



ORDER BELOW EXH. 64 IN R.C.S. 43/2016
Prabhakar and another Vs Vinayak and others

1. The present application has been filed by original defendant No.1/counter-claim plaintiff Vinayak Mahadeorao Raut under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, seeking temporary injunction against original plaintiff Nos.1 and 2. By the present application, the applicant has prayed that original plaintiff Nos.1 and 2 be restrained from carrying out further construction of a wall and Otta in the alleged counter-claim approach way and from causing obstruction to his ingress and egress through the said way during the pendency of the suit and counter-claim.

2. Original plaintiff Nos.1 and 2 have filed their reply at Exhibit 68 and opposed the application. Perused the application, reply, pleadings of the parties and documents placed on record. Heard learned Advocate Shri S. N. Sarkale for original defendant No.1/counter-claim plaintiff and learned Advocate Shri M. A. Khan for original plaintiff Nos.1 and 2.

3. The original suit has been filed by plaintiff No.1 Prabhakar Ramkrushna Raut and plaintiff No.2 Yogesh Prabhakar Raut against defendant No.1 Vinayak Mahadeorao Raut and defendant No.2 Gram Panchayat, Dhotra, seeking a mandatory injunction. Original defendant No.1 Vinayak Mahadeorao Raut has filed a counter-claim against original plaintiff Nos.1 and 2 and Gram Panchayat, Dhotra, seeking declaration, permanent injunction and mandatory injunction in respect of the alleged approach way.

4. The case of the applicant is that he is the owner and possessor of Gram Panchayat House Property No.68 situated at Mouje Dhotra, Tahsil Mangrulpur, District Washim. According to him, the said property was purchased by him under a registered sale deed dated 20.12.1999. The applicant contends that his house property has no independent means of ingress and egress. According to him, an ancestral cattle shed or Kotha, locally known as “Gadichi Jaga”, has been converted into an approach way leading to his house.

5. It is further contended that the open space measuring approximately 51 feet north-south and 13 feet east-west is his ancestral property and has been continuously used by him and his ancestors as an approach way since the year 1700. According to the applicant, during the pendency of the suit and counter-claim, original plaintiff Nos.1 and 2 started constructing a wall and Otta in the alleged approach way. He alleges that the construction is being carried out without permission from Gram Panchayat, Dhotra and that it obstructs his ingress and egress.

6. The plaintiffs have denied the applicant's ownership, possession and exclusive user over the alleged approach way. They have specifically denied that the disputed open space is an ancestral property of the applicant or that it has been used exclusively by him since the year 1700. According to the plaintiffs, they have constructed a residential structure over an area of approximately 496 square feet out of the total area of about 2,900 square feet forming part of Gram Panchayat House Property Nos.12 and 13, which are owned and possessed by them.

7. The plaintiffs have further contended that the western wall of their property had become old and dangerous and, therefore, they constructed one bedroom, one kitchen and one living room for the residence of the son of plaintiff No.1. According to them, the existing western door has been retained and no obstruction has been caused to the applicant. For deciding an application for temporary injunction, the applicant is required to establish the existence of a prima facie case, balance of convenience in his favour and likelihood of irreparable injury in the event of refusal of injunction. Failure to establish any one of these essential requirements would disentitle the applicant from temporary relief.

8. At this interlocutory stage, the Court is not expected to finally adjudicate the title, possession or easementary rights claimed by the parties. However, the applicant must place sufficient prima facie material showing an existing legal right and an imminent threat to that right. In the present case, the applicant claims that the disputed approach way is his ancestral property and that it has been owned and possessed by his ancestors since the year 1700. However, no prima facie documentary evidence showing the ownership of the applicant or his predecessors over the disputed open space has been placed on record along with the application.

9. The registered sale deed dated 20.12.1999 relied upon by the applicant pertains to Gram Panchayat House Property No.68. However, from the material presently placed on record, it is not prima facie established that the alleged approach way measuring 51 feet by 13 feet forms part of the property purchased under the said sale deed. The applicant himself has stated that the property purchased by him was an open plot and that it had no ingress and egress. He further

contends that he subsequently provided access to the plot through the ancestral Kotha. This averment itself indicates that the alleged approach way is not specifically shown as part of the property purchased by him under the registered sale deed.

10. The applicant has relied upon a rough map attached to the counter-claim. However, a privately prepared rough map, without supporting title documents, revenue record, Gram Panchayat record or duly proved measurement, is insufficient to establish a prima facie proprietary right over the disputed open space. There is also an apparent discrepancy regarding the measurement of the alleged approach way. In the application, the applicant has described it as measuring 51 feet north-south by 13 feet east-west, whereas in the reply the plaintiffs have referred to the applicant's claim as being 59 feet north-south by 13 feet east-west. The precise identity, location and measurement of the alleged way are, therefore, seriously disputed.

