

ORDER BELOW EXHIBIT 5 IN R.C.S. NO.30/2026
(Smt.Aparna Patil and Ors. Vs.Shri.Dineshchandra Gupta and
Others.)

1. Heard Ld. Advocates for both sides. Perused record.
2. The Plaintiffs (claiming through late Shri. Arun Shamrao Patil) are stated to be in possession of house No.38 area 175 sq. ft. located in Panchali Gram panchayat, Palghar. The house is stated to be in the name of late Shri. Arun Shamrao Patil who passed away on 03.12.2023. The said house No.38 is stated to be eastward facing, towards its northern side is house of Shri.Dilip Laxman Patil (son of late Shri.Laxman Sakham Patil). Towards the southern side of house No.38 of the Plaintiffs are house Nos.39, area 425 sq.ft. and house No.40, area 352 sq. ft. of Smt. Suchita Pramod Patil (daughter of late Shri. Pandurang Govind Patil). Deceased Shri. Laxman Patil and Shri.Pandurang Patil are cousin fathers-in-law of Plaintiff No.1. The said house Nos. 39,40, the land beneath them and the open space in front of them are the subject matter of the present suit. As relatives of Smt.Suchita Pramod Patil, the Plaintiffs had the preferential right of pre-emption/ to purchase the house Nos.39 and 40. Plaintiffs came to know in October 2024 that Smt. Suchita Patil was selling said house Nos. 39 and 40. They proposed to purchase the house properties i.e. house Nos.39 and 40. However, she sold the house properties house Nos.39 and 40 to the Defendants. Without taking any permission from Gram panchayat or town planning authority or any authority, the Defendants demolished house Nos.39 and 40. Since Plaintiffs house No.38 and house No.39 sold to the Defendant is part of same construction, due to the demolition, the wall towards the eastern side of the Plaintiffs' house No.38 was rendered open. Due to the illegal demolition, the Plaintiffs' house

has come into peril and likely to be damaged. Despite approaching the police on 20.05.2025, no action was taken and the Plaintiffs' complaint was disposed on 30.05.2025 stating that this is a civil dispute. As no action was taken by the Grampanchayat, *vide* letter dated 22.12.2025 the Plaintiffs applied to the town planning authority seeking information about the permissions sought by Defendants for newly constructing house Nos.39 and 40. The said houses are close to Palghar/Boisar highway. The Defendants are making constructions without leaving 5 ft. margin. The Defendants are constructing upon the land which is causing harm to the Plaintiffs' house No.38. On 27.12.2025 the wall towards the eastern side of Plaintiffs' house No.38 collapsed on 27.12.2025. N.C. was registered against Defendant No.3 on the same day. Plaintiffs had also brought the illegal digging and the apprehension and attempt of encroachment to the notice of the Board Development Officer *vide* application dated 29.12.2025. However, no action was taken. Plaintiffs had also requested for inspection of the land to the Talathi *vide* application dated 13.01.2026, inspection was done on 20.01.2026. However, there is no panchnama is given on record. No safety measures are taken by the Defendants. Despite requests to various authorities no steps are taken. The Defendants have not taken any permission for new construction and have not got any plans approved. The said demolition and reconstruction are illegal and dangerous to the Plaintiffs' property. Hence, the present suit is filed praying for permanent injunction restraining the Defendants from making new construction on the land beneath house properties Nos.39 and 40 without prior approval of the building plan from the relevant authority and without leaving 5 ft. margin. The temporary

injunction at Exh.5 (present application) is seeking interim protection as regards the said prayer.

3. *Per contra*, the present application is vehemently opposed by the Defendants (Exh.31). The averments regarding illegality are denied. It is submitted that, the Plaintiffs have not filed suit for easementary right. The suit is not properly valued. The Plaintiffs had not received any notice seeking objection to the construction. The present suit is not maintainable and deserves to be dismissed. Necessary parties are not added i.e. the vendor Smt.Suchita Pramod Patil, Shri.Saikumar Pramod Patil and Smt.Megha Rakesh Raut. Hence, suit is bad in law for non-joinder of necessary parties. The Defendants had purchased house Nos.39 and 40 alongwith the adjoining open space by way of registered sale deed dated 05.11.2024 (Written statement at Exh.31 para 5). Plaintiffs have sought mere injunction but have not prayed for declaration of easementary right. UDCPR (Unified Development Control and Promotion Regulations for Maharashtra) dated 02.12.2020 of the town planning authority (Exhibit 42) is applicable in Palghar. As per para 2 of letter dated 18/03/2021 of the State Government of Maharashtra, Department of Rural Development (Exhibit 37/2), Appendix-K is not applicable for construction in 150 sq. meter i.e. less than 1500 sq. ft., hence there is no need for permission for construction. The construction sought by the Defendants is only 977 sq. ft. i.e. less than 1500 sq. ft. Hence, as per UDCPR only map may be prepared and submitted to the Grampanchayat and house cess shall be calculated. The Plaintiffs are making illegal demands. It is also denied that house No.38 has area of 175 sq.ft., is brick constructed house in the name of husband of Plaintiff No.1. That, it is not

