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|  | <p style="text-align: center;"><b><u>ORDER PASSED BELOW APPLICATION</u></b><br/><b><u>EXH.5 IN REGULAR CIVIL SUIT NO.50/2025</u></b><br/>[CNR NO. MHWS0002972025]</p> |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|

- 1) This is an application submitted by plaintiffs under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction against all defendant Nos. 1 to 4.
- 2) Perused application and written statement at Exh. 26 and 34 submitted by defendant No.4 and 3 respectively. Also perused say/reply of defendant No.4 submitted in respect of temporary injunction Exh.5. As per order dated 17.6.2025 passed below Exh.1 this suit was proceeded ex-parte against defendant No.1 and 2.
- 3) Also, perused all photocopies of documents submitted by plaintiffs as list of document at Exh. No.3, 28 and 32 and defendant No.4 submitted document as per list of document Exh.30.
- 4) Heard advocate N.M.Muley for plaintiffs, A.G.P. Shri. D.G.Gangawane for defendant No.3 and advocate Shri. S.R.Jakhotiya for defendant No.4.
- 5) Considering rival contention and documents of plaintiffs and defendant No.3 and 4 and after hearing

arguments of all advocates, following points arise for my determination and I have recorded my findings thereon with reasons as follows.

| <i>Sr. No.</i> | <i>Points</i>                                                                                                        | <i>Findings</i>        |
|----------------|----------------------------------------------------------------------------------------------------------------------|------------------------|
| 1]             | Whether plaintiffs have prima facie case?                                                                            | ... In the affirmative |
| 2]             | Whether the balance of convenience is in favour of plaintiffs?                                                       | ... In the affirmative |
| 3]             | Whether plaintiffs would suffer and irreparable loss/injury, if their prayer for temporary injunction is disallowed? | ... In the affirmative |
| 4]             | What order?                                                                                                          | ... As per final order |

### **REASONS**

#### **AS TO POINT NOS.1 TO 3 :-**

6) It is well settled that, for getting temporary injunction, plaintiff must prove that, he has prima facie case, balance of convenience lies with him and if injunction is not granted then he will suffer irreparable loss/injury.

7) It is admitted to plaintiffs and defendant Nos. 3 and 4 that;

**A)-** On 21/4/2023 Arun Panjabrao Sudke( who is defendant No.4 in present suit) had submitted an application under section 5 of the Mamlatdars Courts Act 1906 (here-in-after same is referred as “said Act”) for removal of obstruction on old road in respect of 7 acre land of Gat No.73 situated at village Poti and accordingly as per order dated 27/10/2023 concerned Tahsildar, Mangrulpir had passed an order of injunction.

**B)-** Plaintiffs Prashant Vinod Gawande and Shrikant Vinod Gawande, have challenged said order dated 27/10/2023 of Tahsildar, Mangrulpir by filing revision bearing No. MCA-05/Poti/02/2023-24 under section 23 of said Act before S.D.O., Mangrulpir and said revision was rejected on merit as per order dated 05/03/2025.

**C)-** Later on plaintiffs Prashant Gawande and Shrikant Gawande have instituted present suit on 28/05/2025 for declaration and perpetual injunction against both order dated 27/10/2023 and 5/3/2025.

8) Advocate for plaintiffs have submitted that, original application dated 21/4/2023 submitted by defendant No.4 before Tahsildar Mangrulpir is not in a specific format as per sections mentioned in the said Act and also no any cause of action mentioned in application dated 21/4/2023. Said application was submitted by defendant No.4. with malafied

intention and due to enmity.

9) On the contrary, advocate for defendant No.4 had submitted that, defendant No.4 had submitted that application dated 21/4/2023 under section 5 said Act for removal obstruction of old customary road.

10) As per section 7 of Mamlatdars Courts Act 1906, a plaint presented in Mamlatdars Court shall contain particulars as name, age, religion, caste, profession, place of abode, of plaintiff and defendant. As per section 8 of the said Act, Mamlatdar shall endorse the desire to obtain relief on petition. Also as per section 9 of the Act when plaint does not contain particular specific in section 7, then plaintiff needs to be examined upon oath for ascertaining from him such particulars specified in section 7 as are not clearly and correctly stated in the plaint.

