

MHWR090003312022



Presented On	22-04-2022
Registered On	22-04-2022
Decided On	18-03-2026
Duration	03-Yr/ 10-M/25-D
Exh. On	49

IN THE COURT OF CIVIL JUDGE (JUNIOR DIVISION), KARANJA GHA.
(Presided Over by Diksha D. Vighne)

Regular Civil Suit No. 26/2022

Smt. Meerabai Ajabrao Pathe

Age- 55 Years, Occ.- Housewife,
R/o. Plot no.72, Welcome Society,
Sai Nagar, Dabha(Wadi),
Tq. & Dist.- Nagpur,

----- Plaintiff

-Versus-

Shri. Hemraj Laxman Pathade,

Age- 47 Years, Occ.- Agricultural,
R/o. Dhawdi (Khurd), Post. Umari,
Tah. Karanja Gha., Dist. Wardha,

----- Defendant

Appearance:- Advocate for Plaintiff :- Smt. U. D. Gakhare
Advocate for Defendant :- Shri. P. G. Dharpure

J U D G M E N T

(Passed on 18/03/2026)

This is a suit for removal of obstruction from Easementary way/pathway u/s 35 of Easement Act, 1882.

Brief facts of plaintiff's case are as under -

2. It is the case of plaintiff that her deceased father Ukandrao Ramdham Bhoyar had purchased Survey no.25 and other adjacent agricultural field from shri. Nabira in the year 1959. After death of

Ukandrao Ramdham Bhojar, his legal heirs had executed partition of his property in the year 2005 vide registered partition deed. Accordingly, survey no.25 situated at mouza Dhawadi khurd came in share and possession of plaintiff. Since 2005 and instead after death of her father from the year 1975 plaintiff is in possession and ownership of survey no.25.

3. It is further pleaded by plaintiff that when her father had purchased survey no.25, from that time itself they had easementary way/pathway of bullock cart which came from Dhawadi khurd pandhan road and thereafter it goes from survey no.15 which has connected to the southern side of survey no.27 and then it goes to her field from southern side of survey no.27. according to her his way is in existence from last 40 years. Defendant has survey no.17/1- A. Government land survey no.15 and 16 are situated adjacent to the agriculture field of defendant. On 20.06.2021 defendant has made encroachment on survey no.15 and 16. He has obstructed way of plaintiff by placing thorns and wooden steams on her way. As well as, defendant has diverted way of water stream. Therefore, water of that water stream has come in the agricultural field of plaintiff and caused damaged to the crops of plaintiff. Prior to this in the year 2018 also defendant had obstructed way of plaintiff and diverted flow of water. That time plaintiff had requested defendant to remove obstruction and reinstate the way of water stream. However, defendant did not give positive response. Hence, on 31.08.2018 plaintiff had sent notice to defendant through her advocate. Defendant had given reply to that notice on 11.09.2018. Thereafter, plaintiff had initiated procedure for filing suit in the court. After learning this fact, defendant had removed his encroachment and reinstate flow of water. Thereafter, in the year

2019 again defendant had done the same thing. That time other agriculturist namely Shantabai Ukandrao Dhole had made complaint to Tahasildar. After learning about his complaint, defendant had removed his encroachment and therefore when Talathi and Revenue Inspector came for inspection that time they had given report on 13.09.2019 that road and water stream are open. Accordingly, on the basis of that inspection report Tahasildar had disposed of that complaint on 18.01.2020.

4. It is further pleaded by plaintiff that survey no.15 and 16 are government land, despite that on 20.06.2021, defendant has made encroachment on the way of plaintiff. As well as, he has changed the flow of water stream. This act of defendant is illegal and therefore, she has filed present suit. It is further pleaded that plaintiff has no other way to approach her agricultural field other than disputed way. Defendant has no nexus with this way. However, due to this act of defendant, plaintiff is suffering and she will face irreparable loss. She had sent notice to defendant on 23.10.2021 but defendant did not give any reply to that notice. Therefore, she has filed present suit for declaration that she has right of way from disputed way/ pathway and for grant of mandatory injunction against defendant for removal of obstruction from that way and to reinstate flow of water stream. As well as, for permanent prohibitory injunction.

