

MHWS110014902025

RCS No. 32/2025

Udaysingh Vs. Manohar



**ORDER BELOW EXH.5**  
**(Passed on 06.05.2026)**

1. This is an application filed by plaintiff against the defendant under Order 39 Rule 1 and 2 along with section 151 of the Code of Civil Procedure, 1908 for granting temporary injunction.
2. It is the contention of plaintiff that he owned and possessed agricultural land admeasuring 14 acre 4 guntha in Gat No.10 situated at Mauja Devchandi. Similarly, plaintiff No.2 is wife of plaintiff No.1 having agricultural land admeasuring 1.04 HR land in Gat No.10, plaintiff's son Veshan Rathod having agricultural land admeasuring 81 R, plaintiff's another son namely Lakhan Rathod having agricultural land admeasuring 1.21 HR in said Gat Number. Except this plaintiff is having 1.21 HR land in said Gat number.
3. Plaintiff carried out the measurement of his agricultural land in Gat No.10 through T.I.L.R., Karanja on 09.06.2022 and found 1.26 HR land in Gat No.11 which is to the western side of Gat No.10 and owned and possessed by defendant. After 15 to 20 days of measurement plaintiff obtained the possession of encroached area made by the defendant and started cultivating. On 15.05.2025, when plaintiff was cultivating his agricultural land with the help of tractor, defendant came there and obstructed and threatened to kill if he continues to cultivate. The encroached agricultural land admeasuring 1.26 HR as per measurement dt.09.06.2022 (in short here-in-after referred as 'suit property').
4. Plaintiff further contended that defendant is owner and

possessor of agricultural land admeasuring 1.15 HR land and after measurement plaintiff found his agricultural land admeasuring 1.26 HR land in the possession of defendant. As the defendant has obstructing and disturbing into his peaceful possession over the suit property. This act of defendant constrained the plaintiff to file the present application.

5. Per contra, defendant appeared and filed say below Exh.11 and denied all the averments of plaintiff and contended that he is owner of agricultural land admeasuring 1.15 HR in Gat No.11 situated at Devchandi, Tq.Karanja, Dist.Washim and he received the said property by way of partition which was effected by his father namely Keshavraoji Ganjare on 02.02.2005. Towards the eastern side of defendant's agricultural land plaintiff's agricultural land admeasuring 1.21 HR in Gat No.10 is situated and on 17.06.2024 when defendant had been to his agricultural land at that time plaintiff No.1 and his sister namely Sunanda Hari Chavan obstructed him from cultivating his agricultural land and threatened that he will be implicated in false cases.

6. Defendant further contended that he filed civil suit bearing RCS No.44/2024 against plaintiff and his sister Sunanda alongwith application of temporary injunction and his application of temporary injunction was allowed by passing order on 19.08.2024. Defendant has not made any obstruction to the suit property of plaintiff in Gat No.10 and he was cultivating his agricultural land in Gat No.11. As defendant has filed suit against plaintiff and his sister and to counter the said suit plaintiff filed the present suit. The suit of plaintiff is not tenable. Hence, the application of plaintiff be rejected.

7. Following are the points for determination along with my findings there on for the reasons to follow.

Sr. No.	Points	Finding
1.	Whether the plaintiffs have a prima facie case?	.. In negative.
2.	Whether the balance of convenience is in favour of the plaintiffs?	.. In negative.
3.	Whether the plaintiffs would suffer an irreparable loss if the application is rejected?	.. In negative.
4.	What order?	.. As per final Order.

### REASONS

#### As to Point No.1 to 3:

8. It is a well settled principle of law that while dealing with temporary injunction application, it must be seen that three test should be fulfilled and party claiming injunction should come before the court with clean hands. In accordance with settle position of law, it is necessary to find out first test that whether plaintiffs have prima-facie case or not?

9. The Ld. Advocate for plaintiffs filed written notes of argument below Exh.17 and relied upon measurement map dt.09.06.2022, copy of 7/12 extract of Gat No.10, 11, copy of Namuna 6, copy of mutation entry No.160.

10. Per contra, defendant filed his written notes of argument at Exh.14 and relied upon copy of order in RCS No.44/2024, copy of 7/12 extract of Gat No.11, copy of non-cognizable offence No.394/2024.

11. From the perusal of copy of 7/12 extract of Gat No.10 and 11 it transpires that plaintiff and defendants are owners of their respective agricultural land. Plaintiff came with the case that defendant made encroachment to the area admeasuring 1.26 HR and said encroachment

was reflect in measurement map issued by T.I.L.R. Karanja dt.09.06.2022 and after 15 to 20 days plaintiff recovered the encroached portion from the defendant.

12. It is the defence of defendant that he has not made any obstruction to the plaintiff in respect of agricultural land in Gat No.10 and he was cultivating his agricultural land situated in his Gat No.11. Defendant relied upon order passed below Exh.5 in RCS 44/2024 and submitted that after the measurement dt. 09.06.2022 which was carried out by the plaintiff he started obstructing him into his peaceful possession and the present suit is nothing but the counter suit to the suit bearing RCS No. 44/2024.

13. Plaintiff on one hand stating that he has recovered the encroached portion from the defendant after 15 to 20 days of measurement dt.09.06.2022 and on other hand after 2 to 3 years he came before the Court with the case for removal of encroachment made by the defendant in respect of suit property. Moreover, there is no possession receipt filed by the plaintiff on record from which it can be gathered that he recovered the encroached land from the defendant except bare pleadings. This creates doubt on the conduct of plaintiff that he has come before the Court with clean hands. Therefore, I do not find that plaintiff made his case prima facie in his favour.

14. Plaintiff in his written notes of argument in para No.3 submitted that encroached portion has been given by the defendants to the plaintiff. Per contra, to which the Ld. Advocate for defendant in his written notes of argument in para No.4 submitted that if the encroached portion admeasuring 1.26 HR as per measurement dt.09.06.2022 was found in the possession of defendant then plaintiff has to recover the said

possession through due process of law and as the plaintiff is trying to recover the possession due to which he filed RCS No.44/2024 and obtained order of temporary injunction in his favour. From the perusal of said order it transpires that dispute in both the suits is in respect of same property i.e. suit property. Unless and until plaintiff by leading cogent evidence proved that he recovered the encroached portion it cannot be stated that balance of convenience tilt in his favour.

15. Moreover, from the written notes of argument of defendant it transpires that plaintiff has filed appeal before Appellate Court, Mangrulpir bearing MCA No. 19/2024 against the order of temporary injunction and said was pending before the Hon'ble Court. As the property in both suits appears to be same and in one suit injunction is granted in favour of defendant and appeal was also pending before the Hon'ble Appellate Court. Therefore, I do not find any irreparable loss will be caused to the plaintiff if the injunction is not granted in his favour.

16. Accordingly, in view of above finding I answer Point No.1 to 3 in negative and in answer to point No.4 following order is passed.

**ORDER**

1. Application is rejected.
2. Costs in main cause.

Date : 06/05/2026.  
Karanja (Lad).

**(B. A. Nerlikar)**  
2<sup>nd</sup> Jt. Civil Judge (Jr.Dn.),  
Karanja (Lad).

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**CERTIFICATE**

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 Steno :- **Devendra V. Daware ( Stenographer Grade-III)**  
Court Name :- 2<sup>nd</sup> Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Karanja.  
Dist. Washim.  
Date :- 06/05/2026  
Order signed by the  
presiding officer on:- 06/05/2026  
Order uploaded on:- 06/05/2026