

MHSO070005722023



**ORDER ON EXH. 5 IN R.C.S.No.470/2023**  
**(Passed on 03<sup>rd</sup> April 2026)**

1. The plaintiffs have filed present application under Order 39 Rule 1 of C.P.C. against defendants seeking prohibitory injunction not to obstruct their peaceful possession over suit property and not to remove trees with the help of JCB from eastern bund of their suit property and not to encroach into it. Defendants filed their say at Exh.16. Heard Advocates for both sides. Perused the record.

2. It is the case of plaintiffs that suit properties situated in Village Babhulgaon, Tal. Pandharpur, Dist. Solapur bearing Gat No.32/3 admeasuring 85R and Gat No.32/2 admeasuring 84R owned by them. In both these properties plaintiffs have their residences. It is also submitted that on eastern side bund of both these properties, there are multiple trees of 10 to 15 years old. These properties are particularly described as follows :-

Sr. No.	Gat No.	Area	Boundaries			
			East	South	West	North
A.	32/3	85R	Gat No.33/1/B	Gat No. 37/1	Gat No.32/4	Gat No.32/2
B.	32/2	84R	Gat No. 33/1/A	Gat No. 32/3	Gat No.32/1	Gat No. 17

(Hereinafter referred as '**suit property**' for the sake of brevity).

3. It is pleaded that previously Gat No.32 was owned by Shivdas Bhinge. Fathers of plaintiffs and other two persons purchased said land on 07.10.1982 by ME No.621. They divided land amongst themselves on 17.06.1984 by ME No.754. Suit

property 1A came to the share of plaintiff No.1 and suit property 1B came to the share of plaintiff No.2. Both properties have Well into it. They have grown multiple trees upon eastern bund of the suit properties prior to 10 to 15 years. Towards east side of the suit properties Gat No.33/1/A and 33/1/B owned by defendants are situated.

4. Defendants conducted measurement in the year 2020 by MR No.2613. Defendants admitted this measurement and boundaries shown at that time were accepted by both parties. Accordingly, eastern bund mentioned above remained between land of plaintiffs and defendants. Later on, defendant No.1 measured Gat No.33 on 07.06.2023 by MR No.6119. On 20.07.2023 boundary marks were fixed. However, these marks were fixed in the land of plaintiffs to the extent of 95 feet inside. Thus, plaintiffs objected fixation of such boundaries. On 08.08.2023 defendants came in the land of plaintiffs and threatened them to hand over possession till the boundary marks have been shown or they will uproot the trees with the help of JCB, enclose the Well and destroy their residences. Thus, present application is filed seeking injunction against defendants.

5. Defendants rejected all the contentions. They have filed counter-claim alongwith written statement and say. It is admitted by defendants that their land is situated on east side of plaintiffs' land. It is pleaded that they have dug Wells at many

places in their land for the purpose of irrigation. Plaintiffs are always disturbing their possession by destroying bunds between their lands. Plaintiffs attempted to encroach into their land to include Well into their own land. Since 1990 defendants are attempting to get their land measured, so that boundary disputes can be resolved. However, the office of Land Record have not responded them positively. On 07.06.2023 measurement was conducted and it is found that plaintiffs have encroached into the lands of defendants to the extent of 41R land. They demanded possession of this land but plaintiffs refused. Thus, they have filed counter-claim seeking possession of encroached area and mesne profit. They prayed to reject the temporary injunction application filed by plaintiffs.

6. In view of rival pleadings and contentions of both the parties following points arise for determination and findings thereon alongwith reasons are mentioned below :-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Do plaintiffs have established prima facie case in their favour ?	<b>Negative.</b>
2.	Whether the balance of convenience lies in favour of the plaintiffs ?	<b>Negative.</b>
3.	Do plaintiffs prove that they will suffer irreparable loss, if temporary injunction is refused ?	<b>Negative.</b>
4.	What order?	<b>As per final order.</b>

## REASONS

### POINT No.1 :-

7. The ownership of suit properties and counter-claim properties is not disputed by any party. It is the case of plaintiffs that defendants are attempting to encroach into suit properties under the guise of measurement conducted on 07.06.2023 and boundary marks fixed on 20.07.2023. Plaintiffs have objected fixation of these boundaries. It is the case of plaintiffs that between the land of plaintiffs and defendants, there is bund. It is the case of plaintiffs that on this bund there are grown trees of 10 to 15 years old. Thus, plaintiffs stated that no question arises of them encroaching into the lands of defendants. Trees and position of the bund is same as it was 10 to 15 years back. It is argued by Advocate for the plaintiffs that when first measurement was conducted by defendants in 2020 they have accepted the boundaries shown. They have given statement and signed upon it (Exh.29/1). Therefore, defendants cannot later on vary with their statement.