Brief facts of defendant's case are as under:-

5. After service of summons defendant has appeared before court and filed his written statement at Exh.13. In his written statement he has denied all allegations made against him in plaint. In his special pleading he has pleaded that father of plaintiff had

purchased survey no.32/02 admeasuring 2.62 H.R. excluding 0.06 H.R. land from Balkisan Dhanraj Maheshwari@Marwadi on 01.10.1959. Balkisan had another brother namely Prayagdas. Prayagdas had received survey no.32/3 in partition. Balkisan and Prayagdas had ancestral property survey no.32/2 and 32/3 and they both had jointly cultivated that property. Survey no.32/3 which came in share of Prayagdas had Pandhan way from Dhawadi Khurd village to Dhawad Bujurg. From only that Pandhan road earlier Balkisan and thereafter father of plaintiff used to approach survey no.32/2 from northern dhura. After death of plaintiff's father his property was partitioned between his heirs. Later Survey no.32/2 renumbered as survey no.25, 27 and 28 and survey number of plaintiffs agricultural field is survey no.25. Name of Balkisan's wife is still floating in revenue record of survey no.26 admeasuring 0.6 H.R. as Sundarabai Balkisan Nabira.

6. It is further pleaded by defendant that since earlier survey no.32/2 which was purchased by father of plaintiff had a way from northern boundary of his field from pandhan road of survey no.32/3 from Dhawadi khurd to Dhawadi Bujurg. Plaintiff and her sisters are using same pandhan way for their cultivation. Plaintiff used to approach her survey no.25 from western side boundary of survey no.28. Thus, no road is in existence in between agricultural field of plaintiff and water stream and agricultural field of defendant survey no.17, and government lands survey no. 15 and 16 to approach agricultural field of plaintiff. Plaintiff has never used disputed way and never demanded it from defendant. Defendant has not changed any route of water stream. Plaintiff has alternate way to approach her agricultural field and therefore she has no right to ask for way from agricultural field of defendant. Plaintiff has filed fabricated map and

four boundaries. Suit of plaintiffs is beyond period of limitation. Hence, he has prayed for dismissal of suit.

7. After perusal of rival pleadings of both sides my learned predecessor had framed issues at Exh.14. Those issues alongwith reasons and findings are as follows.

Sr. No.	Issues	Findings
1	Does plaintiff prove existence of road as mention in sketch map?	No
2	Does plaintiff prove her right over the alleged road / way?	No
3	Does plaintiff prove that, the defendant is causing obstruction to the allege way and has done fencing?	No
4	Does Plaintiff prove that defendant has obstructed, diverted the flow of waters stream?	No
5	Does defendant prove that the plaintiff has alternative way from the boundary of survey no.32/2 ?	Yes
6	Whether plaintiff is entitled for relief of declaration as sought?	No
7	Whether plaintiff is entitled for perpetual injunction as prayed?	No
8	Whether plaintiff is entitled for mandatory injunction as prayed?	No
9	What order and decree ?	Suit is dismissed with cost.

REASONS

Argument of plaintiff's side-

8. Learned advocate for plaintiff Smt. U. D. Gakhare has filed her written notes of argument below Exh.48. It is submitted by her that plaintiff is owner of survey no.25 situated at mouza Dhawadi Khurd. That agricultural land was received by plaintiff on partition after death of her father in the year 2005. Since 2005 plaintiff is in peaceful possession of suit property and since then she is cultivating that property. For approaching agricultural land of plaintiff, she is having bullock-cart road from agricultural land survey no.15 and 16, which will connect to the southern side boundary of survey no.27. Since last 40 years this way is an only cultivating way of plaintiff and she has no other alternative way to approach her agricultural land. Agricultural land of defendant's survey no.17/1a is adjacent to the government agricultural land survey no.15 and 16. Defendant has made encroachment over survey no.15 and 16 and thereby closed pathway of bullock-cart of plaintiff.

