

Judgment

[1]

MCA No.5/2024

MHSN040001972024



Presented on : 23-02-2024

Registered on : 23-02-2024

Decided on : 16-07-2026.

Duration : 02 yrs. 04 ms.24 ds.

Exhibit No.36

IN THE COURT OF
DISTRICT JUDGE-2 ISLAMPUR, DISTRICT SANGLI.
Presided Over by R.B.Rote

MISC. CIVIL APPEAL No. - 5/2024

1. Hari Pandurang Lohar
Age: 38 years, Occupation : Agri.
R/o: Takave, Tal. Shirala, Dist. Sangli
2. Govind Pandurang Lohar
Age: 35 years, Occupation : Agri.,
R/o: Takave, Tal. Shirala, Dist. Sangli.

Appellants

VERSUS

1. Jaywant Ganapati Lohar
Age: 55 years, Occupation : Agri.,
2. Bapu Ganapati Lohar
Age: 65 years, Occupation : Agri.,
3. Vasudev Ananda Lohar
Age: 40 years, Occupation : Agri.,
4. Pandurang Ganapati Lohar
Age: 75 years, Occupation : Agri.,
5. Yashwant Ananda Lohar
Age: 35 years, Occupation : Agri.,

Respondents

6. Ramchandra Ganapati Lohar
Age: 60 years, Occupation : Agri.,
All R/o: Takave, Tal. Shirala, Dist. Sangli.

Respondents

Advocate for Appellants: Shri. P. V. Shinde
Advocate for Respondent No.1 : Shri. S.A.Patil
Respondent no.5 and 6 : Exparte

JUDGMENT
(Delivered on 16-07-2026)

1] The appellants have preferred this appeal under Order 43 Rule 1 of C.P.C. being dissatisfied with the order passed in RCS No.183/2023 below Exh.5 passed by Ld. Civil Judge, Jr. Dn., Shirala on dated 20.01.2024, whereby the temporary injunction application filed by plaintiff (respondent no.1) came to be allowed and the appellants (original defendant no.2 and 3) were restrained from making any construction in the suit property B and from changing the nature of suit property B, till disposal of the suit.

(For the sake of convenience, the parties are hereinafter referred as plaintiff and defendants as referred before the Trial Court).

The facts giving rise to the present appeal in short are as under:-

2] According to plaintiff, the property described at Sr.No. 'B' having Grampanchayat property no.527

admeasuring 25 x 30 having house property and open space, admeasuring 69.68 sq.mtrs. (750 sq. fts.) situated in Gat no.162 admeasuring 7 H 17 R , bounded by East- the share of Ramchandra Ganpati, West- open land from the said Gat number, South – Bambavde – Takave road, North – the remaining land in the said Gat number, situated at Mouje Takave, Tq. Shirala, Dist. Sangli is the subject matter of the suit.

3] According to plaintiff, defendant no.1, 4 and 7 are his brothers and defendant no.2, 3,5 and 6 are his nephews. The suit property is the ancestral property of plaintiff and defendants and there is partition between the plaintiff and defendants and suit property A and B has been allotted to the share of plaintiff. The plaintiff is in possession of suit property 'B' since more than 30 years. However the defendant no.1 to 3 are trying to make new construction admeasuring 20 x 17 in the suit property by making encroachment without obtaining permission from Grampanchayat. They have prepared foundation and erected cement pole for the purpose of construction. The plaintiff requested them not to make any construction by making encroachment in the suit property but they did not respond. The plaintiff also approached the Grampanchayat authority and Tantamukti Samitee. The committee members called defendant no. 1 to 3 and instructed them not to make any

illegal construction in the suit property. However the defendant no.1 to 3 did not respond. Therefore the plaintiff has filed the suit for perpetual injunction and claimed the relief of temporary injunction by filing application Exh.5.

4] The defendant no.2, 3, 6 and 7 contested the suit and temporary injunction application by filing their written statement. They denied all the adverse allegations made by the plaintiff. However, they admitted that there was oral partition between plaintiff and defendants and accordingly entries are made in the revenue record. As per the partition the defendant no.1 and his sons got their legal share and they are in possession their share. According to them, the defendant no.2 and 3 are in possession of the suit property described by the plaintiff. Therefore, the plaintiff has no concern with the suit property. The plaintiff has not come with clean hands and suppressed the material facts. The defendant no.2 and 3 are not making any construction in the house property of the plaintiff but they are making repairs of the roof of their cattle shed to protect their cattle from wild animals. The roof of the cattle shed has been damaged therefore they are making repairs of the roof of the cattle shed. The defendant no.2 and 3 are residing in the house situated in the village. Therefore, in order to grab their property, plaintiff has filed the suit against the defendants. The plaintiff is not in possession of the suit property.

Therefore the defendants prayed for rejection of the application.

5] The defendant no.1, the father of defendant no.2 and 3 filed written statement and admitted the description of the suit property. He admits that the suit property A and B has been partitioned and the plaintiff is in possession of the suit property. He also stated that the defendant no.2 and 3 are making construction by making encroachment in suit property B and he had tried to convince them but still they continued the construction without permission of Grampanchayat.

