

ORDER BELOW EXH. 5 IN CIVIL SUIT NO. 324 /2023

1] Perused contents of the application supported with affidavit and say filed. Heard advocates for the parties.

2] This is an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction restraining the defendant from disturbing the peaceful possession of the plaintiff on the usage of 10 ft road which is towards east side of the defendant's properties during pendency of this suit.

3.] The present suit is filed claiming perpetual injunction. It is the case of the plaintiff that the suit property in para 1A of the plaint is in plaintiff's possession and the properties in para 1B, 1C, 1D are in defendant's possession and there is a 10ft road on the eastern side of their said properties. It is further stated by the plaintiff that the defendant has started disturbing the usage of the road by the plaintiff. So if the plaintiff is not allowed the usage of the said road it will cause him inconvenience and loss which cannot be compensated in money. Hence, he filed the suit and prayed for granting temporary injunction by restraining the defendant from continuing with the disturbance till final disposal of this Suit.

4.] Defendants have presented their written statement cum say at Exh. 42 and thereby contested to the prayer of temporary injunction made by the plaintiff. Vide their say they contended that there is grampanchayat's concrete road which is constructed between Suit

property 1A to 1D. So also they contended that the plaintiff has suppressed the material facts. They also contended that it is the plaintiff who is trying to do illegal and unauthorised construction over the said road which will cause nuisance. Hence prayed for rejection of the application.

5.] Heard learned advocate Shri.C. D. Zambre for the plaintiff and learned advocate Shri.V. D. Bagal for the defendants.

6.] In view of rival pleading and contentions of both the parties following points arise for my determination. I have noted my findings on all points for reasons mentioned below:-

<u><i>Sr. No.</i></u>	<u><i>Points</i></u>	<u><i>Findings</i></u>
1.	Does plaintiff prove that he is having prima facie case ?	In negative
2.	Whether the balance of convenience lies in favour of the plaintiff ?	Do not survive
3.	Does plaintiff prove that he will suffer irreparable loss by refusal of temporary injunction?	Do not survive
4.	What order?	Application is rejected

REASONS

7.] **AS TO POINT NO.1 to 3 :-** As point nos. 1 to 3 are hinge upon the same pivotal hence, to avoid the repetition of facts point nos. 1 to 3 are clubbed together for discussion. Before deciding the application one need to look into the provision of law.

Law:

In Indian legal system the law of injunction is mainly governed by Order 39 and sections 36 and 42 of the Specific Relief Act. Section 94(c) of the Code of Civil Procedure also gives upplemental provision for grant of temporary injunction.It is also settled that there is no bar in granting injunction or supplementary orders under section 151 of the Code of Civil Procedure for compliance of injunction in just cases.

Temporary Injunction is a provisional remedy that is invoked to preserve the subject matter in its existing condition. Its purpose is to prevent dissolution of the plaintiff's rights.The main reason for use of a temporary injunction is the need for immediate relief. Grounds of temporary injunction provides that temporary injunction may be granted by the court when:

- i. Property in dispute is in danger of being wasted,damaged or alienated by any party to the suit or wrongfully sold in execution of the decree.
- ii. Where defendant threatens or intends to remove or dispose of his property with a view to defraud creditors.
- iii. where the defendant threatens to disposses the plaintiff or otherwise cause injury to the plaintiff in relation to the property

in dispute.

- iv. Defendant is about to commit breach of peace or contract or otherwise(O.39 R.2)
- v. Where the court is of opinion that interest of justice, so required.

Thus, burden is on the plaintiff praying for the relief. Mere proof of one of the above conditions does not entitle a person to an order of temporary injunction.

8.] From the present application it is observed that the parties to the suit do not argue with regard to the title of their respective properties. The only grievance is seen regarding the 10ft concrete road between both the properties that is no. 1A which belong to the plaintiff and 1B to 1D which belong to the defendant. Now to prove the prima facie case plaintiff need to show that there is prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. However it should not be confused with a case proved to the hilt. In deciding prima facie case this case should be guided by the plaintiff's case as revealed in the plaint , affidavits or other materials produced by him. Here in the present case, there is no specific description given of the land which in in danger to wasted by the defendant. It was the case that the defendants blocked the plaintiff's way by means of stones on the alleged concrete road in the year 2021.

The application does not show any incidence of actual obstruction to the possession of plaintiff over the suit property after filing the instant application. Not only this but the application also does

not show the continuous obstruction or disturbance to the possession of the plaintiff over the suit property. From the entire record it is nowhere seen that there is an actual interference with the possession of plaintiff and irreparable loss to him. Hence, I answer point no.1 in negative. As no prima facie case is seen to have been established from the record before this court, point nos. 2 and 3 do not survive, hence answered as not proved.

9] AS TO POINT NO 4 :- I, thus find no imminent danger to right of plaintiff in respect of the suit property. In such a situation, it cannot be said that the plaintiff has prima facie case and he would suffer an irreparable loss and also that the balance of convenience goes in favour of the plaintiff. With these observations, I have replied the point Nos.1 to 3 in the negative. Hence, I draw the conclusion that plaintiff is not entitled to seek a relief of temporary injunction against the defendant. With this conclusion I proceed to pass following order.

ORDER

- i) The application at exh.5 is hereby rejected.
- ii) No order as to costs.
- iii) Parties to proceed with the suit.

Date :- 23/06/2026

(K. J. Khomane)
2nd Jt. Civil Judge Junior Div.,
Pandharpur

CERTIFICATE

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

Name of the Stenographer	-	M.B.Takpere
Court	-	2 nd Jt. CJJD & JMFC, Pandharpur.
Date of Judgment/Order	-	23/06/2026.
Judgment/Order signed by the Presiding Officer on	-	23/06/2026.
Judgment/Order uploaded on	-	23/06/2026.