

MHST170007262025 	Received On : 20/12/2025 Registered On : 22/12/2025 Decided On : 09/06/2026 Duration: 00Yrs : 05Ms. :19Ds.
---	---

IN THE COURT OF DISTRICT JUDGE – 1, VADUJ
AT VADUJ, DIST.SATARA.

(Presided over by – Vidyadhar B. Kakatkar)

MISC.CIVIL APPEAL NO.70/2025
Exhibit No.34

1. **Rajkumar Chittajirao Ghatge**
Age: 60 Yrs., Occu. : Agriculture
2. **Bhimrao Chittaiirao Ghatge** Appellants
Age: 58 Yrs., Occu.:Agriculture
R/o- Mol, Tal - Khatav, Dist - Satara

VERSUS

1. Dajisaheb Bhavanrao Ghatge (deceased)
Through Kantabai Dajisaheb Ghatge
Age: 75 yrs. Occ.: Agriculture.
2. Subhash Bhavanrao Ghatge (Deceased),
Through Sunil Subhash Ghatge,
Age: 46 yrs, Occ.: Agriculture/ Service
3. **Rajendra Bhavanrao Ghatge,**
Age: 70 yrs, Occ.: Agriculture.
4. **Sanjay Bhavanrao Ghatge,**
Age: 60 yrs, Occ.: Agriculture,
No. 1 to 4 R/o, A/p Mol,
Tal. Khatav, Dist. Satara. ----- Respondents

Appearance :

Ld. Advocate for the Appellants	: Shri. A.R. Ghadge
Ld. Advocate for the Respondents	: Shri. R.A. Mahajan

JUDGMENT

(Delivered on:08/06/2026)

1. The original defendants preferred the Miscellaneous Appeal against the order dated 12/12/2025, passed below in Exhibit-5, by the learned Joint Civil Judge, Senior Division, Vaduj, in Regular Civil Suit No. 425/2025. For convenience, the parties are hereinafter referred to by their status in the original suit.

2. The subject matter of dispute in the present suit is the internal road situated between the properties forming part of the mansion bearing City Survey Nos. 187, 188, 189, 190 and 191, situated at Mouje Mol, Taluka Khatav, District Satara. The disputed road is an internal road, 6 feet wide from south to north and approximately 100 feet long from east to west, running from the main gate on the eastern side of the mansion towards its western side. The said disputed road is shown in green colour in the rough sketch map filed by the plaintiffs along with the suit.

3. Balwant, the common ancestor (deceased) had 2 sons, namely Bhavanrao (deceased) and Chintajirao alias Chintamani (deceased). Bhavanrao's wife was Kalavati (deceased). Bhavanrao has four sons Dajisaheb (deceased), Subhash (deceased), Rajendra (Plaintiff No. 3) and Sanjay (Plaintiff No. 4). Dajisaheb's wife, Kantabai, is Plaintiff No. 1A. Subhash's wife, Hirabai (deceased), and their son, Sunil, are Plaintiff No. 2A, while Sharmila and Urmila are their daughters. Chintajirao alias Chintamani's wife was Tarabai (deceased), and from their branch, Rajkumar is defendant No. 1 and Bhimrao is defendant No. 2.

4. The plaintiffs and the defendants had, and continue to have, ancestral immovable properties situated at Mouje Mol, Taluka Khatav, District Satara, comprising ancestral agricultural lands as well as a traditional enclosed mansion of old construction, along with appurtenant open spaces, all situated within the limits of the original Grampanchayat area of the village.

5. During the City Survey operation conducted by the Government in 1987, the open space in front of the mansion on its eastern side was assigned City Survey No. 186. The open space inside the mansion, adjoining its main entrance gate, was assigned City Survey No. 190. The property inside the mansion, on the northern side of the internal passage running westwards from the eastern entrance gate of the mansion, was assigned City Survey No. 189 and southern side property was assigned as City Survey No.191.