8. Defendants on the other hand, submitted that they have given complaint that while measuring sub-divisions of Gat No.33 they found that boundary fixation map and 7/12 extract do not match with each other. Therefore, his measurement request for sub-division measurements was disposed off. Thus, he had given application to Deputy Director, Land Record, Pune on 28.02.2023 to take action against Surveyor namely Mr.Kambale (Exh.31/1). Later on, another surveyor was

appointed and MR No.6119/2023 was concluded by measuring Gat No.33. Plaintiffs have also filed entire proceeding of MR No.259 which is disposed on 30.12.2022 (Exh.27). While arguing the Advocate for the plaintiffs brought to the notice that on 14.10.2022 previously appointed surveyor was changed and new surveyor is appointed. However, this proceeding has been disposed and it is of no use of plaintiffs. As per measurement conducted on 07.06.2023 and boundary shown on 20.06.2023 by MR No.6119/2023 (Exh.24/2), it is found that owner of Gat No.32 has encroached into Gat No.33 to the extent of 41R land. Thus, both parties have relied on measurement maps alone. The case of plaintiffs is that defendants have conducted measurement in the year 2023 in conspiracy with officers of Land Record Office. With a view encroached into the suit properties, faulty map has been prepared. Based on this faulty map, plaintiffs have apprehended that defendants are committing encroachment into their land and threatening to disturb their possession.

9. At present from prima-facie reading of the documents available on the record, it can be seen that two measurement maps are prepared, one in the year 2020 and second in the year 2023. In the later map plaintiffs have been found encroaching into the land of defendants. Defendants have filed counter-claim for removal of encroachment. Apart from this plaintiffs have not produced any prima-facie evidence on the record to prove their apprehension that defendants are

attempting to encroach into their land, destroying their bund, uprooting trees upon bund, destroying their residences, etc. Apart from producing copy of entire proceeding of measurement before Land Record Office, statements given before surveyor and 7/12 extracts plaintiffs have not produced any other documents. To prove prima-facie case plaintiffs have to establish that they have triable case. However, plaintiffs have not brought on record any material which will prima-facie shows that act of defendants is endangering to the rights of plaintiffs into the suit properties. Conducting measurement with the help of government agency does not ipso-facto threatens the right of plaintiffs in the suit properties. Thus, plaintiffs failed to show that they have prima-facie case. Accordingly, **point No.1 is answered in the negative.**

**POINTS No.2 AND 3 :-**

10. The plaintiff have failed to establish prima-facie case in their favour. The immediate act of defendants endangering their rights in the suit properties is not established on record. The suit properties are not found under the danger of being alienated, wasted away, damage at the hands of defendants. Thus, no irreparable loss will cause to the plaintiffs if injunction is refused. Thus, balance of convenience do not lie in their favour. Accordingly, **points No. 2 and 3 are answered in the negative.**

**POINT No.4 :-**

11. On the backdrop of above discussion, plaintiffs have

not established prima-facie case, balance of convenience do not lie in their favour and they will not suffer irreparable loss, if injunction is refused. Therefore, for point No.4 following order is passed.

**ORDER**

1. Application at Exh.5 is rejected.
2. Costs in cause.

**Pandharpur.**  
**Date : 03.04.2026.**

**(Smt. S.S.Raul)**  
**Jt. Civil Judge, Junior Division,**  
**Pandharpur, Dist.- Solapur.**

Certificate

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

Name of Stenographer	:-	D.S.Landage (Grade-III)
Court	:-	Jt. Civil Court,J.D., Pandharpur.
Date	:-	03.04.2026.
Judgment/Order signed by the Presiding Officer	:-	03.04.2026.
Judgment/Order uploaded on	:-	03.04.2026.