

ORDER PASSED BELOW EXH.05

1) This is an application filed by the plaintiffs under Order-XXXIX, Rule-1 and 2 of the Code of Civil Procedure, seeking temporary injunction for restraining respondents from obstructing their access way of the suit property. Whereas in the suit, plaintiffs have prayed for reliefs of declaration regarding order of Mamlatdar Court and Revisional Court being null and void and for perpetual injunction against non obstruction of the way.

The case of the plaintiffs may be briefly stated as below;

2) The plaintiff no.1 owns and possesses gat no.48/1 and plaintiff nos.2 and 3 own and possess gat no.49/1 which are located at Korambi and Sukanegaon respectively. Whereas defendant no.3 owns and possesses Western adjacent agricultural land gat no.50/2 whereas defendant no.4 also owns and possesses gat no.50/1 and defendant no.5 owns and possesses Western adjacent gat nos.16/9 and defendant no.6A owns and possessess adjacent Western gat no.15 and these properties are located from Suknagaon and Korambi Maregaon.

3) Plaintiffs contend that these agricultural properties of defendants are at the beginning of “Shivrasta” and plaintiffs are having these access way and bullock card way which is nearest and convenient and there is no other way. However, on 15/07/2020 defendant nos.3 to 6 had blocked this way by wooden logs and had encroached on the way

which is causing great loss to the plaintiffs to access their properties.

4) Plaintiffs further contend that these defendants did not remove the obstruction therefore they had filed application before Mamlatdar court which was not properly decided and on revision it was remanded and again the Mamlatdar court without considering the admissions in the evidence and without following the section 5 and 19 of the Mamlatdar court Act and without considering Talathi and Circle officer site report rejected the application which was also maintained by Revisional Court on same ground and on ground of limitation. Hence, they pray for temporary injunction.

The case of the defendant nos.1 and 2 may be briefly stated as below;

5) Defendant no.1 is S.D.O. Wani and defendant no.2 is Nayab Tahsildar, Wani who were Revisional authority and Mamlatdar Court and whose order are assailed in this suit. They have failed to appear inspite of service. Hence, suit and application proceeded exparte against them.

The case of the defendant nos.3 to 6A may be briefly stated as below;

6) These defendants have filed contesting W.S. and say Exh.19 and 20 and denied the allegations of plaintiffs of the blocking of the access way of the plaintiffs and they have justified the orders of the Mamlatdar and Revisional

court. They also deny blocking of the way by them on 15/07/2020 and contend that there is no cause of action and the existent way has not been closed and it is open and it is “Pandan” way. They also contend that plaintiffs have alternate way adjacent to gat no.48/1 from Suknagaon Maregoan Pandan way which has also been mentioned in reports of Talathi and Circle officer.

7) Moreover, these defendants also contend that there is bar of limitation therefore, Mamlatdar court rightly rejected the petition of the plaintiffs and plaintiffs have filed his suit to counter blast suit of the defendant nos.3 to 6A of compensation which is pending in C.J.J.D. court, Wani and plaintiffs are claiming illegally 33 feet width way and there was no such a wide access way and it has also not been mentioned in the revenue record and this application has been filed to harass the defendants. Hence, they pray for rejection of this application.

8) Heard. Perused entire record. On rival pleadings, the following points arise for my determination. I have recorded my findings to those points for the reasons stated below.

Sr. No.	POINTS	FINDINGS
1)	Whether the plaintiffs are having <i>prima facie</i> case ?	Affirmative.
2)	Whether balance of convenience lies in favour of plaintiffs ?	Affirmative
3)	Whether irreparable loss would be caused to the plaintiffs, if	Affirmative

	injunction is refused ?	
4)	What order ?	Application is allowed.

REASONS

As to point Nos.1 to 3:-

9) All these points are discussed together for the sake of brevity.