6. The property situated at the northern side of City Survey No.189 was assigned at City Survey No.188 and the land to the northern side of City Survey No.188 was assigned as City Survey No.187. In the City Survey records, the name of the plaintiffs' predecessor-in-title, Bhawanrao, was erroneously recorded as "Bhagwanrao Balwant Ghatge." Likewise, although the defendant was known as Chittajirao alias Chintamani, only the name "Chintamani" was recorded in the City Survey entries. Access to the open spaces comprised in City Survey Nos. 187 and 188 within the mansion are available through a 6-foot-wide internal road running westwards from the main entrance gate of the mansion and passing along the western side of City Survey No. 189.

7. The said mansion was partitioned between the predecessors-in-title of the plaintiffs and defendants, namely Bhawanrao and Chittajirao alias Chintamani. The partition was effected by a partition deed dated 14/06/1970, executed on stamp paper of Rs. 3.50. The said partition deed was executed by Chittajirao alias Chintamani in favour of Bhawanrao, in the presence of attesting witnesses D.J. Raje Ghadge, Bhimrao Ghadge, and 2 others. Under the said partition, the northern portion of the mansion came into the possession of Chittajirao alias Chintamani and has since been recorded his name in the Grampanchayat records. The said property bears Grampanchayat Property No. 60 and is recorded in the names of the defendant and his mother. Likewise, the southern portion of the mansion came into Bhawanrao's possession and has been recorded in the Grampanchayat records since his lifetime. The said property bears Grampanchayat Property No. 61 and is recorded in the names of Bhawanrao's children.

8. The City Survey Scheme was implemented around 1987. Due to an oversight at that time, the name of Chittajirao, alias Chintamani, was also recorded along with Bhawanrao for City Survey No. 191. According to the plaintiffs, this entry is erroneous and illegal. As per the partition deed, City Survey No. 188 was allotted to the defendants and City Survey No. 187 to the plaintiffs, a fact reflected in the City Survey records. City Survey No. 186, situated outside the mansion, is jointly owned by the plaintiffs and defendants. Similarly, the internal open space bearing City Survey No. 190 is also jointly owned by them. The road shown in green colour in the rough sketch map filed by the plaintiffs, situated on the western side of City Survey No. 190, is a common and pre-existing

access road. This road has been used by the parties from time immemorial for ingress and egress and for transporting agricultural produce and continues to be used for these purposes.

9. The plaintiffs contend that the defendants have encroached upon the common road situated between the parties' properties and shown in green colour in the rough sketch map annexed to the plaint. According to the plaintiffs, the defendants have encroached upon a portion of the said road measuring approximately 3 feet in width from north to south and about 40 feet in length from east to west. It is alleged that on 10/12/2025, the defendants commenced excavation for the construction of a new RCC structure on the encroached portion. Prior thereto, the plaintiffs, through their advocate, had issued a notice dated 15/10/2025 calling upon the defendants not to carry out any excavation or construction activity on the disputed portion. Thereafter, when the plaintiffs attempted to lodge a complaint at Pusegaon Police Station, the defendants temporarily stopped the work for 2 days but subsequently resumed construction activities on the encroached area.

10. According to the plaintiffs, the defendants have illegally occupied approximately 120 square feet of the common road, thereby obstructing the plaintiffs' right of passage and access. The plaintiffs have, therefore, instituted the present suit seeking a perpetual injunction restraining the defendants from carrying out any construction on the common road situated within the mansion premises, and seeking mandatory relief for the removal of the alleged unauthorised construction. The plaintiffs further contend that the contents of the defendants' reply to the legal notice are false and incorrect. Along with the suit, the plaintiffs also filed an application

below, Exhibit-5, seeking a temporary injunction pending disposal of the suit.

11. The defendants have filed their written statement at Exhibit-13 and has denied the averments made in the plaint as well as in the application below Exhibit-5. According to the defendants, no common property of the nature alleged by the plaintiffs exists. It is contended that the sketch map annexed to the plaint is incorrect and that the genealogy produced by the plaintiffs is incomplete. The defendant has further contended that all legal heirs of Dajisaheb and Subhash are necessary parties to the suit and that the suit suffers from non-joinder of necessary parties. It is also contended that the plaintiffs have not produced any material to establish that Plaintiff Nos. 1A and 2A are the managers or representatives of the joint family, to maintain the present proceedings on behalf of all concerned members.

