.S.L.R is as per law.

24. In the decision of Tahsildar it is mentioned that, in the said proceeding the plaintiffs appeared and filed their say. Also the chief and cross examination of land surveyor is conducted. On perusal of said decision it prima facie appears that there is no illegality. Prima facie it appears that he has followed the principle of natural justice. Therefore the order passed by Tahsildar appears to be prima facie valid.

25. In the present suit, there is a dispute relating to an area and boundary marks between the plaintiffs and defendants who are adjacent land holders. Therefore, the actual area of the suit property in possession of the plaintiffs appears to be in dispute. Unless and until those boundaries of the suit property of the plaintiffs and defendants get fixed, it would be uncertain to observe at this stage that defendants are dispossessing peaceful possession of the plaintiffs over the suit property. Also Therefore, without fixation of boundaries between the suit property 1A and 1B blanket injunction can not be granted in favour of the plaintiffs.

26. Plaintiffs are indirectly praying main relief in the present application. For the main prayer of the plaintiffs there needs proper adjudication of the matter. It can be decided after adducing evidence. At this interim stage we cannot decide this by mere contention. After going through the entire record, apart from bare words of the plaintiffs, there is no documentary evidence on record to show prima-facie that the procedure followed for the measurement and fixation of boundaries and procedure followed while deciding BND case is not proper. Therefore, the plaintiffs have

failed to show that they have a prima-facie case. The plaintiffs have failed to show that the balance of convenience lies in their favour. Further, the plaintiffs failed to prove that, if the application is rejected, it will cause hardship upon the plaintiffs which cannot be compensated in terms of money and no irreparable loss will be caused to them even if the relief of temporary injunction is not granted. Therefore, I answer **point Nos. 1 to 3** in the **negative**.

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

27. Considering the findings of point No. 1 to 3. The application is liable to be rejected. Hence as to point No. 4 the following order is passed.

**ORDER**

1. The application is rejected.
2. No order as to the costs.

Sd/-

Place: Ghodegoan  
Date: 18/08/2025

(Sneha Sunil Pulujkar)  
2nd Joint Civil Judge Junior Division,  
Ghodegoan, Dist. Pune.

**CERTIFICATE**

I affirm that the contents of this PDF file order are same word for word as per original order.

Name of the Court : Smt. Sneha Sunil Pulujkar,  
2nd Jt. C.J.J.D. and J.M.F.C., Pune.

Name of the Steno : J. S. Kaite, Steno Grade - III.

Order date : 18/08/2025

Order signed by P.O. on : 18/08/2025

Order uploaded on : 18/08/2025