11) When in this situation the photo copy of application dated 21/4/2023 was perused it shows that, it does not contains religion, cast and profession of plaintiff as well as defendants of said plaint/application, also age of defendants/Non-applicants were also not mentioned in it, as required under section 7 of the said Act, 1906. Also it does not bears an endorsement as per section 8 of the said Act and also defendant No.4 had not shown that, he was examined upon

oath as per section 9 of the said Act. Also, there is no cause of action mention in that said application dated 21/4/2023 and it can not be ascertained said suit was brought within six month from the accrual of date of cause of action. Hence, from this fact it can be said that, plaint/ application dated 21/4/2023 does not fulfills essential requirements of section 5(3), 7 to 9 of the said Act,1906 and there is merit in the submission of advocate for plaintiffs that said application dated 21/4/2023 was not in specific format of said Act.

12) Advocate for plaintiff further submitted that, a road of Poti to Mohari was passed from Gat no. 70, 72 and 73 and said road was available to defendant no.4, still defendant no.4 was claiming another way. Defendant No.4 had cultivated a road which was adjacent to a government canal. There were many agriculturist in Gat No.73 and except defendant no.4 no any agriculturist have problem of road.

13) Advocate for plaintiffs have further submitted that, concerned Talathi and Circle Officer of Poti have submitted their report dated 19/7/2023 contending that, as shown in two diagrams, two alternate roads were available to Arun Sudke. Also in that case, Mamlatdar/Tahsildar had not recorded any evidence of both parties on oath and cross-examination was also not recorded in that case. Also Tahsildar had not followed provisions of said Act. So, temporary

injunction may be granted against defendant No.1 to 4 from disturbing of lawful possession of plaintiffs' and from creating any way or construction of any road from the agricultural land of plaintiffs

14) On the contrary, advocate for defendant No.4 had submitted that, application submitted under section 5 of said Act,1906 is an evidence for plaintiff and Non-applicant/defendants of said application needs to be submit an application for adducing evidence and then witness summons will be issued. It is not mandatory to lead evidence at the time of application under section 5 of the said Act. Plaintiffs were allowing remaining agriculturalist to use said way but refusing to use said way by defendant No.4. Said old way was a convenient way to the defendant No.4 for cultivation of his land Gat No.73. No any alternative way was available to defendant No.4. Also plaintiffs have not availed equally efficacious remedy of Commissioner Court at Amravati, so as per section 41(h) of Specific Relief Act,1963 injunction can be refused.

15) Also, Assistant Government Pleader for defendant No.3 had submitted as per section 23 of the said Act option of revision was available to the plaintiffs, but they have not availed it. So, there is a bar of section 41(h) of Specific Relief Act,1963 and section 11 of Bombay Revenue Jurisdiction Act,

1876. No any illegality was committed by Tahsildar Mangrulpir at the time of passing an order dated 27/10/2023. So, this temporary injunction application submitted by plaintiffs is not maintainable and same may kindly be rejected. In support of his above submission Assistant Government Pleader had relied on a ruling of Hon'ble Supreme Court in case of *The Municipal Corporation of Delhi Vs. Sureshchandra Jaipuriya and Anr* reported in *AIR 1976 Supreme Court 2621*.

16) I have perused above ruling relied by Assistant Government Pleader. Already plaintiffs have filed revision bearing No. MCA-05/Poti/02/2023-24 under section 23 of said Act against order of Tahsildar Mangrulpir and said revision was rejected as per order dated 5/3/2025. As plaintiffs have already used equally efficacious remedy of revision, so there is no bar of section 41(h) of Specific Relief Act, 1963. So above ruling relied by Assistant Government Pleader is not helpful to defendant No.3.

17) After considering submissions of advocate for defendant No.4, a question arises that, whether evidence needs to adduced at the time of deciding application under section 5 of said Act and provisions of section 135 to 138 of The Indian Evidence Act, 1872 would be applicable to the proceeding under section 5 of the Mamlatdars Court Act, 1906 ?