12. The defendants have stated that there is a separate 8 feet wide road on the western side of City Survey No. 191. They have denied executing the partition deed between the parties on 14/06/1970. It is stated that the partition was effected between the parties on 12/06/1972. The Plaintiffs subsequently inserted the terms of the partition into that document at their convenience. The defendants have denied that they erected pillars by encroaching upon the common way available to the Plaintiffs. It is further stated that the Plaintiffs have constructed houses on land recorded in the name of the defendants' father. Now the Plaintiffs are aggrieved as the Defendants are constructing their own house. There is no cause of action for the present suit.

13. These Defendants have further stated that the land bearing City Survey No. 187 was allotted to the Plaintiffs' father and the land bearing City Survey No. 188 was allotted to the Defendants' father. Accordingly, the parties have been in possession of their respective lands to date.

14. The Defendants further stated that at the time of partition of the ancestral house, the southern 139.30 sq.mtrs. portion, City Survey No. 191, was allotted to the Defendant's father, Chintamani@Chittajirao, and the northern portion, bearing City Survey No. 189 and measuring about 116.20 sq.mtrs., was allotted to the Plaintiff's father, Bhavanrao. Accordingly, entries were made in the city survey record.

15. Defendants further stated that the plaintiffs had a larger family than the defendants. Hence, the defendants' father permitted the plaintiffs' father to use City Survey No. 191. Though this property was recorded in the name of the defendants' father, Chintamani, in the City Survey record, the name of the plaintiff's father was wrongly recorded on the property card. It is further stated that City Survey No. 189 was given to the defendants' father for use, but the name of the plaintiffs' father is still recorded on that property. The defendants have been constructing their house on the land they possess for a long time. The plaintiffs are willfully obstructing the construction of the defendants.

16. It is further stated that the defendants' father constructed a wall between City Survey Nos. 189 and 191 to avoid further disputes. After the demise of the plaintiff's father, Dajisaheb, Subhash and Plaintiff Nos. 3 and 4 have divided City Survey No. 191 into four

parts and are peacefully enjoying their respective parts. There is a Grampanchayat road on the southern side of City Survey No. 191. The plaintiffs use that road regularly. They have no access from the eastern side.

17. The Defendants further stated that they are constructing an RCC structure and that the doors will open into City Survey No. 188, which belongs to them. The Plaintiffs will not face any trouble due to the Defendants' construction. As the Defendants have demolished their existing house, they have no alternative residence. There is no cause of action for the present suit. The Plaintiffs have no prima facie case, and they will not suffer any irreparable loss, nor does the balance of convenience lie in their favour. Therefore, the Defendants have prayed that the application at Exhibit 5 be rejected.

18. It is necessary to reproduce a certain part of the judgment of the learned Trial Court for convenience. A portion of paragraph 15 runs as,

Considering the manner in which the mansion is divided vertically into two parts, it is but natural that logically one common way might have been left from the common main door to reach their respective houses, situated on both the sides. In order to get the exact area of said way or open space, it has to be seen whether both the parties have made construction within the limits of their respective survey numbers. Under such situation in order to find out any such alleged encroachment, it is necessary to measure both the city survey number i.e. City Survey No.189 and 191. Till then, if the defendants are allowed to continue their construction, it will definitely cause irreparable loss to the plaintiffs if they succeed in

proving their case. At present, there is balance of convenience on the side of plaintiffs and they have made out prima facie case for the grant of temporary injunction till the report and map of measurement by T.I.L.R comes on record.

With these reasons, the learned Trial Court concluded that the Plaintiffs have proved their prima facie case and irreparable loss partly, and that the balance of convenience partly lies in their favour. The learned Trial Court restrained the Defendants from carrying out any construction in C.S.No. 189 till the report of the Court Commissioner is filed on record, and further directed both parties to apply for the appointment of the Court Commissioner to measure C.S.No. 189 and 191.