clarified how he purchased it or constructed it. In the assessment extract of house No.38 (3/2), the area is mentioned as 25 ft x 7 ft. Hence, the Plaintiffs have not approached the Court with clean hands. The Defendants are not aware of the other houses mentioned. It is denied that house No.39 of 425 sq.ft and house No.40 of 352 sq.ft. are towards the southern side of the Plaintiffs' house or that, they are close to each other. The photographs are submitted of December 2025 and in which no loss to the Plaintiffs' house can be seen. The Defendants are not aware of the need of panchnama as claimed, appropriate margin is left regarding the construction. The Defendants have already purchased the property for Rs.21,36,465/- and construction material of Rupees 4 lac is lying on the site. It is prayed that the present application may be rejected with costs.

4. Ld. Advocates for both sides have vehemently argued their case.

5. The following points of determination arise for consideration :

Sr.No.	Points of determination	Findings
(I)	Whether the Plaintiffs have made out a <i>prima facie</i> case?	...Yes.
(II)	Whether the Plaintiffs prove that, the balance of convenience lies in their favour?	...Yes.
(III)	Whether the Plaintiffs prove that, irreparable injury will be caused to the Plaintiffs if the relief prayed is not granted?	...Yes.
(IV)	What order?	...As per final order

REASONS

6. The said points being inter related the same are dealt with

together. Present application filed by Plaintiff may be considered under Order 39 Rules 1 and 2 of the Code of Civil Procedure (C.P.C.). The said provisions are reproduced hereinbelow for reference:-

Rule 1 Order XXXIX of Code of Civil Procedure 1908

"Cases in which temporary injunction may be granted"

Where in any suit it is proved by affidavit or otherwise –

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders."

7. It is a settled position of law that, the parties approaching the Court has to state all facts. While considering grant of temporary injunction, the Court also has to consider whether the parameters of *prima facie* case, balance of convenience and irreparable injury are made out.

8. Both sides have relied certain documents. Photographs are submitted by both sides. Plaintiffs have relied upon UDCPR (Exh.42) which mentions that application for approval for construction has to be submitted as per Appendix K. The Ld.Advocate for the Defendants has relied upon notification dated 18/03/2021 (Exhibit 37/2) that as per para 2.1.2 (xv) for building

on plot area upto 150 sq. meter (low risk category) and 150-300 sq. meters (moderate risk category) no permission from planning authority is required. As regards the objection regarding area of the Plaintiffs' house No. 38, the assessment extract of Plaintiffs' house No.38 (3/1) mentions area of 175/25 x 7 sq. ft/sq.mts. It is unclear why the calculation is stated as such but the assessment does mention 175 alongwith 25 x 7. Similar measurement can be seen of form 8 extract of house No.40 (Exh.3/6) which reflects area of 352/16 x 22. Thus, the objection regarding the Plaintiffs' area does not *prima facie* stand. The photocopy of sale deed produced on record appears to be of house Nos.39 and 40 claimed to be sold by Smt.Suchita Pramod Patil and consented by Shri. Saikumar Patil and Smt. Megha Raut. The relationship between the Plaintiffs and these persons is not denied. *Prima facie* it appears that they are relatives are abutting houses in Panchali village. The copies of the applications/ the complaints made by the Plaintiffs are also submitted. The photographs at Exh.3/16 show that the digging/excavation is done very close to the structure claimed to be house No.38 belonging to the Plaintiffs. Photograph of 22.12.2025 shows that there is a wall, photographs on 21.02.2026 reflect that the wall of that structure is demolished. Photographs of 03.02.2026 also reflect the demolished wall after further construction by the Defendants. Photographs submitted at Exh.30 also reflect the construction as done on 07.04.2026 with the wall of the structure house No.38 (claimed by Plaintiffs) still demolished.

