



Geetabai Thakaji Thorat

Vs.

Chandrakant Ganpat Thorat

COMMON ORDER BELOW EXH. 5 AND 23 B

The plaintiffs have filed the present application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 to restrain defendants, their agent, servants or any other assignees claiming on behalf of them from causing obstruction by any means to the peaceful possession of the plaintiffs over the suit property mentioned in the para 1 A of plaint till final decision of the suit and to restrain defendants from causing obstruction and alienating the way admeasuring 585 sq. feet mentioned in the para 1 B of plaint.

2. The defendants have filed the counter claim along with temporary injunction application under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 to restrain plaintiffs from causing obstruction by any means to the peaceful possession of the defendants over the suit property mentioned in the para 20 of counter claim and restrain them causing mischief to the crops of defendants.

Case of plaintiffs in short is as follows:

3. The present suit is instituted for declaration as per Section 15 of Indian Easement Act 1882 and permanent injunction. The subject-matter of the suit is village panchayat property No. 222 admeasuring an area 770 sq. feet, village panchayat property No. 223 admeasuring an area 221 sq. feet and pathway adjacent to the block No. 315 admeasuring 585 sq. feet all properties are situated at Lauki, Tal. Ambegaon and Dist. Pune boundaries specifically described in the Para No. 1 A and 1 B of the present application. (“suit property 1A and 1B”)

4. The plaintiff No. 1 obtained the suit property 1 A in the partition. Now plaintiffs are residing there by constructing houses. The suit property 1 A is adjacent to the defendant's block No. 315. There is a pathway admeasuring 8 feet adjacent to the block No. 315 and which is connected to the main village road. The plaintiffs have been using the pathway i.e. suit property 1 B for 50 years. The father of defendants was aware of the same and he never obstructed the same. The defendants also never obstructed the plaintiffs from using the same. The plaintiffs have been using the same since 50 years without any intervention. Now the plaintiffs have the right to way by easement. The plaintiffs do not have any alternative for the way.

5. On 19/08/2024 defendants told the plaintiffs that they want to cultivate the land and from today onwards you should not use the way. If you want to use the way then give us one and half times of your property. Plaintiffs requested them but they did not give heed to them. They cut down the mango trees of plaintiffs. They abused and threatened the plaintiffs. On 20/08/2024 they cut down the fruit trees of plaintiffs and levelled the suit property. They did not obstruct the way as police Patil and other villagers explained to them. On 20/09/2024 with help of some people they tried to encroach upon the suit land and obstructed the way of the plaintiffs. At that time plaintiffs stopped them therefore they lodged false complaint against plaintiffs. On 23/09/2024 police were told to settle down the matter. Despite that, the defendant with the help of JCB levelled the suit property 1 A and obstructed the way of plaintiffs. The plaintiffs have been using the way since 50 years and they established the prescriptive easementary right on it. For the decision of suit lots of time is required. Hence they filed a present application and prayed to allow the application.

6. On the other hand, the defendant filed the reply along with a temporary injunction application. The block No. 315 i.e suit property

mentioned in the para 20 of counter claim and suit property 1 A are adjacent to each other. On the north side of the suit property 1 A there is a 30 feet east-west Canal Road and the said road is used by the plaintiffs and other villagers. On the south side of suit property 1 A there is Thorandale-Kalamb road, which is used by the plaintiffs and other villagers. There was no road present in block No. 315. As per demand of plaintiffs if the road is given to the plaintiffs then defendants will suffer irreparable loss as they have been having onion crops and the vineyard since 7 years. The defendants have spent 8 lakh rupees on the crops. The plaintiffs are having alternative roads from the north as well as south side.

7. There was a partition between the family of plaintiffs. The daughter-in-law of defendant No. 1 closed the road of plaintiffs due to their family dispute. Therefore plaintiffs are claiming roads from the property of defendants. On 10/09/2024 they abused and threatened defendants regarding the same. The defendants have requested them but they did not give heed to them. They used to destroy the crops of defendants, as defendants was keep going to Mumbai regarding their work. On 23/01/2015 plaintiffs threatened the defendants by saying they have filed a suit in court and trying to create a road from the property of plaintiffs. Plaintiffs are harassing the defendants. They failed to prove the prima facie case, on the contrary defendants have prima facie case. If the application is allowed then defendants will suffer irreparable loss as the defendants made huge expenses. Hence they prayed to reject the application of plaintiffs and prayed to allow their application.