10) To substantiate the claim, plaintiffs have filed 5 documents along with list Exh.03 and 01 document vide Exh.08 list which are as follows :-

Sr. No.	Name of the documents
1)	Application filed by plaintiffs before Mamlatdar court i.e. defendant no.1 dtd.21/11/2022.
2)	Order passed by Revisional court i.e. S.D.O. Wani who is defendant no.1 dated 08/05/2023.
3)	Chief and cross-examination of plaintiff no.2 in Mamlatdar's Court, Wani.
4)	Chief of plaintiff's witness no.2 of in Mamlatdar's Court, Wani.
5)	Chief of defendant's witness no.2 of in Mamlatdar's Court, Wani.

Whereas vide list Exh.08;

Sr. No.	Name of the documents
1)	Order passed by Mamlatdar court i.e. Nayab Tahsildar who is defendant no.2 dated 02/09/2022.

11) Whereas defendant nos.3 to 6A did not adduce any document to support their contentions.

12) The pleadings of the parties reveals that contesting defendants do not dispute description of the suit properties

and they have conceded ownership and possession of plaintiffs as per the pleading of the plaintiffs in their plaint.

13) Moreover, there is also admissions by defendants about the defendant no.3's property adjacent to the Western common boundary of plaintiff no.1 and plaintiff nos.2 and 3 property is adjacent to Western common boundary of defendant no.6A and they also conceded that there is Wani Suknagaon North South Tar road and ahead of it there is East-Western Government way (Dhura) which is Shivdhura of Suknagaon Shiv and Maregaon Korambi.

14) Moreover, even as per the reports of the Talathi and Circle officer there exist way which was not blocked which has been mentioned in the Mamlatdar court order.

15) It has been argued and pleaded by the plaintiffs that contesting defendants intermittently block that way when there is a dispute and they had cleared the way when Talathi and Circle officer had come for inspection.

16) The counsels of the defendants have also conceded present usage of that access way by plaintiffs and argued that plaintiffs are claiming 33 feet width access way.

17) The perusal of the above mentioned documents of the plaintiffs which are evidence of the witnesses and orders of the Mamlatdar court and Revisional court reveals that inspite of holding existence of the access way sought by plaintiffs is Shivdhura and it is open. However, only due to limitation positive relief was not granted to the plaintiffs.

18) The counsel of the plaintiffs have cited case law,

1. **Mohammad Khan s/o Rahim Khan Vs Shankar s/o Maroti Dhane & Anr. Second Appeal No.386 of 2003 dated 08/03/2017.**

2. ***Vasudev Pandharinath Raikar & ors. Vs Manoj Mohan Dalvi & ors.2019(1) ALL MR52.***

The first ruling inter alia provides for maintainability of the suit against order of the Mamlatdar court whereas in the second ruling inter alia provides for maintainability of temporary injunction against the orders of the Mamlatdar court and Revisional court and it does not amount to res-judicata.

19) These rulings aid the contentions of the plaintiffs that their Civil suit and T.I. application is maintainable and as noted above, if interim relief is not granted then defendants may intermittently keep blocking the access way which would cause hardship to the plaintiffs to access their properties.

20) Hence, there is prima facie case, balance of convenience and irreparable loss in favour of the plaintiffs and there is no comparative hardship and irreparable loss to the contesting defendants. Hence, I have recorded findings on points nos.1 to 3 in the affirmative.

As to point No.4:-

21) Hence, in view of findings recorded to point Nos.1 to 3, plaintiffs are entitled for relief of temporary injunction

as prayed for. Hence, in answer to point No.4, following order is passed.

ORDER

- 1) The application (Exh.05) is hereby allowed.
- 2) Defendants are hereby directed by temporary injunction and restrained from obstructing the access way of the plaintiffs to access their properties which is presently open till decision of the suit.
- 3) Costs in cause.

Date : 14.08.2025

(P. S. Jondhale)
Civil Judge (Sr. Dn.),
Wani.