19. This order is impugned in the present appeal on the following grounds.

1. The order passed by the learned Trial Court is vague, arbitrary, illogical, illegal, unjust, and erroneous.
2. The impugned order was passed without a judicious application of mind and in a hasty manner.
3. The learned Trial Court did not consider that the Plaintiffs failed to establish a prima facie case, irreparable loss, and the balance of convenience in their favour.
4. The impugned order is perverse and in violation of the principles of natural justice.
5. The learned Trial Court failed to consider that no common way exists between C.S. Nos. 189 and 191, and that the construction of the Defendants was obstructed by the Plaintiffs without any cause

of action.

6. The learned Trial Court failed to consider that the Defendants had their old house in C.S. No. 189 and that they have no alternative place of residence.
7. The findings recorded by the learned Trial Court demonstrate a non-application of a judicious mind.
8. The impugned order is passed in the style of an order appointing the court commissioner rather than an order on the application for a temporary injunction.
9. The reasons recorded by the learned Trial Court are not cogent and sufficient.
10. The learned Trial Court failed to consider that the Defendants have established their prima facie case, irreparable loss, and that the balance of convenience lies in their favour.

For all the above reasons, the appellants have prayed for allowing the appeal and for squashing and setting aside the impugned order.

20. Considering the pleadings, appeal memo, documents on record, impugned order and arguments advanced by both the learned advocates, the following points arise for my determination, and my findings on them are stated below for the following reasons.

<u>Sr.No.</u>	<u>POINTS.</u>	<u>FINDINGS</u>
01]	Have the plaintiffs proved their prima facie case?	In the Negative.
02]	Have the plaintiffs proved that they will suffer irreparable loss if the application at Exhibit 5 is rejected?	In the Negative.

- | | | | |
|-----|--|---|---|
| 03] | In whose favour does the balance of convenience lie? | : | In favour of Defendants. |
| 04] | Is an interference required in the impugned order? | : | Yes. |
| 05] | What order? | : | Miscellaneous Civil Appeal is allowed as per the final order. |

REASONS

As to point No. 1: -

21. I have gone through the record and proceedings. I have heard both learned Advocates. Before going to the merits of the matter, it is necessary to state the admitted facts. Genealogy is not disputed. It is admitted that the suit properties are ancestral properties. There are two partition deeds brought on record, and before going further, it is necessary to discuss them. The copies of those documents filed with the paper book are illegible. However, it is important to note that both parties claim ownership of the property based on the partition deed, but neither states that the road was reserved for accessing the backside property in the said partition. It is also important to note that the partition was not carried out as intended in the partition deed. It is the case of the defendants that, because the family of the plaintiffs' ancestor was larger, the portion allotted to the present defendants' ancestor was given in possession of the ancestor of the plaintiffs, and the portion allotted to the plaintiffs was given in possession of the ancestor of the defendants. Therefore, the entries in the Grampanchayat and City survey records

do not match each other, nor do they align with the parties' actual possession.

22. The Defendants allege that the Plaintiffs have constructed in the portion in their possession and are now obstructing the Defendants' construction for no reason. The road claimed by the Plaintiffs is not a public road, and hence there is no possibility of any record of such road unless it is sourced from any private document.

23. For the sake of convenience the chart of City Survey Record is prepared as under-

Sr. No.	City Survey No.	Name of the holder	Area Sq.Mtrs.	Remark
1.	186	1. Bhagwan Balwant Ghatge 2. Chintamani Balwant Ghatge	129.80 sq.mrs.	Ancestral
2.	187	Bhagwan Balwant Ghatge	139.60 sq.mrs.	Ancestral
3.	188	Chintamani Balwant Ghatge	139.60 sq.mrs.	Ancestral
4.	189	Bhagwan Balwant Ghatge	116.20 sq.mrs.	Ancestral
5.	190	1. Bhagwan Balwant Ghatge 2. Chintamani Balwant Ghatge	88.10 sq.mrs.	Ancestral
6.	191	1. Bhagwan Balwant Ghatge 2. Chintamani Balwant Ghatge	139.30 sq.mrs.	Ancestral

