

**ORDER BELOW EXH. 5**

(Passed on 30/05/2026)

The present application is filed for seeking relief of temporary injunction against the defendants vide Order XXXIX Rule 1 of the Code of Civil Procedure. The suit is filed for declaration and perpetual injunction against the defendants. In the present application, it is prayed that the defendants be restrained from making new road from the embankment of the suit property by virtue of order of Tahsildar dtd.20.03.2025 till final disposal of the suit.

**2. Brief facts of the plaintiffs' case are as under -**

The landed property admeasuring 01H-24R out of Gat No.139/1 (suit property 1A) owned by the plaintiffs and landed property bearing Gat No.136 admeasuring 02H-24R (suit property 1B) owned by defendant no.1 jointly with his family members situated at village Kandar, Tal.Karmala, Dist.Solapur are the suit properties which are more particularly described in paragraph no.1 of the plaint. It is submitted that the plaintiffs and defendants are residents of the same village. Suit property 1A is owned and possessed by the plaintiffs. There is a standing crop of sugarcane and banana in the suit property 1A. Suit property 1B is jointly owned and possessed by the defendant no.1 and is family members. Defendants filed false road case before Tahsildar on the basis of false averments. Plaintiffs were not party to that case. Defendant no.2 does not own or possess any property, but he was the applicant no.1 in above mentioned road case. Hence, he is impleaded as the defendant no.2 in the present suit.

3. One road approximately 10 to 15 feet wide and 200 feet long passes through Gat no.120, which is situated to the North of suit property 1B and parallel to Kandar-Satoli main road already exists. This road goes to the well situated in Gat no.137. This road is in

existence since 15 to 20 years. Alleged road never existed. But, the defendants pretended before the Tahsildar that said road was in existence. It was just done to annoy the plaintiffs. Defendants parked one tractor plough on the alleged road along with rotter to pretend that said road was blocked. Therefore the order of the Tahsildar dtd.20.03.2025 is void ab-initio. Hence, the plaintiffs have brought this suit along with this application.

4. The defendants filed say at Exh.11. It is contended therein that plaintiffs have brought this suit by suppression of material facts. Along with gat no.136, gat no.140, 141, 139 and 138 and gat no.137 wherein a well is situated is owned by the defendants and their relatives. They have made partition among themselves. Therefore, for reaching to their share and the well situated in gat no.137, one 15 ft. wide road was prepared by the defendants since 70 to 80 years. Defendants have easement by necessity and easement by prescription to use this road. Both the plaintiffs and defendants are using said road for reaching the well in gat no.137, cultivating their respective shares and transporting their agricultural produce by means of tractor, truck, bullock cart, etc. The plaintiff no.1 and his son assaulted the defendant no.2 on 04.04.2023, to restrain the defendants from using the water from well situated in gat no.137 and to grab their share in gat no.136. On 05.04.2023, the plaintiffs parked a tractor along with plough rotter on said road to create obstacle. Hence, the defendant moved an application vide Section 5(2) of the Mamlatdar's Court Act on 27.07.2023. Tahsildar passed an order on 20.03.2025 to remove that obstacle after recording evidence, conducting enquiry and spot panchnama. The plaintiffs moved a revision application no.03/2025 before the SDO, Madha. SDO rejected that revision on conducting enquiry.

5. It is also contended that the right of the defendants to use the alleged road and right of the plaintiffs to use the alleged road is one and the same and not contradictory to each other. Satoli-Kandar shiv rasta was never in existence. Some agriculturists of Satoli and other villages filed illegal road case no.65/2023, which is totally hypothetical. It is not at all concerned with road case no.45/2023. In road case no.45/2023, order was passed in favour of these defendants. The road in question in that case is being used by these defendants for cultivating their agricultural properties bearing no.140/1, 140/2 and 140/3. Defendants have no other source of water other than the well situated in gat no.137 and 136. The plaintiffs do not have balance of convenience and prima facie case. If the obstacle on the alleged road is removed, the plaintiffs are not going to suffer at all. But if it is not removed, then the defendants would be unable to cultivate their properties along with gat no.136. Therefore, defendants prayed for rejection of this application.

6. Perused application, say and documents on record. Heard detailed argument of both sides. From the above peculiar facts and circumstances of the case, following points arise for my determination and my findings thereon with reasons are as under -

<u>No.</u>	<u>Points for Determination</u>	<u>Findings</u>
1.	Whether plaintiffs have proved <i>prima facie</i> case?	<b>Yes.</b>
2.	Whether balance of convenience lies in favor of plaintiffs?	<b>Yes.</b>
3.	Whether irreparable loss will be caused to the plaintiffs, if temporary injunction is refused?	<b>Yes.</b>
4.	What order?	<b>Application is allowed.</b>