6] The defendant no.4 and 5 have also admitted the suit claim of the plaintiff by filing their written statement. They also contended that the suit property A has been partitioned and the plaintiff is in possession of suit property B and defendant no.2 and 3 are making construction in the suit property illegally.

7] The Ld. Trial Court after hearing Ld. Counsel for the plaintiff and defendants and considering the evidence on record allowed the temporary injunction application and granted temporary injunction against defendant no.2 and 3 restraining them from making any construction in the suit property B and from changing the nature of suit property B, till disposal of the suit.

8] The appellants have challenged the order passed by the Ld. Trial Court on the various grounds mentioned in the appeal memo.

9] Considering the nature of appeal and the rival submissions of both the parties, following points arise for my determination to which I record my findings for the reasons given below-

Sr. No.	Points	Findings
1.	Whether plaintiff has prima facie case in his favour?	In the affirmative
2.	In whose favour the balance of convenience lies?	In favour of plaintiff
3.	Whether plaintiff will suffer irreparable loss if temporary injunction as prayed is not granted?	In the affirmative
4.	Whether the order passed below Exh.5 by the Ld. Trial Court need interference by this Court?	In the negative
5.	What order?	Appeal is dismissed

REASONS

AS TO POINT NO.1 TO 3:-

10] The Ld. Counsel for the appellants has submitted that the plaintiff has not described the suit property properly.

He has not mentioned his share in Gat no.162. The assessment extract of property No.527 shows the constructed area 750 sq.fts. and there is no mention of open land. Therefore, the description of suit property is not correct. The letter issued by the members of Tantamukti Samittee is contradictory and property No.2364 has been mentioned in the letter which is not the suit property. The said letter is not signed by Gramsevak, therefore, the letter is not relevant to decide the encroachment. The plaintiff has produced incomplete photographs. The plaintiff has not produced hand-sketch of the suit property. The shares of plaintiff and defendants are recorded in the 7/12 extract by Anewari. The plaintiff has got recorded the written statement of defendant no.1 in collusion. The defendant no.1 has filed such written statement due to dispute with his sons and the plaintiff has taken disadvantage of the said fact. The defendant no.2 and 3 are making repairs of the cattle shed and the suit property and the cattle shed of the defendants are separate properties. The plaintiff has not measured his property to ascertain encroachment. The permission of Grampanchayat is not required for construction of cattle shed. Even the Grampanchayat can regularize the construction by imposing penalty. The Ld. Trial Court has observed that the possession of plaintiff in suit property B is suspicious. The Ld. Trial Court has not considered the facts of the case and the affidavits of witnesses submitted on behalf of defendant no.2

and 3. It is submitted that if the order passed by the Ld. Trial Court is not set aside, the defendant no.2 and 3 will suffer irreparable loss. Therefore he prayed for setting aside the order passed by Ld. Trial Court.

11] In support of his contention he placed reliance on the decision in **The City and Industrial Vs. Anwar Khan S/o Rahim Khan : DLD (Civil) -2022 – 724** wherein the Hon'ble Bombay High Court has observed that in the matter of removal of encroachment by statutory body courts should be careful in insisting for concrete and reliable proof regarding encroachment. He further relied on the decision in **Shri Navnath Kisanji Gajbhiye Vs. Gangadhar S/o: Bhagwan Gedam, DLD (Civil) -2023 -2132.**

12] Per contra, Ld. Counsel for the respondent no.1 has vehemently supported the order passed by the Ld. Trial Court. It is submitted that the defendant no.2 and 3 are trying to make construction of a permanent shed by making encroachment in suit property B without permission of the Grampanchayat. The said construction is illegal. The defendant no.2 and 3 have admitted in their written statement that the property was partitioned by oral partition and they are in separate possession. However, the defendant no.2 and 3 have filed affidavits of the witnesses stating that there was no partition with four boundaries. The contention

of defendants and the affidavits are contradictory. The defendants have contended that they are making repairs of the roof of shed. However, the photographs clearly shows that the defendants are making new construction. There is no entry in the Grampanchayat record in respect of the existence of shed of defendant no.2 and 3 since 30 years and no any documentary evidence has been produced by defendant no.2 and 3 in that respect. The plaintiff has prima facie proved his right over suit property B. He has made complaint to Tantamukti Samittee and the members of the committee have also reported that the defendant no.2 and 3 are making illegal construction by making encroachment in the share of plaintiff. The Ld. Trial Court has correctly appreciated the evidence on record and granted temporary injunction against defendant no.2 and 3. Therefore, Ld. Counsel for respondent no.1 prayed for dismissal of the appeal.