18) There is a ruling of Hon'ble Bombay High Court in a case of **Sudhir Yashwant Dhangade V/s. Ankush Kashiram Bole & others** reported in **2019 (1) All M R 825.** in that case, respondent No.1 filed an application under section 5 of the Mamlatdars Court Act, 1906 seeking direction against petitioner to remove obstruction over the passage in Gat No. 68 of Kamathe, Chiplun Dist. Ratnagiri and to restrain him from obstructing use of said passage. Petitioner had challenged order dated 16.06.2017 and 02.01.2018 passed by Tahsildar Chiplun and Addl. Collector Ratnagiri. In this ruling Hon'ble High Court considered applicability of section 135 to 138 of Indian Evidence Act, 1872 in respect of proceeding of section 5 of Mamlatdars Court Act. Hence, facts and question considered in above ruling and facts and question raised in this suit are same so above ruling is applicable to this suit. Relevant paragraph nos. 10 to 12 of above ruling are reproduced as under.

10. It is thus evident that the Act specifically confers powers on the Mamlatdar to record evidence. Hence, the Court presided over by the Mamlatdar, would be a 'Court' within the meaning of Section 3 of the Indian Evidence Act and provisions of Section 135, 136, 137 and 138 of the Indian Evidence Act would be applicable to the proceedings under Section 5 of Mamlatdars Court Act.

11. In the instant case, the records reveal that the Mamlatdar has recorded statements of the respondent no.1 and his witnesses. In view of

applicability of the provisions of Section 135, 136, 137 and 138 of the Indian Evidence Act to the proceedings under Section 5 of the Mamlatdars Court Act, the petitioner had right to cross examine the respondent no.1 and his witnesses. The records reveal that the learned Mamlatdar had not given an opportunity to the petitioner to cross examine the respondent no.1 and his witnesses. Suffice it to say, right of cross examination being legal right, the petitioner was not required to file any application but it was the obligation of the statutory authority recording the evidence to afford such opportunity. In the P.H. Jayani 19 WP5896.18.doc instant case, no such opportunity was given.

12. It is well settled that no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross examination. Under the circumstances, the learned Mamlatdar was not justified in placing reliance on the evidence of the respondent no.1 and his witnesses without giving any opportunity of cross examination. The order passed by the learned Mamlatdar is in breach of principles of natural justice.

19) Above ruling of Hon'ble High Court made it clear that, Court presided over by Mamlatdar would be a "Court" within the meaning of section 3 of Indian Evidence Act, 1872 and provisions of section 135 to 138 of Indian Evidence Act, 1872 would be applicable to the proceeding under Section 5 of the said Act. Also Hon'ble High Court made it clear that, the petitioner was not required to file application for cross examination, but it was the obligation

of statutory authority recording the evidence to afford such opportunity.

20) Section 14 of the said Act, 1906 prescribes procedure where plaint admissible and a convenient day and place for the trial of the case needs to be fixed and the expenses of the plaintiff notice in form of Schedule A to the defendant shall be issued. Also Section 15 of the said Act is in respect of attendance of witness, and if either party requires any witness then a summons needs to be issued by the Mamlatdar, if requires warrant of arrest may be issued. Also as per section 16 and 17 of the said Act Mamlatdar needs to record evidence of parties.

21) It is important to note that, during arguments of this temporary injunction application, advocate for plaintiffs and advocate for defendant No.3 and 4 have clearly and fairly admitted that, concerned Mamlatdar Mangrulpur had not recorded any oral evidence of both parties while deciding said application filed under section 5 of the said Act. In other words, it can be said that, no any oral evidence of either of party was recorded, cross-examination was also not recorded by the then Tahsildar in said road case proceeding. Hence, from above facts it can be said that, concerned Mamlatdar Mangrulpur had not followed the procedure prescribed under section 14 to 16 of the said Act and certainly this will affect the

decision of Mamlatdar dated 27/10/2023.

22) As per mandate of section 19(2) of Mamlatdars' Courts Act, 1906, Mamlatdar if thinks fit to make a personal inspection of the property in dispute in presence of parties, after due notice to them. So, as per section 19(2) of said Act Mamlatdar himself needs to make inspection of the property in dispute, but in this suit Mamlatdar/ Tahsildar Mangrulpir had deputed Talathi and Circle officer for doing spot inspection of the road in dispute.

23) It is admitted that, Talathi and circle officer have made spot inspection on 19/7/2023 and photo copy of said spot inspection report was submitted by plaintiffs as per list of document Exh.4 in this suit.

24) In this situation following questions arises that, as spot inspection was conducted by other than Mamlatdar, so Whether status of said Talathi and Circle Officer Poti is a Court Commissioner ? and Whether said Court Commissioner can be cross-examined ?