**REASONS****AS TO POINTS NO.1 TO 4 :**

7. Perused application, say and documents on record. Heard both sides at length. Plaintiffs have filed written notes of argument on Exh.5 at Exh. 38 and defendants have filed their written notes of argument on Exh.5 at 28 & 49 respectively. All of them have been read and considered while deciding this application. In respect of this particular litigation, it is pertinent to note that the suit was filed on 23.09.2025. Learned Adv. Shri. B.R. Raut appeared on behalf of the defendants on 15.10.2025 and on same day he filed say and written statement which is at Exh.11. On 25.03.2026, the plaintiffs moved an application at Exh.14 for taken on board, which was allowed and they moved an application at Exh.15 for seeking an order of status quo. Learned Adv. Shri. B.R. Raut filed say to the application at Exh.15 on behalf of the defendants on the same day. After hearing both sides at length, application at Exh.15 was allowed. On 10.04.2026, learned Adv. Shri. S.J. Kshirsagar filed an application at Exh.18 on behalf of the defendants for taken on board and vacating status quo. But, there is no “no objection” of previous learned advocate Shri. B.R. Raut on the V.P. filed by learned Adv. Shri. S.J. Kshirsagar which is at Exh.20. An application at Exh.19 was moved by learned Adv. Shri. S.J. Kshirsagar for filing V.P. on behalf of the defendants, on which say of learned Adv. Shri. B.R. Raut was called. Next date was kept on 20.04.2026. Eventually, this court was on pre-approved leave on 20.04.2026. Hence, next date was kept on 27.04.2026. On 27.04.2026, learned Adv. Shri. B.R. Raut gave no objection to the V.P. of learned Adv. Shri. S.J. Kshirsagar, hence it was taken on record. After hearing both sides at length, order of status quo was vacated by issuing a reasoned order at Exh.18 on 07.05.2026.

8. Again on 16.05.2026, the plaintiffs appeared before incharge court, as this court was on pre-approved summer vacation. They moved an application at Exh.33 to entertain this civil matter during the period of summer vacation and the application for taken on board at Exh.34. Both these applications were allowed. The plaintiffs moved an application for seeking an order of status quo at Exh.35. The matter was kept on 18.05.2026. The defendants filed say at Exh.41 along with written argument at Exh.43. On 18.05.2026, the incharge court allowed the application at Exh.35 and again granted status quo, subject to condition that on 25.05.2026, both parties to argue on Exh.5 before presiding officer. On 25.05.2026, both parties filed joint pursis at Exh.44 stating that they have no objection to hear and decide the application at Exh.5 during summer vacation. On same day, arguments of both the parties were heard on Exh.5.

9. One case law was filed by the plaintiffs to support their application viz. Vimal Bhausahab Nabde V/s. The SDO, Ahmednagar Dist. Ahmednagar & Ors, Writ Petition No. 5074 of 2022, decided on 04.08.2025, wherein it was held that the remedy of filing civil suit is an adequate alternate remedy and rather a more efficacious remedy for challenging the orders passed by Mamlatdar or Collector under the provisions of the Mamlatdar's Court Act. The civil court has the jurisdiction to decide correctness or otherwise of the order passed by the authority under the Act, the party aggrieved by the order can file a substantive civil suit and get rid of the order by establishing the case on merit and obtaining a decree contrary to the adjudication of the dispute by authorities under the Act. It is contended on behalf of the defendants that in the present litigation also the plaintiffs should have impleaded the SDO, Madha and the Tahsildar, Karmala as the necessary parties. It is also contended that this court does not have jurisdiction to decide this matter. It is pertinent to note that this

contention does not find place in the say and written statement of the defendants. It is also contended that the plaintiffs purposely did not moved the higher authority of SDO against his order. This court is not the place to challenge the order of SDO or Tahsildar. However, it is to be considered that the plaintiffs have not asked to set aside the order of SDO or Tahsildar. The plaintiffs have prayed that order of Tahsildar dtd.20.03.2025 and order of SDO dtd.29.08.2025 be declared as void and not binding on the plaintiffs. Moreover, no civil right is claimed against Tahsildar or SDO.

10. Section 5 of the Mamlatdar's Court Act is the provision which is summary power in nature and it does not finally decide civil rights. A very important provision in Section 22 of the Mamlatdar's Court Act contemplates that the order passed by the Mamlatdar continues to operate until otherwise decreed or ordered by competent civil court. That means the civil court's adjudication prevails over the summary revenue order. Moreover, on considering the material available on record, prima facie it cannot be inferred that the present suit exceeds pecuniary or territorial jurisdiction of this court. The defendants have contended that the alleged road is their private easement. Nothing on record shows that said road was public road in any manner. Therefore, at this stage, I am of the opinion that this court has jurisdiction to try and decide this suit.

11. Another case law viz., Mohammad Rahim Khan V/s. Shankar Maroti Dhage & Anr., decided on 08.03.2017, is submitted by the plaintiffs, wherein it is observed that the ouster of the plenary jurisdiction of civil court cannot be readily interfere and such jurisdiction remains intact and available to be exercised either against the order u/s.5 or against the order of revision u/s.23 of the said Act. This citation is followed while deciding this application.