8. Heard the learned advocate for the plaintiffs Shri. S. S. Barathe. He submitted as per his application. To support his contention he filed following citation

Mercy Vs. Agnus Maria, E.J. and Anr.

(R.S.A. No.605/2023 High Court of Kerala)

9. Also he contended that the plaintiffs are having a prima-facie case. The balance of convenience is in their favour. They will suffer irreparable loss, if the injunction is not granted. Therefore he prayed for grant of a temporary injunction against the defendants.

10. Heard the learned advocate for the defendant Shri. S. S. Take. He submitted that there is no record of way as easementary right. The plaintiffs have not filed any documentary evidence to support their claim. They do not come up before court with clean hands. They have destroyed the crops of plaintiffs. Remaining he submitted as per his application and reply. He further submitted that the plaintiffs have failed to prove prima facie case, on the contrary defendants have proved prima facie case. Balance of convenience does not lie in the favour of defendants. If the application is allowed then the defendants will suffer irreparable loss. Hence he prayed to reject the application of plaintiffs and allow his application.

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

Sr. No.	Points	Findings
1)	Who has made out a prima-facie case ?	Neither plaintiffs nor defendants
2)	In whose favour the balance of convenience lies ?	Neither plaintiffs nor defendants
3)	Who will suffer irreparable loss if the temporary injunction as sought is not granted ?	Neither plaintiffs nor defendants
4)	What order ?	Both Applications are rejected.

REASONS

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

- Copy of 7/12 extract of Gat No.316, Mauje Loki, Tal. Ambegaon, Dist.Pune.
- Copy of Village Panchayat extract No.222 of house property owned by plaintiff Nos. 2 and 3.
- Copy of Village Panchayat extract No.223 of house property owned by plaintiff Nos.4 and 5.
- Copy of 7/12 extract of Gat No.315, Mauje Loki, Tal. Ambegaon, Dist.Pune.
- Copy of police complaint.
- Copy of police complaint filed by defendant against plaintiff.
- Medical documents of wife of plaintiff namely Popat Thorat.
- Medical documents of daughter of plaintiff namely Popat Thorat.
- Photographs of suit property.
- Affidavit of Ravindra Sudam Thorat.
- Affidavit of Balashiram Sitaram Thorat.
- Copy of hand written map of suit property.

13. In support of averments, defendants have produced following documents:

- Copy of 7/12 extract of Gat No.315 owned by defendant.
- Copy of N.C. filed by defendant No.2 against plaintiff Popat Thorat and Goraksh Thakaji Thorat.
- Xerox copy of hand written map of agriculture property owned by plaintiff and defendant.
- Photographs of suit property taken by Chirag Photography dated 21/01/2025.

AS TO POINT NOS. 1 TO 3:-

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

15. The plaintiffs and defendants have filed present applications 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.

16. 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.

17. Perused the applications, reply thereon, citation and documents filed on record.

18. The present suit is instituted for declaration as per Section 15 of Indian Easement Act 1882 and permanent injunction. It is an admitted fact that the plaintiffs are the owner of block No. 316 and defendants are the owner of block No. 315. According to plaintiffs there was a way i.e. suit property 1 B adjacent to the defendant's block No. 315 and plaintiffs have been using it since 1974. The father of defendants as well as defendants never obstructed them. Now defendants closed that way and obstructed the plaintiffs from using it. To support the contentions of plaintiffs they filed photographs of pathway and suit property 1 A and hand map of suit property. On perusal of record, it is needless to state here that it is the case of the plaintiffs that there was a pathway and they have been using it since 1974. Therefore, the burden lies on the plaintiffs to prima-facie show that there was a pathway and they have been using it since 1974 on their own footing. Mere filing of the photographs and hand map of suit property shall not establish the fact that there was a pathway and they have been using it since 1974. Furthermore, it shall not establish the fact that the defendant are obstructing the peaceful possession of plaintiffs over the suit property 1 A illegally by encroaching upon the said property.

