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Registered on	23/11/2023
Decided on	06/04/2026
Duration	02 Y. 04 M. 14 D.

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

Misc. Civil Appeal No. 54/2023
CNR No. MHWS010016302023

Exh. No. 15

1)	Prakash Pandurang Thakare, Aged about 44 years, Occu. Agriculturist,	... Appellants.
2)	Gajanan Pandurang Thakare, Aged about 46 years, Occu. Agriculturist,	
3)	Tryambak Kisan Thakare, Aged about 65 years, Occu. Agriculturist,	
4)	Ananda Tryambak Thakare, Aged about 42 years, Occu. Agriculturist,	
5)	Ramdas Tryambak Thakare, Aged about 40 years, Occu. Agriculturist, All R/o. Kharola, Po. Kajalamba, Tq. & Dist. Washim.	
<u>V E R S U S</u>		
	Santosh Kisan Thakare, Aged about 45 years, Occu. Agriculturist, R/o. Kharola, Po. Kajalamba, Tq. & Dist. Washim.	... Respondent.

APPEAL UNDER ORDER 43 RULE 1(r) OF CPC.

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Appearance:-

Mr. N. M. Nikam, Advocates for appellants.
Mr. C. S. Poddar, Advocate for respondent.

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J U D G M E N T

(Dated 06/04/2026)

1. By the present application, the opponent is challenging the order passed by the Ld. Trial Court below Exh 5 in RCS No. 266/2022 dated 02/11/2023 allowing application for interim relief against the appellants.
2. The plaintiff/respondent herein filed the above suit contending that he is owner of Gat No. 295 as shown in the map. It is further alleged that defendant Nos. 1 to 6 have encroached on the suit field on the southern side and it is to the tune of 7 R. He carried out measurement which shows encroachment by the defendants. The plaintiff received property in partition in the year 2007-08. The defendant No. 5 has also received property in partition and thereafter, certain transactions have taken place. The defendant Nos. 1 to 6 assured of vacating the encroachment area, but failed to do so. Hence, the suit for removal of encroachment. It is contended that pending the suit, there is likelihood of more encroachment and disturbing possession of the plaintiff. Hence, prayed for temporary injunction.
3. The defendants filed reply denying that there any encroachment. It is contended that there is no boundary fixed between two parties and boundary marks are not fixed. It is further contended that map being incorrect, cannot be relied upon and defendants will get land measured through the Court Commissioner and unless all the lands are measured, one cannot verify the said encroachment. Apparently, the dispute relates to the alleged occupation of the property. It was contended that reply of defendant Nos. 2, 5 and 7 was filed on record and same has not been considered.
4. After hearing both the sides, the Ld. Trial Court allowed the application.
5. Heard both sides. Considered the submissions advanced. Following points

arise for my consideration and I answer the same as under for the reasons stated hereinafter.

Sr. No.	Points	Findings
1]	Whether plaintiff has made out prima facie case ?	... Does not survive.
2]	Whether balance of convenience lies in favour of the plaintiff ?	... Does not survive.
3]	Whether the plaintiff will suffer irreparable loss ?	... Does not survive.
4]	Whether the impugned order requires any interference ?	.. In the affirmative.
5]	What order ?	... As per final order.

REASONS

As to Point Nos. 1 to 4 :-

6. At the outset, the aspect with regard to the reply being filed by defendant Nos. 2, 5 and 7 not being considered and kept pending is apparent on the face of record. It was necessary for the Ld. Trial Court to consider the same before passing any orders. There is nothing on record to indicate as to what happened of the reply filed by these defendants. There is no consideration of this reply. In such circumstances, I refrain myself from considering the entire appeal on merits. Suffice to say that on this sole ground alone , appeal is required to be allowed and the matter be remanded back to the Ld. Trial Court. Hence, point Nos. 1 to 3 does not survive and point No. 4 is answered in affirmative and I pass the following order -

ORDER

- 1) The appeal is partly allowed.

- 2) The impugned order passed by Ld. 2nd Jt. Civil Judge (Jr. Dn.), Washim in RCS No. 266/2022 below Exh. 5 dated 02/11/2023 is hereby set aside.
- 3) The matter is remanded back to the Ld. Trial Court for fresh hearing as per Law.
- 4) The Ld. Trial Court to consider the replies of other defendants, if available on record and re-hear the entire interim application at Exh. 5 as per Law.
- 5) During the course of argument, effort was made for joint measurement. The defendant Nos. 1 to 6 have also so stated in their reply. Somehow, it did not go through. If the parties apply for such measurement by way of Court Commissioner, the Ld. Trial Court to consider such application expeditiously for disposal 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. 54/2023 stands disposed off.

Washim
Date - 06/04/2026

(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	:	06/04/2026
Judgment Dictated on	:	06/04/2026
Order/Judgment signed by Presiding Officer on	:	06/04/2026
Order/Judgment uploaded on	:	06/04/2026