9. The Defendants have submitted photographs at Exh.37 showing that, margin is left near the construction. A notification dated 18.03.2021 is submitted, stating that permission as per

Appendix-K under UDPCR for construction of 150 sq.mts (low risk) and 300 sq.mts. (moderate risk) area is not required. However, for construction over such land, it stated that, the Grampanchayat needs to examine the land ownership documents, permitted layout/plan lay out, building plan (with p-Line), receipt of payment of development cess and labour, plan by architect (proposal is strictly in accordance with the provisions of UDPCR 2020). It also mentions the fees to be levied for land development. From the said document, it can be seen that constructions below 300 sq.mts are not completely devoid of permissions or approvals or restrictions. In the present case no document is brought on record by the Defendants to show that construction plans are submitted or drawn regarding the necessary procedure before the local authority/Gram panchayat. In the photographs submitted it appears that, the wall of the structure (claimed to be the Plaintiffs' house has fallen during the time the construction is undertaken by the Defendants. Regarding the distance between the houses, the same cannot be determined without inspection of the property. Even otherwise, the Defendants have not submitted any layout, plan reflecting the construction. Hence, the apprehension of the Plaintiffs does not seem devoid of merit. Hence, *prima facie* case is made out by the Plaintiffs for grant of temporary injunction.

10. As regards irreparable injury and balance of convenience, it appears that, the Plaintiffs had a pre-existing structure which is getting damaged. The Defendants have purchased the property and demolished the pre-existing houses and sought to reconstruct. However, plans, layout are not submitted to reflect the actual construction sought to be undertaken. The damage to a pre-existing

structure outweighs building a new structure after demolition and might not be able to be compensated in terms of money. If the construction is allowed to continue without the requisite clarity about the distance required, the building plan, layout, the Defendants are also likely to suffer if eventually the suit is decreed in the favour of the Plaintiffs and demolition of portion of property belonging to the Defendants is required. The balance of convenience lies in the favour of the Plaintiffs.

11. The Ld. Advocate for the Plaintiffs has relied upon the following judgments (Exh.49) :-

i) *Smt. Fatima Joao Vs. Village Panchayat of Mercas and another* (AIR 2000 BOMBAY 444) wherein the writ petition was dismissed regarding the easementary right claimed by the plaintiff therein *inter alia* on the ground that the civil remedy in the form of filing of suit is available to such a litigant. In those facts, the Hon'ble Bombay High Court (Goa bench) was pleased to also appreciate the earlier judgment regarding the land development that was being done by the local authority has to be in consonance with the right to a clean environment to the people from the locality. Ld. Advocate for the Defendants has differentiated the judgment stating that, the present suit is not filed for declaration of easement by the Plaintiffs.

Perusal of the judgment reflects that, it does appear that the present suit is not for declaration of easement. However, while considering grant of injunction the development sought to be done by a person has to be balanced with the well being of the locality /neighbours.

ii) *K.Ramdas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and others* (AIR 1974 SUPREME COURT 2177). In those facts, it was *inter alia* noted that the Municipal authorities owe

a duty and obligation under statute to see that the residential area is not spoilt by the unauthorised and illegal construction. Ld. Advocate for the Defendants has differentiated the judgment stating that, the present suit is not filed against municipal authorities.

Perusal of the judgment reflects that, the same deals with facts of those case. In the present case, municipal authority is not made a party, however, it is claimed that, the demolition and construction undertaken by the Defendants is illegal. The Plaintiff will have to prove his averments however, *prima facie* surmises can be made for the purpose of temporary injunction.

12. The Ld. Advocate for the Defendants has relied upon the judgment (Exh.43) in *Jaram Singh Vs. Santosh and another* [2019 0 Supreme (HP) 368], which dealt with a right of way by way of easement by prescription claimed by the plaintiff therein. In those facts, since declaration was not sought, the relief was injunction was denied. The said judgment of the Hon'ble Himachal Pradesh High Court is sought to be differentiated by the Ld. Advocate for the Plaintiffs on the basis of the facts in the present case, where the easement to way is not sought.

Perusal of the judgment reflects the facts of that case. It is submitted in the present case that, there has been damage to the Plaintiffs' property and gap is not maintained by the Defendants between the Plaintiffs' and the Defendants' properties.

13. In the present facts, the Plaintiffs need to prove how much requisite distance is required between the properties. However, there is damage to the Plaintiffs' house property. Moreover, no documents regarding the layout, building plan are submitted to reflect the actual construction to be undertaken and if such documents are available for procedure (para 2a at Exhibit

37/2) before the local authority/Gram panchayat. These facts weigh heavily against the Defendants. Hence, points No.1 to 3 are answered accordingly.

14. As to point No.4, in these circumstances,

ORDER

1. Application is partly allowed.
2. Subject to the final adjudication of the suit, the Defendants are restrained from making any new construction on the land beneath house properties Nos.39 and 40 without prior approval/intimation regarding the building plan from the relevant authority/Gram panchayat in terms of notification dated 18/03/2021 (Exhibit 37/2).
3. Costs in cause.
4. Application is accordingly disposed of.

Place: Palghar
Date: 07/07/2026

(Smt. P.S.G. Chalkar)
2nd Jt. Civil Judge Junior Division,
Palghar.