9. Plaintiff has further submitted regarding issue no.1 that to prove this issue she has examine two witnesses and they both have stated that plaintiff has only way to approach her field from survey no.15 and 16 which will connect to the southern side boundary of survey no.27 and she has no alternative way. She is using this road since last 40 years. PW-2 Gajanan Dharpure has also stated that plaintiff has been using disputed road from last 40 years. Plaintiff has filed and proved government documents in support of her contention. As well as, plaintiff has proved issue no.2 that she has a right over alleged road. Plaintiff and her witnesses specifically deposed that they

have no alternative way other than disputed road. Moreover, plaintiff has proved that defendant has obstructed and diverted the flow of water stream. The same fact has proved because when defendant had obstructed stream of water that time plaintiff had sent notice to defendant on 23.10.2021. Defendant did not give any reply to that notice that means he has admitted contents of notice. Other than this issue no.4 is on the defendant to prove but he does not lead his evidence and therefore he has failed to prove alternative way to the plaintiff. Plaintiff has proved issue no.1 to 3 and defendant has failed to prove issue no.4 therefore plaintiff is entitled for relief of declaration, perpetual and mandatory injunction as prayed. It is also submitted by her that 'a person who has failed to examined himself by standing in the witness box, the court cannot consider his side'. She has relied on authority of Hon'ble Supreme Court in the case of Vidyadhar Vs. Manikrao in support of her submission. Plaintiff has lead her oral and documentary evidence and from that evidence, case of plaintiff is proved. Hence, she has prayed for decretal of suit as per prayer. In support of her argument, she has filed copy of judgment in the case of Vidyadhar Vs. Manikrao and others.

10. Learned advocate for defendant has filed pursis at Exh.45 that he does not want to examined any witness. He is solely relied on the cross examination of PW-1 and PW-2 in support of his defense. He has argued that to prove case of plaintiff she has firstly and mostly need to prove existence of disputed road. It is alleged that plaintiff is having ancestral easementary way from land survey no. 15 and 16 of Forest Department. However, she has failed to file any document which shows that the road is in existence from survey no.15 and 16. The father of plaintiff had purchased survey no.32/2 which was partition

between his children. There are seven sisters to the plaintiff but no one have made any complaint against defendant. Neither plaintiff has examined any of her sisters. For filing this suit, the plaintiff has to claim or demand a road from Forest Department. Thereafter, this suit will sustain. The suit of plaintiff is barred by period of limitation and also barred for non-joinder of necessary party i.e. forest department. The Forest Department is a necessary party in this suit. However, plaintiff has failed to join them as party in this suit. Moreover, the notice at Exh.26 and 28 are very vague because in those notices date of obstruction has not mention as well as date of encroachment is also not mention. Other than this plaintiff has not file any panchnama or document regarding procedure adapted before revenue authority. As per case of plaintiff on 20.06.2021 defendant has obstructed way of plaintiff and she had sent notice in the month of October without doing any preliminary procedure. PW-2 in his cross examination has admitted that plaintiff has alternative way other than disputed road. Therefore, when plaintiff has failed to prove existence of disputed road then no question has arisen to prove other issues. He has relied on authority of Raghu Narayan Dukre and others Vs. Gorakshanath Mahadev Nalkar and others and Dhondiram Rajaram Salunke Vs. Dinkar Parshuram Salunke and others.

As to issue no.1-

11. In this issue burden lies on the shoulder of plaintiff to prove that road mention in sketch map is existed. To prove this issue plaintiff has examined herself as PW-1 at Exh.24 and Gajanan Bhagwanji Dharpure as PW-2 at Exh.39. Plaintiff has also relied on following documentary evidences in support of her case.

