

MHSO050010792024



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IN THE COURT OF DISTRICT JUDGE - 03, PANDHARPUR
(Presided over by Shri. A. S. Salgar)

Misc. Civil Appeal No. 45 of 2024.

Exh. - 34.

1) Shamrao Tayappa Dhavare,
Age – 60 years, Occu.- Agri.,

2) Laxman Dagadu Dhavare,
Age – 70 years, Occu.- Agri.,

3) Pravin Makaji Dhavare,
Age – 42 years, Occu.- Agri.,

4) Sambhaji Dagadu Dhavare,
Age – 61 years, Occu.- Agri.,

5) Siddheshwar Mahadev Dhavare,
Age – 60 years, Occu.- Agri.,

6) Bharat Mahadev Dhavare,
Age – 41 years, Occu.- Agri.,
R/o. - Kachrewadi, Tal. Mangalvedha,
Dist. Solapur.

Appellants.
(Original plaintiffs)

Versus

1) Shamrao Vithoba Kolekar,
Age – 76 years, Occu.- Agri.

2) Raosaheb Vithoba Kolekar,
Age – 60 years, Occu.- Agri.,

3) Bhausahab Vithoba Kolekar,
Age – 66 years, Occu.- Agri.,

4) Pandurang Vithoba Kolekar,
Age – 51 years, Occu.- Agri.,

5) Makaji Tayappa Kolekar,
Age – 68 years, Occu.- Agri.,
All R/o – Kachrewadi, Tal. Mangalvedha,
Solapur.

--- Respondents.
(Original defendants)

The appeal is filed under order 43 Rule 1 of Code of Civil Procedure.

Appearances -

Shri. M. V. Kasabe Advocate for the Appellants.
Shri. V. R. Deshmukh, Advocate for the Respondents.

J U D G M E N T

(Delivered on 09.06.2026.)

The appellants have preferred this appeal against impugned judgment and order passed by Ld. Civil Judge, Jr. Div., Mangalvedha below Exh. 5 in RCS No. 29/2024 dated 28.06.2024, whereby the Ld. Civil Judge, Jr. Div. rejected application filed by appellants filed for temporary injunction. (The parties in this appeal are described as per their original nomenclature in the suit itself.)

02. The appellants filed RCS No. 29/2024 for the relief of declaration and permanent injunction against the respondents regarding agricultural land bearing Gat No. 78/2, Gat No. 33/1/F to 33/1/E, 33/1/D/3, 33/1/D/2 of village Kachrewadi.

Brief facts of plaintiffs case are as under -

03. The plaintiffs submitted that, they are owner and possessor of suit lands, which are described in para No. 1-A to 1-E of the plaint. The defendants Nos. 1 to 4 submitted one application before Tahsildar, Mangalvedha for grant of road under section 143 of Maharashtra Land Revenue Code, 1966 (MLR). The plaintiff No. 1 filed Regular Civil Suit No. 33/2007 against the defendants for perpetual injunction and said suit was decreed. The appeal filed by the defendants against said judgment was also dismissed. The defendants Nos. 1 to 4 submitted application before Tahsildar, Mangalvedha under sec. 5 of Mamlatdar's Court Act to remove impediment on the road. The Tahsildar without giving any intimation to the appellants prepared spot inspection panchnama. The application submitted by respondents/defendants before Tahsildar is illegal one. Tahsildar, Mangalvedha by exceeding his powers has granted said application. The order passed by Tahsildar in Rasta Case No. 37/2022 dated 20.11.2023 is basically illegal. The defendants on the basis of order passed by Tahsildar are trying to create new road from the suit property. The plaintiff will suffer irreparable loss if road is created from the suit property. Hence, they sought temporary injunction against the defendants.

04. The defendants filed their written statement and say at Exh. 33 and resisted application on the ground that, plaintiffs have not come with clean hands. Plaintiffs have preferred appeal against the order passed by Tahsildar before SDPO, Mangalvedha. Said appeal was

disposed on 18.03.2024. The suit of the plaintiff is not maintainable against the order passed by Ld. Tahsildar. After purchasing land from the original owner defendants constructed a big farm house in his land which is known as Kolekar Wasti. Likewise there is construction of RCC and there is huge cattle shed for as much as 40 cattle. Likewise there is bore well as government hand pump. Defendants also allotted 2 Guntha land to Samaj Mandir of Grampanchayat. In addition to that there is one temple and one dairy near by the wasti of the defendants.