It appears that City Survey No.189 where the defendants' construction is ongoing is recorded in the name of plaintiffs' predecessor. City Survey No.191 is recorded in the name of predecessors in interest of the plaintiffs and defendants jointly. It is the case of the plaintiffs that the entry of Chintamani's name is City

Survey No.191 is incorrect and the entry of Bhagwan's name (predecessor-in-interest of the plaintiffs) is incorrect. The defendants come with the case that City Survey No.191 was allotted to their predecessor and City Survey No.189 was allotted to plaintiff's predecessor but owing to larger family City Survey No.191 was given in possession of the plaintiffs' predecessor and City Survey No.189 was given in possession of the defendant's predecessor. These pleadings need to be proved in evidence. However, it is prima facie admitted that the plaintiffs are occupying City Survey No.191 and the defendants are occupying City Survey No.189 though it is recorded in the name of predecessor of the plaintiffs which entry is admittedly incorrect.

24. As far as the documents showing the existence of the road are concerned, the photographs are filed along with the paper book. The first photograph shows that there are platforms at both sides, and the footway passes through the same. However, the end of the road is not clearly visible, nor does it show the exact situation on the spot. This photograph is sufficient to show that there is a footway to enter the mansion.

25. The second photograph shows the road and the door of a house at the end of the road. There is construction on the other side of the house. The photograph shows a narrow, cemented pathway along the left side, leading towards the rear portion of the property. It is important to note that the said photograph shows a vacant portion on the right side of the cemented pathway. That, prima facie, does not show the existence of any old road. The ongoing construction at the end of the vacant place is admittedly belonging to the Defendants. A water tank is kept in that vacant place. An old

Tulsi Vrindavan is also visible in the said photograph in the vacant place. This prima facie shows that the vacant place (soiled) beside the cemented pathway is not used as access.

26. The third photograph shows the ongoing construction by the Defendants. The important aspect of this photograph is that the portion between the old and new structures does not appear to be a passage used as a pathway. In fact, an old step appears in the said portion, indicating that the said portion was not used as a pathway.

27. The fourth photograph is that of the entire mansion from the outside. It shows the entry of the mansion.

28. The fifth photograph shows the window on the first floor of the mansion. A wall appears in the same position as alleged by the Defendants. This bisects the mansion as claimed by the Defendants according to the partition.

29. The sixth photograph shows the backside of the Defendants' construction and is not helpful in resolving the present dispute.

30. The seventh photograph shows the road, which Defendants allege is available to residents who have the backside portion of the mansion. The seventh, eighth, and ninth photographs clearly show a black-coloured gate, and Defendants claim it is available as access. It is also important to note that, prima facie, the said gate appears to be the front portion of a house. It is submitted on behalf of the Plaintiffs that the said gate cannot be used to bring the palanquin into the mansion as per the tradition. It needs to enter the mansion from the front door visible in photographs No. 4 and 5. However, the existence of such a tradition is not proved prima facie.

31. The tenth photograph is again important. It shows the disputed pathway from the other end, that is, the end where the Defendants' construction is. That photograph also does not show any pathway beside the ongoing construction of the Defendants.

32. A map is also produced in the paper-book issued by the city survey office. The map also does not help resolve the dispute, as the pathway is an internal affair of the plaintiffs and defendants. It is not recorded separately as a pathway.

33. Learned advocate for the Defendants relied upon the judgment in the case of the Hon'ble Bombay High Court bench at Nagpur in **Laxman Bisan Uke and Others v. Ashok Ishwar Shinde and Others**, Second Appeal No. 379 of 2016. It is held that,

13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or Possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1 Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2 Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3 Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

In the present matter, the existence of the pathway itself is disputed. Therefore, prima facie, it appears necessary that the plaintiffs should have sought the relief of a declaration of the existence of the pathway and their right to use the said pathway. This aspect needs to be considered at the final hearing of the suit.