Sr. No.	Documents	Exhibit no.
1.	Notice	26
2.	Reply of defendant to that notice	27
3.	Notice dt.26.10.2019	28
4.	Postal receipt and acknowledgment	29 & 30
5.	7/12 extract of survey no.32/2	31
6.	P-1 of the year 1910-11	32
7.	Renumbering parcha	33
8.	Talathi Map	34
9.	C copy of measurement map	35
10.	Bandobast Nakasha	36
11.	Certified copy of sale deed of defendant	37

12. On the other hand, defendant has cross examined witnesses of plaintiff. However, he has chosen not to lead his own evidence. He has filed purshis at Exh.45 to that effect.

13. I have perused oral and documentary evidence of plaintiff. As well as, also gone through cross-examination taken by learned advocate for defendant of PW-1 and PW-2. In this issue the burden lies on the shoulder of plaintiff to prove that the way/ pathway shown in plaint sketch map is existed. In affidavit-in-lieu of examination in chief of P.W.1, she has reiterated contention of her plaint. She has deposed that she has own survey no.25 and that agricultural land was received by her after death of her father on registered partition in the year 2005. She has further deposed that prior purchasing of that agricultural land by her father that bullock-cart way from survey no.15 was existed. That bullock-cart way has existed during whole life-time of her father and after his death is in her cultivation. Since last 40 years this bullock-cart way is the only the way existed for her cultivation. Agricultural land of defendant is adjacent to government land survey no.15 and 16.

Defendant has no nexus with survey no.15 and 16. Despite that defendant has closed that way by putting thorn, wood etc. As well as, diverted flow of water stream. On perusal of her cross-examination, it is seen that she has admitted that Shantabai Dhole is her real sister. Her agricultural land is adjacent to her suit field. She has further admitted that, her sisters are cultivating their agricultural fields by approaching their fields from Dhawdi Pandhan road. She has further admitted that, her father had purchased his agriculture land from Balkisan Maheshwari. She has further admitted that survey no.32/2 and 32/3 are ancestral properties of Balkisan and Prayagdas. She has also admitted that at that time Dhawadi khurd to Dhawadi Bujurg road was went from agricultural land of Balkisan and Prayagdas. It is also admitted by her that farmers of that village and other adjacent farmers have used Dhawadi Khurd to Dhawadi Bujurg pandhan road to approached their agricultural field. She has further admitted that at present her sisters are using pandhan road for approaching their agricultural land. It is also admitted by plaintiff that she has no documentary evidence to show that their is way from forest land. It is also admitted by her that she has made no efforts to receive those documents from Forest Department. She has also admitted that she had received information after inquiry of Tahasildar and Forest Department that there is no road existed.

14. On perusal of chief examination of PW-2 it is seen that he is a husband of plaintiff's sister Pushpa Gajanan Dharpure and they are relatives of each other. He has own survey no.24. He has deposed that his father-in-law had bullock-cart way which went from Dhawadi pandhan road and then from survey no.15 which then connect to the Southern side boundary of survey no.27. He has deposed that this is an

only way existed to the plaintiff since last 40 years. It is also deposed by him that defendant had obstructed way of plaintiff by putting throne, wooden steam etc. on her way and by diverting flow of water stream. On perusal of his cross-examination, it is seen that he is a retired teacher and his whole service has completed in Ashti Tahasil. After his retirement he has started residing at Karanja Gha. He has admitted that in the year 2018 when Meerabai had given notice to defendant related to suit property that time he was with Meerabai. It is admitted by him that Meerabai is resided at Nagpur and she has given her share agricultural field by Theke-Batai (share out). It is also admitted by him that defendant had given reply to the notice of plaintiff of the year 2018 in which he had denied the existence of disputed road. It is admitted by this witness that there is a water stream adjacent to the agricultural land of defendant. He has deposed that measurement of survey no.15 and 16 has not conducted by Forest Department. He has also deposed that he had written letter to Forest Department regarding existence of road from survey no.15 and 16 but they did not take cognizance. He has also admitted that private people have no road from land of Forest Department.