05. The defendants further contended that, the plaintiffs ploughed the road and caused obstruction to defendants from passing the road. The defendants were in need of the said road in order to pass and re pass from the said road and to bring milk and fodder. Therefore, they filed application before Tahsildar, Mangalvedha under Sec. 5 of Mamlatdar's Court Act by raising ground that, the plaintiffs have obstructed the alternate road and they prayed to open the road and sought injunction against the plaintiffs. In that proceeding the plaintiffs appeared and filed his reply. Tahsildar visited the spot as well as made spot inspection and drawn panchnama and Tahsildar allowed the application of defendants. The defendants are not having any alternate road. If temporary injunction is granted against them, then they will suffer irreparable loss, which cannot be compensated in terms of money. Hence, they prayed for dismissal of suit as well as temporary injunction application.

06. The Ld. Trial Court after considering submissions of both the parties and documentary evidence, passed order on Exh. 5 and rejected application filed by plaintiffs for temporary injunction. Being aggrieved and dissatisfied with impugned order passed below Exh. 5 in RCS No. 29/2024 the appellants (original plaintiffs) have preferred this appeal before this Court by raising various grounds. Some of the grounds are as follows.

- i) The order passed by the Ld. CJJD below Exh. 5 is illegal one and it is against natural justice.
- ii) While passing order below Ex. 5 the Ld. Trial Court has not considered the document and evidence produced by the appellants.
- iii) The respondent has not given information to Tahsildar, Mangalvedha in respect of the judgment passed by the Ld. CJJD, Mangalvedha in RCS No. 33/2007. So also the order passed in RCA 73/2012 was not informed to the Ld. Tahsildar. The respondents have concealed both these orders from the Court and with intention to take revenge and for creating the new road from the land of appellants. They obtained the order from Ld. Tahsildar Pandharpur illegally.
- iv) It was necessary on the part of Ld. Trial Court while passing the order below Exh. 5 that the Court commission was conducted in RCS No. 33/2007 and in the Court Commissioner report in last para it is mentioned by the defendants that, there was no road in existence.
- v) The observations and inferences drawn by Ld. Trial Court while passing order below Exh. 5 are totally wrong one.

07. Lastly the appellants prayed that, appeal may be allowed and the impugned order passed by Ld. Trial Court below Exh. 5 in RCS No. 29/2024 be set aside and the respondent Nos. 1 to 4 be restrained from creating road in the suit property on the basis of order passed by Tahsildar dt. 20.11.2023 in Rasta case No. 5/SR/37/22.

08. The respondents appeared before the Court through advocate and they supported the impugned order passed by Ld. Civil Judge, Jr. Div., Mangalvedha.

09. From the rival contention of parties, following points arise for my determination and I have recorded my findings as below.

	POINTS	FINDINGS
01.	Whether the appellants/plaintiffs prove that, there exists prima facie case ?	In the negative.
02.	Whether appellants prove that, the balance of convenience lies in their favour ?	In the negative.
03.	Whether appellants prove that, if the temporary injunction is not passed against the defendants then they will suffer irreparable loss ?	In the negative.
04.	Whether appellants/plaintiffs are entitled for grant of temporary injunction against the respondents ?	In the negative.
05.	Whether impugned order passed by Ld. Trial Court below Exh. 5 in RCS	In the negative.

No. 29/2004 is wrong or erroneous one ?

06. Whether the interference of this Court is required in the impugned order as called for ? In the negative.
07. What order ? As per final order.

REASONS

10. Heard learned advocate Shri. Kasabe for the appellants/plaintiffs and learned advocate Shri. Deshmukh for the respondents/defendants, at length.

As to point Nos. 1 to 6 -

11. All these points are interconnected with each other. Hence, for avoiding repetition of discussion, these points are taken together for discussion. The appellants/plaintiffs filed application for temporary injunction before trial Court and said application was rejected by the Court. Being aggrieved by the said order the appellants/plaintiffs have preferred this miscellaneous appeal before this Court. In exercise of powers of appeal, this Court can interfere in the order of learned trial court only, if it is shown that the order of the Trial court is illegal, perverse or is contrary to the settled principles of grant of injunction.