12. On prima facie perusal of order of Tahsildar, it appears that the Tahsildar considered the issues framed and the inference thereof while deciding the application. However, no issues were framed by Tahsildar in the said proceeding. On prima facie perusal of order of SDO it appeared that the SDO was unable to read spot panchnama as neither of the party filed it on record. Hence, SDO was unable to confirm version of either of the party about alleged road. Hence, she rejected the revision application. Prima facie considering these reasons enumerated in the orders of Tahsildar and SDO, it can be hardly concluded that both the authorities arrived at the conclusion on merit about the existence of alleged road. Therefore, I am prima facie of the opinion that these orders are against the spirit of law and if such orders are allowed to operate, they would certainly cause injustice to the plaintiffs.

13. One road case no.65/2023 is pending before Tahsildar, wherein it is prayed that one road which is situated towards West of gat no.86/4 owned by the respondents therein, was obstructed by the respondents should be made open by removing the so called obstruction. Said road passes through shiv rasta situated towards South of Kandar-Satoli tar road. It prima facie appears that unless and until said road is made open by removing the obstacles, the road in road case no.45/2023 is of no use.

14. Interestingly, the defendants argued that the SDO and Tahsildar should answer the questions raised by the plaintiffs and these poor defendants should not be compelled to answer those questions. It is also argued on behalf of the defendants that the Tahsildar is a woman and she pursued police protection due to high handedness on the part of plaintiffs. Again there is no prima facie proof of the so called threat suffered by a lady Tahsildar. One question

was posed by the defendants, why the plaintiffs did not move before District Collector against the order of SDO. It is pertinent to note that it is choice of the aggrieved party to claim relief as per the provisions of law. Therefore, on the ground that the plaintiffs have approached this court instead of District Collector, the relief cannot be denied to them on this sole ground.

**15.** The defendants have claimed easement of necessity and easement of prescription in respect of alleged road. Easement of necessity arises when a property cannot be enjoyed at all without the way or easement claimed. Important principle in this regard is 'mere convenience is not necessary'. For the sake of establishing easement by prescription, the party must show that the right was enjoyed peaceably, openly, as of right, without interruption for 20 years in case of private land and 30 years against Government land. In both these cases, since final evidence is not yet recorded, courts rely heavily upon documents and surrounding circumstances. In case of easement of necessity, it is to be prima facie established that both dominant and servient tenements originally belong to one owner and after partition or sale, one portion became landlocked due to which there is no other reasonable usable access exists. Defendants have not produced any record to support their contention at this stage.

**16.** Similarly, in case of easement by prescription, for establishing long continuous use, old revenue maps showing path way, old sale deeds mentioning the way, municipal/gram panchayat record, electricity or agricultural access records are required to be proved. Condition precedent is, the way was used as of right, no permission ever sought and there is uninterrupted assertion of right. At this interim stage, exact proof of 20 years may not be conclusively established, but there should be strong prima facie material indicating

long-standing use. Again, such type of prima facie material is not produced on record by the defendants. It is agreed that though such material is not produced on record at this stage, the defendants are at liberty to produce it at the time of trial. However, on the basis of material before the Court, at present it cannot be prima facie concluded that the defendants were using the alleged road or the road in question as easement of necessity and easement of prescription.

17. On perusal of spot panchnama dtd.18.01.2024 in road case no.45/2023, it transpired that it is observed in said panchnama that road is made up to half portion of embankment between gat no.139/1 and 139/2. Embankment is constructed in remaining half portion. It is alleged by the defendants that how much time it takes to construct and embankment. Again, this contention is not supported by the pleading. On the contrary it prima facie appears that one road approximately 10 to 15 feet wide and 200 feet long passes through Gat no.120, which is situated to the North of suit property 1B and parallel to Kandar-Satoli main road already exists. This road goes to the well situated in Gat no.137. Plaintiffs have submitted copies of some photographs and one hand drawn map as prima facie proof. Prima facie it appears that this road is optional to the road in question. That means, the defendants would not be landlocked even if the road in question is not made obstacle free as per the order of the Tahsildar. Of course, this is prima facie conclusion. But on the basis of this conclusion, I am of the opinion that the plaintiffs have prima facie case, balance of convenience is in their favour and if the temporary injunction is not issued as prayed, they are going to suffer irreparable loss. Hence, I answer the points no.1 to 3 in affirmative and in answer to the point no.4, I proceed to pass the following order -

**ORDER**

- (i) The application is allowed.
- (ii) The defendants no.1 and 2 are temporarily restrained from making new road from the embankment of the suit property by virtue of order of Tahsildar dtd.20.03.2025 either themselves or through any one acting on their behalf in any manner till the final disposal of this suit.

Dated: 30/05/2026.

(Smt. S.P. Kulkarni)  
2<sup>nd</sup> Jt. Civil Judge Junior Division,  
Karmala.