15. I have gone through oral and documentary evidence of plaintiff. It is seen that ownership of plaintiff over survey no.25 is not disputed. As well as, ownership of defendant over survey no.17/1/a is also not disputed. It is also not in dispute that survey no.15 and 16 are government land belongs to Forest Department. It is deposed by plaintiff that she is having easementary right of way from survey no.15 and 16. And defendant has obstructed her easementary right of way by putting throne, wooden steam etc. on her way and by diverting flow of water stream. It is settled law that the dispute regarding existence of

way shall be determined by documentary evidence. Existence of road cannot be determined by leading ocular evidence. Plaintiff has filed documentary evidence such as notices, reply of notices, postal receipt and acknowledgment, bandobast map and 'C' copy of measurement map to prove her case. I have gone through those documents. For proving existence of any way or road the documentary evidence in this regard is necessary. Bandobast Map and C copy of measurement map which was carried out by defendant filed by plaintiff are relevant documents in this regard. As per evidence of plaintiff her easementary right of way is existed prior to preparation of bandobast map. On perusal of bandobast map at Exh.34 which is of the year 1889-90, it is seen that one pandhan road has went from survey no. 32/3 which is adjacent to survey no. 32/2. The earlier survey number of plaintiffs agricultural land was 32/2. It is seen from the map that pandhan rasta was went from survey no.32/3 which was earlier own by Balkisan and Prayagdas. That means it is seen from this map that earlier the only way for approaching survey no.32/2 and 32/3 was pandhan as shown in this map. However, no such way or road is seen from the survey no.15 and 16 of government land as deposed by plaintiff. As well as, on perusal of C copy of land measurement map at Exh.35, no way or road from survey no.15 and 16 which is approaching survey no.25 of plaintiff can be seen. The burden of proving existence of disputed road is on the plaintiff and existence of road can be determine only by documentary evidence. However, none of the document filed by plaintiff has shown that dispute easementary way is existed from survey no. 15 and 16.

16. It is admitted fact that survey no.15 and 16 are Forest land. Forest Department is a proper party who can deposed whether any way

from their land is existed or not. However, plaintiff has neither joint Forest Department as a party in this suit nor file any document issued by Forest Department about existence of road from their land. Plaintiff has not examined surveyor who had prepare map of survey no.15 and 16 which is Exh.35. Surveyor is an expert about measurement and map prepared by them. Evidence of surveyor could have benefit to determined dispute between plaintiff and defendant. However, plaintiff has not examined him for the better reason known to plaintiff. In such circumstances it is seen that plaintiff has failed to show existence of disputed way from her evidence on record. It is also seen from the map and brought on record that there is a water stream in between agricultural land of plaintiff and defendant. If plaintiff had a way or road from survey no.15 and 16 then how could she approached her land by crossing that water stream without any bridge. No any evidence about existence of any bridge has come on record.

17. It is also seen from the cross examination of both witnesses that before filing this suit they had approach revenue authorities regarding obstruction by defendant. After conducting inquiry by revenue authorities, it was found that no way or road is existed from survey no.15 and 16 to approach land of plaintiff. This fact was in knowledge of plaintiff despite that she has filed present suit instead of preferring appeal against order of revenue authority. As well as, plaintiff has not file inquiry report or document relating to proceeding initiated before revenue authority regarding disputed road. It shows that plaintiff wanted to hide this fact from court about inquiry conducted by revenue authority and its conclusion. Other than this plaintiff has not filed any document to prove existence of road. As well as, she has failed to make efforts to obtain any document regarding

disputed road from Forest Department. In such circumstance it is seen that plaintiff has failed to show that disputed road is existed from survey no.15 and 16. Thus, considering aforesaid reason I find that plaintiff has failed to prove issue no.1 in her favor. Thus, I answer issue no.1 negative and record my findings accordingly.