12. I am conscious of the fact that in order to seek injunction, plaintiffs have to establish a prima facie case and that balance of

convenience is in their favour and that they would suffer irreparable loss, if injunction is refused.

13. It is well settled principle of law that, if Ld. Trial court has properly and correctly used his judicial discretion while deciding interim application at hand, the court of appeal must be very slow while interfering therein and the Appellate court should not substitute his own exercise while doing so. In support of these observations I placed reliance on following rulings -

1] AIR 1967 SC 249 (U.P. Corporation Federation Ltd. Vs Sunder Brothers)

2] AIR 2010 SC 3221 (Skyline Education Institute Ltd. Vs S. L. Vaswani)

3] AIR 2012 SC 1718 (Esha Ekta Apartment CHS Ltd. Vs Municipal Corporation of Mumbai).

14. The proposition of law laid down can be summarized as under, it is well established that where the discretion vested in court has been exercised by Trial Court, the Appellate court should be slow to interfere with the exercise of that discretion. In dealing with matter raised before it at Appellate stage, the Appellate court would normally not be justified in interfering with the exercise of the discretion under appeal on the ground that if it has considered the matter at trial stage, it may have come to a different conclusion. If the discretion has been exercised by trial court with reasonableness in judicial manner, it is not

open to the Appellate court to substitute its own exercise. Let us now proceed with material on record as well as impugned order.

15. In order to decide the application for temporary injunction the court is required to consider prima facie proof in respect of the pleading put forward by both the parties.

16. Admittedly the plaintiffs are the owners of land bearing Gat Nos. 78/2, 33/1/F, 33/1/F, 33/1/E, 33/1/D/3 and 33/1/D/1. The ownership of the plaintiffs over the suit property is not disputed. So also it is admitted fact that, defendants are owners of Gat No. 33/2. It is admitted fact that, defendants purchased land Gat No. 33/2 from original owner Makaji. It is also admitted fact that the defendants filed one application before Tahsildar, Mangalvedha for grant of road under section 143 of Maharashtra Land Revenue Code, 1966 (MLR). It is also admitted fact that, the plaintiffs filed Regular Civil Suit No. 33/2007 before Civil Judge Jr. Div., Mangalvedha for relief of perpetual injunction and after considering the evidence of parties, the Court decreed the suit of the plaintiffs on 30.05.2012 and defendants were restrained from causing obstruction to the possession of plaintiffs over the suit property. It is also admitted fact that, the present defendants preferred appeal bearing RCA No. 73/2012 against the said judgment before District Court, Pandharpur and said appeal was dismissed. It is also admitted fact that, defendants Nos. 1 to 4 filed application before Tahsildar, Mangalvedha under section 5 of The Mamlatdars' Courts Act, 1906 for

removal of impediment on road and for opening the road. Said application of defendants was allowed by Tahsildar, Mangalvedha on 20.11.2023. Being aggrieved by said order of Tahsildar the present appellants/plaintiffs preferred revision application before SDPO, Mangalvedha. However said revision was withdrawn by the appellants. Said revision application was disposed by the SDPO on 18.03.2024.

17. It is contention of the appellants/plaintiffs that, the order passed by the Tahsildar dated 20.11.2023 is illegal and wrong one. On the basis of said order the defendants were trying to create new road from the suit property. If defendants succeeded in their efforts, then plaintiffs will suffer irreparable loss. Hence, they prayed that, the defendants be restrained from creating new road from the suit property with help of JCB machine.

18. On the contrary it is contention of defendants that, the plaintiffs have not come with clean hands. The suit of the plaintiffs is not tenable against the order passed by Tahsildar. The defendants Nos. 1 to 4 for having access to their land have to go from remaining portion of Gat No. 33 and firstly they have to go from western side and then by turning towards northern side, they have to use the Kachrewadi to Dhavare vasti road. According to the defendants, the plaintiffs have made obstruction to them while passing from said road. According to the defendants, the plaintiffs have obstructed the road which was in existence and therefore, they made application for removal of impediment and opening the road.

