

Received on	01/03/2024
Registered on	02/03/2024
Decided on	10/04/2026
Duration	02 Y. 01 M. 09 D.

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, WASHIM.
[Presided over by Anil Subramaniam]

Misc. Civil Appeal No. 12/2024
CNR No. MHWS010002232024

Exh. No. 19

1)	Bhagwan Ratnaji Kalbande, Aged about 55 years, Occu. Agricultural, R/o. Kokalgaon, Dit. Washim.	... Appellants.
2)	Godawari Bhagwan Kalbande, Aged about 50 years, Occu. Household, R/o. Kokalgaon, Dist. Washim.	
<u>V E R S U S</u>		
1)	State of Maharashtra, Through Collector, Washim.	... Respondents.
2)	The Tahsildar, Washim, Dist. Washim.	
3)	Taluka Inspector of Land Records, TILR office, Washim, Dist. Washim.	

APPEAL UNDER ORDER 43 RULE 1(R) R/W SECTION 151 OF CPC .

=====
Appearance:-

Mr. A. A. Pathan, Advocate for appellants.
Mr. A. R. Vyawahare, APP for respondents.

J U D G M E N T

(Dated 10/04/2026)

1. By the present appeal, the appellant is challenging the order passed by Ld. Jt. Civil Judge (Sr. Dn.), Washim in RCS No. 193/2023 dated 02/02/2024 below Exh. 5 rejecting the application of the

plaintiff/appellant herein.

2. The plaintiff/appellant herein filed the suit contending that Gat No. 402 is inherited by him and Gat No. 403 is self acquired property purchased in 2015. The applicants are trying to create a way through center of their fields. It is further contented that there was way about 30 to 35 years between field of the applicants. Because of the improper condition of the said road, the villagers were having difficulty passing through the way and hence, villagers requested father for allotment of suitable land and hence, father allotted suitable and convenient land of 11 feet in width from the said road from the southern side proceeding east west and the road is also constructed therein in Rozgar Hami Yajana by the Government and it is used by all the villagers. No documentation was taken at that time considering relationship and other aspects.
3. Notice was issued by the opponent that they should release the way and land for putting up way and thereby causing damage to the crops. Hence, as the road is already available, request was made to stop this activity and hence, the suit and interim relief being prayed therein.
4. The said application came to be resisted by the defendants stating that Kokalgaon Waghola Pandhan road is in existence. It is contended that the application was filed to remove obstruction on Pandhan way and clear road. The land was measured and boundary marks fixed and as per directions, road was being released.
5. Heard Ld. counsel for the appellants as well as respondents. Following points arise for my consideration and I answer the same as under for the reasons stated hereinafter.

Sr. No.	Points	Findings
1]	Whether the plaintiff has prima facie case ?	Does not survive

2]	Whether balance of convenience and irreparable loss would be caused to the plaintiff ?	Does not survive
3]	Whether the impugned order requires any interference ?	.. partly In the affirmative.
4]	What order ?	... As per final order.

REASONS

As to Point Nos. 1 to 3 :-

6. At the outset, one has to consider that the fact that the plaintiff had filed affidavit of number of persons of the village contending existence of alternate road. The Ld. Trial Court has pointed out that the plaintiff has to approach to the Collector for such change of road. Thus, one has to consider that existence or non existence of such alternate road being provided by the plaintiff has not been considered. Apparently, the plaintiff has filed application for removal of encroachment on the public road but what part of road is not ascertained by the Ld. Trial Court. Apparently, there is no road in existence at present between two parts. It is not pointed out that the the alternate road from the lands of plaintiff was built in Rozgar Hami Yojana Scheme . But court disbelieved as there are no documents to that effect. These documents are available with the Panchayat office and the Government in that regard. In such circumstances, I hold that the Ld. Trial Court has failed to appreciate the aspect of existence or plaintiff having provided an alternate road of way or easement from his land .
7. Even from the record, it is seen that a proposal has been forwarded to the Tahsildar for such alternate road and same is still pending which contemplates that there is such alternate road provided. In such

circumstances, so called deficiency or no representation as pointed out by the Ld. Trial Court is also made up. Hence, I hold that at present approach of the Ld. Trial Court is erroneous. So much so that the aspect of giving of alternate road by the present appellant has not been considered. The exact situation at the place or fields has not been placed by the state and it was bounden to do so. In such circumstances, it is necessary to point out that this would requires verification.

8. Considering the fact that proposal is pending before the Tahsildar, he shall examine the same and the intimate it to the Ld. Trial Court along with detailed facts and circumstances and the detailed maps of the area. Relating the present road/s and proposed road/s if any. Hence, I refrain myself from considering points Nos. 1 to 3 and remand proceedings back to the Ld. Trial Court. Hence, I answer point Nos. 1 to 3 accordingly and I pass the following order -

ORDER

- 1] The appeal is partly allowed.
- 2] The order passed by Ld. Jt. Civil Judge (Sr. Dn.), Washim in RCS No. 193/2023 dated 02/02/2024 below Exh. 5 is hereby set aside.
- 3] The matter is remanded back to the Ld. Trial Court.
- 4] The learned trial court also to consider if the The Ld. Tahsildar or Competent Authority are to consider aspect of the plaintiff having provided or ready to provide Alternate road or its suitability and consider same.
- 5] The Ld. Trial Court to rehear the parties and decide the same, as per Law.
- 6] Inform to Ld. trial Court, accordingly.
- 7] R & P be returned to the trial Court as per rules.

- 8] No order as to costs.
9] Misc. Civil Appeal No. 12/2024 stands disposed off.

Washim
Date - 10/04/2026

(Anil Subramaniam)
Principal District Judge,
Washim.

CERTIFICATE

I affirm that the contents of this PDF file word to word are same as per original judgment/order.

Name of Stenographer	:	A. W. Ajmire, Steno (Grade II)
Court Name	:	Principal District & Sessions Judge, Washim.
Date of order/Judgment	:	10/04/2026
Judgment Dictated on	:	10/04/2026
Order/Judgment signed by Presiding Officer on	:	10/04/2026
Order/Judgment uploaded on	:	10/04/2026