As to Issue no.2 -

18. In this issue also the burden lies on the shoulder of plaintiff to prove her right over the alleged way/road. As I discuss in issue no.1 that plaintiff has failed to prove existence of road as mention in plaint map. Therefore, no question has arisen about right of plaintiff over any disputed road. Moreover, admittedly survey no.15 and 16 are forest land. No private person can claim their right over the land or any way belong to government or Forest Department until and unless it is notified by government. Plaintiff has not filed any document like government notification which shows that she has acquired right of way from forest land. Thus, considering aforesaid reason I hold that plaintiff has failed to prove her right over alleged way. Thus, I answer issue no.2 negative and record my finding accordingly.

As to issue no.3 and 4 -

19. It is deposed by plaintiff that defendant has caused obstruction to the alleged way and had done fencing as well as obstructed and diverted flow of water stream. As I discuss in issue no.1 that plaintiff has failed to prove existence of alleged way. Therefore, no question has arisen to obstruct her right of way by defendant. In respect of diversion of water flow I find that a water stream is flowing in between survey no.25 i.e. old survey no. 32/2 and survey no. i.e. 17/1/a old survey no. 32/4. It is seen that water stream is a natural

course of water. With passage of time and change in quantity of water naturally water stream expand its area. The map at Exh.35 shows that as per there old map the water stream has slightly expand its area. However, it is not seen from this map that water stream has diverted by any act of defendant. Thus, it is seen that plaintiff has failed to prove obstruction and diversion of water flow of water stream. Thus, considering aforesaid reason I answer issue no. 3 and 4 in negative and record my findings accordingly.

As to issue no.5 -

20. In this issue burden lies on the shoulder of defendant to prove that plaintiff has alternative way from the boundary of survey no.32/2. On perusal of evidence, it is seen that survey no.32/2 and 32/3 were own by Balkisan and Prayagdas. Thereafter, father of plaintiff had purchased survey no.32/2 from Balkisan. It is seen that Balkisan and thereafter father of plaintiff have cultivated their agricultural land by approaching from Dhawadi Khurd pandhan way. The map filed by plaintiff shows that the only way approaching her agricultural land is a pandhan way from east to west Dhawadi Khurd pandhan way. Other than this, no any way or road has shown to be existed to approach agricultural land of plaintiff. If the alleged disputed way was existed and it was received by plaintiff as easementary right then she could have filed sale deed of survey no.32/2. Sale deed of survey no.32/2 must have contain recital about existence of easementary way. However, no such document has filed by plaintiff. Thus, existence of disputed road is not proved. On contrary, it is seen from the map filed by plaintiff that she and her other sisters are having Dhawadi Khurd pandhan way to approach their agricultural land. Therefore, it is seen that plaintiff can easily approach her agricultural

land from Dhawadi khurd pandhan way and thereafter from the eastern dhura of survey no.32/3. Thus, it is seen that existence of alternative way to plaintiff has proved by defendant. Thus, I answer issue no.5 in affirmative and record my findings accordingly.

As to issue no.6 to 8 -

21. Plaintiff has prayed for declaration, permanent and mandatory injunction. However, plaintiff has failed to prove her burden regarding existence of disputed road. In such circumstance she is not entitled for any the relief as prayed by her. Thus, I answer issue no.6 to 8 in negative and record my findings accordingly.

As to issue no.9 -

22. Considering reasons and finding of issue no.1 to 8, in answer to issue no.9 and in the result, I pass following order.

ORDER

1. Suit is dismissed with cost.
2. Decree be drawn up accordingly.

Date: 18.03.2026

(Diksha D. Vighne)
Civil Judge (Jr. Dn.),
Karanja Gha.

CERTIFICATE

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

Name of Stenographer : Mr. A. R. Thakur, Stenographer (Grade-3)

Name of Court : Civil Judge (Jr.Dn.) & JMFC, Karanja Gha.

Date of Judgment : 18/03/2026.

Judgment checked and

signed by Presiding Officer on : 02/04/2026.

Judgment uploaded on : 02/04/2026.