19. Further, the plaintiffs have filed affidavits of third persons. On perusal of the affidavits, it appears that the plaintiffs have been using the pathway for a long time and the defendants are obstructing it by levelling the land and cultivating on the same. However, it is needless to state that said

witnesses are yet to go through the test of cross-examination. Therefore, at this stage, the plaintiffs ought to have filed documentary evidence to show there was a pathway and they have been using it since 1974. However, apart from bare words of the plaintiffs, the plaintiffs have not filed any documentary evidence on record to show that there was a pathway and they have been using it since 1974 and the defendant is causing obstruction over it. At this stage we cannot decide this by bare words, it will be decided after evidence.

20. It is the contention of defendants that there is no pathway exists. The defendants are cultivating their property i.e. block No. 315. The plaintiffs are claiming the pathway from the block No.315 and for that purpose they are destroying the crops also they are causing obstruction to the peaceful possession of defendants over the block No.315. The plaintiffs have alternate way for their usage. To support their claim defendants filed the N. C. R. No. 950/2024 in the Manchar Police Station and photographs of suit property. Mere filing of photographs and N.C. R. prima facie we cannot say that plaintiffs are causing obstruction to the peaceful possession of defendants over the block No. 315.

21. In answer to the contention of defendant that their exist alternate way for the usage of plaintiffs he submitted that availability of alternate pathway is not ground to reject the temporary injunction application. To support this he has filed the citation.

In the case of **Mercy Vs. Agnus Maria, E.J. and Anr.** (**R.S.A. No.605/2023 High Court of Kerala**) the Hon'ble High Court of Kerala held that "availability of alternate pathway with more convenience to the dominant tenement is not the reason to deny easement by prescription, if the essential are pleaded and proved by the plaintiffs."

The facts of above citation are different. Therefore, with due respect the above citation is not applicable to the present case.

22. It is not permissible to grant a blanket injunction when there is dispute regarding the identity of the property and existence of way. Further, I have minutely gone through all documents on record. The plaintiffs as well as defendants have produced nothing on record to prima-facie substantiate their claim. Moreover, the plaintiffs have not specified description of the property of the defendants sufficient to identify it, as they have come with the specific prayer of temporary injunction against the defendants. No blanket injunction can be granted without adjudicating the identity of the property and existence of pathway.

23. The plaintiffs have come before the court for perpetual injunction and declaration as per Section 15 of Indian Easement Act 1882. The plaintiffs are trying to claim the main prayer of suit through this application. The burden lies upon the plaintiffs to show prima-facie that defendants have made obstruction over the pathway and firstly there is a pathway. Also to prove the plaintiffs are obstructing the peaceful possession of defendants over the block No. 315 is on the defendants. The plaintiffs as well as defendants have prima-facie failed to prove the obstruction.

24. After going through the entire record, apart from bare words of the plaintiffs as well as defendants, there is no documentary evidence on record to show prima-facie that defendants and plaintiffs have obstructed the peaceful possession of the plaintiffs and defendants respectively over the suit property. Therefore, the plaintiffs as well as defendants have failed to show that they have a prima-facie case. The plaintiffs as well as defendants have failed to show that the balance of convenience lies in their favour. Further, the plaintiffs as well as defendants failed to prove that, if the application is rejected, it will cause hardship upon the plaintiffs as well as defendants 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:-

25. Considering the findings of point Nos. 1 to 3. Both applications are liable to be rejected. Hence the following order is passed.

ORDER

- 1) The application at Exh.5 and 23 B are rejected.
- 2) Cost in main cause.

Sd/-

Place: Ghodegoan
Date: 10/09/2025

(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 : 10/09/2025

Order signed by P.O. on : 10/09/2025

Order uploaded on : 10/09/2025