11. The applicant has also claimed continuous ownership and user since the year 1700. Such a claim requires strict proof by legally admissible documentary and oral evidence. A bare assertion in the application is not sufficient to establish a prima facie case. It is an admitted position that, pursuant to the order passed below Exhibit 51, a Court Commissioner was appointed and the Commissioner's report has been filed at Exhibit 59. The applicant has filed objections to the said report at Exhibit 60. The Commissioner's report and the objections thereto are yet to be considered on their own merits. The mere fact that the applicant has raised objections to the Commissioner's report does not establish that the construction made by the plaintiffs is situated in the applicant's alleged approach way.

12. The applicant alleges that the plaintiffs started construction immediately after submission of the Commissioner's report. However, the plaintiffs have specifically stated that construction has been made within Gram Panchayat House Property Nos.12 and 13 owned and possessed by them and that the construction is almost complete. The present application does not disclose the exact date on which the alleged construction commenced, the stage of construction existing on the date of filing the application or the precise portion of the construction which allegedly falls within the disputed way. No contemporaneous photographs, measurement report, approved village map or other prima facie material has been produced to demonstrate that the wall or Otta is actually being constructed over the alleged approach way.

13. The applicant has relied upon a complaint dated 19.06.2023 allegedly submitted to Gram Panchayat, Dhotra. He contends that the Gram Panchayat informed him that no construction permission had been granted to the plaintiffs. However, the question whether the plaintiffs obtained permission from the Gram Panchayat is distinct from the question whether the disputed land belongs to the applicant. Absence of construction permission, even if assumed for the present purpose, does not create or establish any private ownership or possessory right in favour of the applicant.

14. Any construction made without the permission required under the applicable law may be dealt with by the competent Gram Panchayat or statutory authority in accordance with law. The applicant cannot obtain a temporary injunction merely on the ground that the plaintiffs have allegedly failed to obtain such permission, unless he independently establishes infringement of his civil right. The plaintiffs

have specifically asserted that no obstruction has been caused to the alleged public road or to the ingress and egress of the applicant. The applicant has not produced sufficient prima facie material to show that his access to Gram Panchayat House Property No.68 has been completely or substantially blocked.

15. The allegation that the plaintiffs have obstructed the applicant's ingress and egress is general in nature. The width of the passage allegedly remaining after construction, the exact location of the wall and Otta and the nature of the obstruction have not been specifically demonstrated. The disputed questions regarding title, possession, existence of the approach way, nature of its user and whether it is a private or public way can be properly adjudicated only after recording evidence.

16. Granting the injunction sought by the applicant at this stage would require the Court to prima facie accept that the disputed open space belongs exclusively to him and that the plaintiffs' construction falls within the said space. Such findings cannot be reached on the basis of the insufficient and disputed material presently available. The plaintiffs claim that the construction is almost complete. An order restraining further construction without clear identification of the disputed portion may operate against the plaintiffs' use and enjoyment of their own property and may virtually grant a substantial part of the final relief claimed in the counter-claim. The applicant has thus failed to establish a strong prima facie case in his favour. In the absence of prima facie proof regarding his ownership, possession or exclusive right of user over the disputed open space, the first essential requirement for grant of temporary injunction is not satisfied.

17. The balance of convenience also does not lie in favour of the applicant. The plaintiffs claim to have carried out construction in their own property and have stated that the construction is almost complete. Restraining them on the basis of an unascertained and disputed claim may cause greater inconvenience and prejudice to them. The applicant has also failed to demonstrate that refusal of injunction would cause irreparable loss or injury which cannot be compensated in terms of money or remedied by an appropriate final decree.

18. In the event the applicant succeeds in establishing his right over the disputed approach way at the trial, appropriate mandatory and prohibitory relief can be granted in the final decree. Therefore, the alleged injury is not shown to be of such a nature as would justify an interlocutory injunction at this stage. It is settled that temporary injunction cannot be granted merely on the basis of apprehension, disputed assertions or an unproved claim. The applicant must establish a presently enforceable right and an actual or imminent invasion thereof. The material on record falls short of this requirement. In view of the above discussion, the applicant has failed to establish a prima facie case, balance of convenience and irreparable loss. Hence, the application deserves to be rejected. Hence, I proceed to pass following order.

ORDER

1. The application at Exhibit 64 filed by original defendant No.1/counter-claim plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure is hereby rejected.

2. The parties shall bear their own costs of the application.

Pronounced in open Court

(Khwaja.C. Kalal)

Date : 21/07/2026

Jt. Civil Judge Jr.Division, Mangrulpir,
Tal. Mangrulpir, Dist. Washim.

<u>CERTIFICATE</u>		
I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order.		
Name of Court	:-	Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpur, Dist. Washim.
Presiding Officer	:-	Khwaja C. Kalal
Judgment/Order uploaded by	:-	Shri. S. S. Rathod (Jr. Clerk)
Date of Judgment/Order	:-	21/07/2026
Judgment/Order signed by the presiding officer on	:-	21/07/2026
Judgment/Order uploaded on	:-	21/07/2026