25) There is an important ruling of Hon'ble High Court of Judicature at Bombay Nagpur Bench at Nagpur in *Ek Nath Punjaji Ghube and other v/s. Deputy Collector, Buldana and Ors., in Writ Petition No. 1130/2020, decided on*

25.10.2021. and relevant paragraph No. 7 of above ruling is reproduced as under ;

7. It cannot be disputed, that any person other than the Mamlatdar, who conducts the spot inspection, the status of such person would be that of a Court Commissioner, thereby making him open for cross-examination and such opportunity has not been granted by the Mamlatdar, in view of which, the judgment of the Mamlatdar as well as that of the Sub Divisional Officer cannot be sustained on this ground alone. The same are therefore, quashed and set aside and the matter is remanded back to the learned Mamlatdar, with a direction to permit the defendants to cross-examine the Naib Tahsildar, who has prepared the map and the map and the spot inspection report and thereafter decide the matter on its own merits.

26) It is not case of plaintiffs in this suit that, they have submitted an application before Mamlatdar Mangrulpir for calling said Talathi and circle officer for cross-examination and their application was rejected by Mamlatdar Mangrulpir at that time. So in this situation, after considering above ruling of Hon'ble Bombay High Court in case of **Ek Nath Punjaji Gubhe and Ors Vs.** (Cited Supra) status of Talathi and Circle Officer Poti who conducts spot inspection dated 19/7/2023, would be that of a Court Commissioner and thereby making them open for cross-examination but such opportunity has not been granted by the Mamlatdar/Tahsildar Mangrulpir while deciding said case.

27) Also, conspicuously section 22 of the said Act

clearly declares that, the decision or order passed by Tahsildar / Mamlatdar would be sub-servient to the decision of a competent Civil Court in a proceeding preferred before it. Bare perusal of section 22 of said Act would clearly indicate that, irrespective of decision of Tahsildar / Mamlatdar under section 5(2) of the said Act, party may approach Civil Court and obtain any relief even contrary to the decision of Tahsildar / Mamlatdar setting it at naught.

28) After considering all above facts and above ruling of Hon'ble Bombay High Court in a case of **Sudhir Yashwant Dhangade V/s.** (cited supra) and ruling in case of **Eknath Punjaji Gubhe and Ors Vs.** (Cited Supra), it can be said that, the then Tahsildar / Mamlatdar Mangrulpir had not followed provisions of section 5(3), 7 to 9 and 14 to 16 of the said Act and order dated 27/10/2023 was passed by Tahsildar, Mangrulpir without recording of evidence and without recording of cross-examination of both parties. So, said order dated 27/10/2023 of Tahsildar/Mamlatdar Mangrulpir is vitiated. So, in this situation, plaintiffs have prima facie case and balance of convenience lies with them. Hence, it can be said that, plaintiffs would suffer irreparable injury if, their prayer for temporary injunction is disallowed. In this way, plaintiffs have prima facie proved all above three essential ingredients, so plaintiffs are entitled for discretionary relief of temporary injunction and there is merit in the submission of

advocate for plaintiffs in that regard. So, I answer point nos. 1 to 3 in affirmative and proceed to pass following order.

**ORDER**

1. Application for temporary injunction Exh.5 is hereby allowed.
2. As per Order XXXIX Rule 1 and 2 of Civil Procedure Code, 1908 defendant nos. 1 to 4 are temporarily restrained from disturbing possession of plaintiffs over suit property land Gat No.67, area 01 H 21 R situated at village Poti, Tal. Mangrulpir and creating any way or construction of any road from the suit property of the plaintiffs, till the disposal of this suit.
3. Cost in causes.

Place : Mangrulpir.  
Date : 21/6/2025.

(D. B. Hambire)  
Civil Judge Senior Division,  
Mangrulpir.

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

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|-----------------------------|---|----------------------------------------------|
| Name of Stenographer        | : | C.R.Gadge                                    |
| Name of Court               | : | Shri. D. B. Hambire,<br>C.J.S.D., Mangrulpir |
| Date of Decision            | : | 21/6/2025                                    |
| Order signed by the P.O. on | : | 21/6/2025                                    |
| Order uploaded on           | : | 21/6/2025                                    |