The defendants are using the approach way for purpose of transportation of milk and fodder.

19. It is seen from the record that the suit filed by plaintiffs i.e. RCS No. 33/2007 was decreed by Ld. C.J.J.D., Mangalvedha and defendants were restraining from causing obstruction to the possession of the plaintiffs over the suit property. In RCS No. 33/2007 the disputed property is towards eastern side of Gat No. 78/2, where the defendants have allegedly claimed the road under section 143 of MLR Code before Tahsildar. Now the defendants are submitting that, the plaintiffs obstructed the road which was in existence towards western side and by turning towards northern side they used Kachrewadi to Dhavare vasti road. Therefore, defendants filed application for removal of impediment on road and for opening road. On perusal of plaint of RCS No. 33/2007 it appears that, the plaintiffs have specifically pleaded that, the defendants Nos. 1 to 4 used to pass from remaining portion of Gat No. 33 towards western side and thereafter they takes turn towards northern side and they used the Kachrewadi to Dhavarevasti road. The point involved in the present matter is whether road was in existence for the defendants for having access to their land bearing Gat No. 33/2 or not. At the outset it is noted that in earlier suit bearing RCS 33/2007 the plaintiffs have admitted that, for having access to their land the defendants used to go through remaining portion of Gat No. 33, firstly towards western side and then by turning towards northern side they used Kachrewadi to Dhavare Vasti road. This pleading of plaintiffs in

earlier suit itself shows that, the road was in existence from Gat No. 33 and thereafter towards northern side.

20. It is seen from the copy of order passed by Tahsildar, Mangalvedha in Rasta Case No. 37/2022 that the application filed by defendants was allowed and the plaintiffs were directed to open the road which was in existence from Gat No. 33/1/E and 33/1/F and from 33/1/D/3. It is seen from record that, the Tahsildar Mangalvedha has made spot inspection and prepared panchnama. The copy of spot inspection report is placed on record. On perusal of order of Tahsildar it reveals that, the Ld. Tahsildar has conducted the spot inspection and prepared the report. It is also seen from record that, notice was issued to the plaintiffs by the Tahsildar before conducting the spot inspection. The spot inspection report dated 20.09.2023 shows that, at the time of inspection both the plaintiffs and defendants were present. Thus, it is clear that in presence of both the parties the Tahsildar has conducted spot inspection and prepared the report. The spot inspection report also shows that plaintiffs have obstructed the road by ploughings the said road. There were also small pits found on the said road. Tahsildar in the said order has observed that defendants (respondents) are having only alternate way to pass to their land from Gat No. 33/1/F, 33/1/E and thereafter from eastern boundary of Gat No. 33/1/D/3 towards northern sides Kachrewadi to Sangola road. Except this road there is no alternate road available to the defendants. The Tahsildar also observed in said order that, since long the road was in existence. Thus, it is crystal clear

that, the Tahsildar has personally conducted spot inspection and saw exact situation at the spot as well as existence of the road. It was also observed by Tahsildar that, the said road was closed by the appellants/plaintiffs. The Tahsildar passed order on 20.11.2023. The appellants/plaintiffs preferred the appeal before SDPO and said appeal was withdrawn by the appellants and accordingly it was disposed on 18.03.2024. Thus, order passed by Tahsildar dated 20.11.2023 was confirmed by SDPO on 18.03.2024. The order passed by Tahsildar is binding upon the plaintiffs. The plaintiffs have suppressed this material facts from the Court. The plaintiffs has not pleaded in the plaint that, they have challenged order of Tahsildar before SDPO and he withdrawn the revision application and said revision was disposed on 18.03.2024. The appellants/plaintiffs have suppressed the facts about the order passed by SDPO, Mangalvedha as well as revision preferred by them. Therefore, the appellants are not entitled to claim injunction against the defendants.