13] In the light of rival submissions of both the counsels I have gone through the record of the case and the order passed by the Ld. Trial Court. According to plaintiff, the suit property B i.e. Grampanchayat property no.527 and the open land, admeasuring 750 sq.fts. is belonging to the plaintiff. The said property is situated in Gat no.162 and there was oral partition amongst the plaintiff and defendants. The contesting defendant no.2, 3, 6 and 7 have admitted the

fact that there was oral partition between plaintiff and defendants and accordingly their names are recorded in the record of rights. Perusal of the 7/12 extract of Gat no.162 it shows that the name of plaintiff has been recorded to 1 H 35.96 R land and the name of Rambhau, Bapu, defendant no.1 are also recorded separately and the name of Vasudev and others are also recorded separately to the specific area. The name of plaintiff is recorded to property no.527 in the Grampanchayat record.

14] According to plaintiff, the defendant no.2 and 3 are making construction of shed by making encroachment in the share of plaintiff without permission of Grampanchayat. The plaintiff had given complaint to Grampanchayat Takave in respect of the illegal construction by defendant no.2 and 3 and the members of Tantamukti Samittee have reported that they have verified the situation of Gat no.162 and found that there are five equal shares as per the partition and defendant no.2 and 3 are making construction by making encroachment in the share of plaintiff. The letter dated 10.01.2024 submitted by the defendants shows that the Vice President and Police Patil have reported that as there is no written partition in respect of Gat no.162, they cannot report about the properties.

15] It is pertinent to note that the defendant no.1 who

is the father of defendant no.2 and 3 by filing written statement admitted the fact of oral partition and possession of plaintiff in suit property B and also the fact that his sons are making illegal construction by making encroachment in suit property B. So also defendant no.4 and 5 have also admitted the said fact. There is no reason to defendant no.1 who is the father of defendant no.2 and 3 to state that the defendant no.2 and 3 are making construction of shed in the share of the plaintiff. Though the defendant no.2 and 3 have contended that they are only repairing the roof of the old shed, the defendant no.2 and 3 have not produced any documentary evidence to show the existence of old shed and only the repair of the roof. On the other hand, the photographs clearly indicates that the defendant no.2 and 3 are making construction of new shed in the suit property. Though, the defendant no.2 and 3 have admitted oral partition in the written statement, they have filed affidavits of witnesses stating that there is no partition by mentioning four boundaries. Though the defendant no.2 and 3 in their written statement denied the possession and the right of the plaintiff in suit property B and stated that the defendant no.2 and 3 are in possession of suit property B, they have filed affidavits of witnesses stating that the suit property and the property where the defendants are making construction of shed are different properties. Therefore, it prima facie shows that the contentions of defendants in written statement and their

witnesses are not consistent.

16] It appears that defendant no.2 and 3 have not obtained any permission for making the construction. There is nothing on record to show that they had applied for permission to make construction of the shed to the Grampanchayat authority. As per the provisions of Section 52(1) of the Maharashtra Village Panchayat Act, 1959, no person is entitled to erect or re-erect any building within the limits of Grampanchayat without previous permission of the Panchayat. It cannot be said that the defendant no.1 and 2 are only repairing the roof of their shed. If the defendant no.2 and 3 erected the construction of new shed in the suit property, the nature of the suit property will be changed. The plaintiff is claiming that the suit property B is belonging to the plaintiff and the father of defendant no.2 and 3 as well as defendant no.4 and 5 have admitted the contention of the plaintiff. In such circumstances, if the defendant no.2 and 3 made permanent structure in the suit property, the plaintiff will suffer irreparable loss. The defendant no.2 and 3 have not produced any documentary evidence to show that the particular portion has been allotted to their share. Therefore, the plaintiff has shown prima facie case. The balance of convenience lies in favour of the plaintiff. In such circumstances, if the temporary injunction is not granted, the plaintiff would suffer irreparable loss. Therefore, point no.1

to 3 are answered accordingly.

AS TO POINT NO.4:-

17] Perusal of the order passed by the Ld. Trial Court it shows that the Ld. Trial Court has correctly appreciated the evidence on record and correctly allowed the application Exh.5. It is well settled that in case of appeal against discretionary orders, if the trial Court has exercised its discretion correctly, legally and properly, the Appellate Court cannot interfere in the discretionary orders. In this appeal, there are no substantial grounds to interfere or set aside the order passed by the Ld. Trial Court. The authorities relied on by Ld. Counsel for appellants are not applicable to the present facts. Therefore, no interference is warranted, in the order passed by Ld. Trial Court. Hence point no.4 is answered in the negative.

18] In the result, in view of my above findings and observations, the appeal deserves to be dismissed. Hence, I proceed to pass the following order.

ORDER

The appeal is dismissed with cost.

[Judgment pronounced in open Court.]

Date : 16-07-2026.

(R.B.Rote)
District Judge 2 Islampur.

CERTIFICATE

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

Name of the Stenographer	:	S.W.Pathan, Steno, (Grade-I)
Court Name	:	Adhoc District Judge – 1 & Addl. Sessions Judge, Islampur.
Date	:	16/07/2026
Signed by P.O. on	:	16/07/2026
Uploaded on	:	16/07/2026