34. Learned Advocate for the appellants relied upon the judgment in the case of **Sakhahari Parwatrao Karahale Vs Bhimashankar Parwatrao Karahale**, decided by the Hon'ble Supreme Court of India, reported in **2001 AIR(SCW)5132**. I have gone through the said judgment. In the matter before the Hon'ble Supreme Court, the suit was filed by a co-sharer against the other co-sharer, claiming exclusive possession of the suit property based on a previous partition. However, the plaintiff therein failed to prove the previous partition. Hence, the Hon'ble Supreme Court, while confirming findings recorded by the First Appellate Court and the Trial Court, held that once the finding is recorded that there was no partition between the members of the joint family, each member of the joint family is a co-sharer and possession for one is possession for all.

35. In the present matter, the facts are completely different. Though the partition is disputed, the plaintiffs claim that the suit passage was kept common between the parties. There is no evidence prima facie to show this fact. Exclusive possession is not claimed by any party. Therefore, with all respect to the ratio above, I state that it is not applicable to the present matter.

36. Considering the above discussion, it appears that, prima facie, the Plaintiffs have failed to prove the existence of such a pathway in the suit property and their right to use the same, the blocking of which by the Defendants would prevent the Plaintiffs from enjoying any part of that property. Therefore, the Plaintiffs are not, prima facie, entitled to stop the Defendants' ongoing construction. They have failed to make out a prima facie case. I answer point no. 1 in the negative.

As to Point No. 2:

37. The plaintiffs have failed to prove that they will suffer irreparable loss if the application is rejected. On the other hand, if the defendants are restrained from completing construction, they will suffer irreparable loss. Therefore, I answer point No. 2 in the negative.

As to Point No. 3:

38. The entire discussion above shows that the balance of convenience lies in favour of the defendants. I answer point No. 3 accordingly in favour of the defendants.

As to Point No. 4:

39. I have gone through the impugned order. It is assailed on one of the grounds that the relief of appointment of a court commissioner was not sought by any of the parties. Still, the Trial Court directed the parties to apply for a court commissioner. It is important to note that the court commissioner has not been appointed, but the parties are directed to apply for one. The other aspects of the appointment are not specified by the learned Trial Court. It is further directed by the learned Trial Court that the defendants shall not construct on City Survey No. 189 until the court commissioner's report is on record.

40. It is important to note that the court commissioner's report, by itself, will not resolve this dispute by fixing the boundaries of the City Survey Numbers. The existence of a pathway is an important aspect that the court commissioner cannot resolve. For that purpose, the parties will have to lead evidence. Any construction, if made by the Defendants after the passing of this order, shall be subject to the outcome of the suit. The plaintiffs have filed an application for the appointment of the court commissioner before the learned Trial Court, as per Exh. 27 in that suit. A certified copy of the same is produced on record along with Exhibit 10. The learned Trial Court shall decide the same on its merits, without being influenced by any observation in this order.

41. Given the above discussion, I conclude that the impugned order requires interference. The Plaintiffs are not entitled to the relief of a temporary injunction. The application for a temporary injunction

deserves to be rejected. Accordingly, I answer point No. 4 in the affirmative and pass the following order for point No. 5.

ORDER

1. The Miscellaneous Civil Appeal is allowed with costs.
2. The order passed by the learned Jt. Civil Judge, Senior Division, Vaduj, below Exh. 5 in R.C.S.No.425/2025 dated 12/12/2025 is quashed and set aside.
3. The application at Exh. 5 in R.C.S.No.425/2025 before the learned Trial Court is rejected with costs.
4. A bill of costs be prepared accordingly.
5. Inform the learned Trial Court accordingly.

Vaduj
Date:09/06/2026

(Vidyadhar B. Kakatkar)
District Judge-1, Vaduj

CERTIFICATE

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

(V.R. Jadhav)
Jr. Clerk