21. In present case the spot inspection report was prepared by the Tahsildar and then order passed by Tahsildar in Rasta Case No. 37/2022 dated 20.11.2023. It was crystal clear that, the road was in existence in order to pass and re pass to the properties of the defendants. The documents on record shows that, the defendants for having access to their land used to go through northern boundary of Gat No. 33/1/F to 33/1/E and they have to go towards western side firstly and then by turning towards northern side they used Kachrewadi to

Sangola road. Except this road there is no other road available to the defendants. The copy of order of Tahsildar shows that, the road was in existence. The plaintiffs have not adduced any evidence on record to show that, the defendants were creating new road from the suit property. The pleading of the plaintiffs in earlier suit itself shows that the plaintiffs himself admitted about the existence of the road and the road was used by the defendants for having access to their land. Admitted facts need not be proved. In view of admission of plaintiffs, it is clear that road was in existence and defendants were using said road. It is also admitted fact that, defendant Nos. 1 to 4 are having residential houses structure and cattle shed, flour mill in their land bearing Gat No. 33/2 and 33/1/F. For access to their land and house there must be road to the defendants. Except the said road defendants are not having any of the road to enter and re enter to their land. It is not the case of plaintiffs that, defendant Nos. 1 to 4 are having alternate road to go to their land. The Tahsildar, Mangalvedha in his order dated 20.11.2023 has observed that, the defendants are using the road from northern boundary of Gat No. 33/1/F and 33/1/E and initially they go towards western side and thereafter towards eastern boundary of Gat No. 33/1/D3 and they go towards northern side Kachrewadi to Sangola road. It was also observed by the Tahsildar that there is no alternate road to the defendants. Tahsildar also observed that, the documents produced by the defendants show that, since beginning the road was in existence. Tahsildar personally made spot inspection and made observation in his order in

Rasta Case No. SR 37/2022. Therefore, order passed by the Tahsildar prima facie appears to be correct one.

22. In present case, it is seen from the copy of order of Tahsildar that, the plaintiff himself made impediment on the road and obstructed road of the defendants. In earlier suit bearing No. 33/2007 the plaintiff admitted about the existence of alternate road to the defendants. Now the plaintiffs cannot take contrary stand and contend that there was no road towards northern boundary of Gat No. 33/1/F and 33/1/E and eastern boundary of Gat No. 33/1/D3. The plaintiffs themselves admitted existence of the road. The plaintiffs themselves made impediment on road and obstructed road. Therefore, they cannot seek relief of injunction against the defendants. The plaintiffs have suppressed material facts from the Court. Therefore, they are not entitled for the relief sought. The plaintiffs have not made prima facie case. The documents on record shows that, from so many years defendants are using road. If defendants are prevented from using road, then they will suffer irreparable loss and they will not be able to cultivate their land and access to their lands. The balance of convenience lies in favour of defendants. The plaintiffs will not suffer irreparable loss, if temporary injunction is refused. The Trial Court after considering documents and pleading of both the sides rightly rejected the application filed by the appellants. There is no error committed by Ld. Trial Court in rejecting the application of appellants. The Ld. Trial Court has given proper reasons and findings while passing the impugned order. No

interference is required in the impugned order by this Court. Hence, I answer point Nos. 1 to 6 in the negative.

23. In the light of aforesaid discussion, I am of the view that, the Ld. Trial Court after considering the evidence on record rightly rejected the application filed by the appellants for temporary injunction. No error committed by Ld. Trial Court by rejecting the application of temporary injunction. I find no merit in the appeal. It is liable to be dismissed. Hence, I pass following order.

ORDER

- 1) Miscellaneous Civil Appeal No. 45/2024 stands dismissed.
- 2) The impugned order passed below Exh. 5 by Ld. Civil Judge Jr. Dn. Mangalvedha, in Regular Civil Suit No. 29/2024 dated 28.06.2024 is hereby confirmed.
- 3) Parties to bear their respective costs.
- 4) Decree be drawn up accordingly.
- 5) The record and proceeding of Regular Civil Suit No. 29/2024 be sent back to the learned trial Court.
- 6) Inform to Ld. Civil Judge, Jr. Div., Mangalvedha (Judgment dictated and pronounced in open Court.)

Date – 09.06.2026.

(A. S. Salgar)
District Judge – 3, Pandharpur

CERTIFICATE

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

01. Name of the Stenographer - Santosh Vilas Ghongade.
02. Name of the Court - Court of Dist. Judge 03,
Pandhapur.
03. Order/judgment signed by P.O. on - 09.06.2026.
04. Order /Judgment uploaded on - 09.06.2026.