

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10784 OF 2025

Saraswatibai D/o. Shamrao Sawale,
Age – 65 years, Occu : Agril & Household,
R/o : Mohal, Post : Hatti, Tal. Sillod,
Dist. Aurangabad.

..Petitioner

VERSUS

1. Rameshwar s/o Keshavrao Sawale,
Age – 45 years, Occu : Service,
R/o : Mohal, Post : Hatti, Tal. Sillod,
Dist. Aurangabad.
Through GPA -
Ashabai w/o Rameshwar Sawale,
Age : 40 years, Occu : Household & Agril.,
R/o : Mohal, Post : Hatti, Tal. Sillod,
Dist. Aurangabad.
2. Pralhad s/o Bajirao Donge,
Age : 58 years, Occu : Agril.,
R/o : Talwada, Tal. Sillod,
Dist. Aurangabad.
3. Anil s/o Gajmal Deshmukh
Age : 43 years, Occu : Agril.,
R/o : Mohal, Post : Hatti, Tal. Sillod,
Dist. Aurangabad.
4. Satish s/o Ratnakar Chauthe
Age : 58 years, Occu : Agril.,
R/o : Mohal, Post : Hatti, Tal. Sillod,
Dist. Aurangabad.

..Respondents

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Advocate for the Petitioner : Mr. P.S. Chavan
Advocate for Respondent No.1 : Mr. P.N. Sonpethkar

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : APRIL 27, 2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
with consent of parties.

2. Present petition takes exception to order dated 14.11.2018 passed by District Judge-2, Aurangabad in Misc. Appeal No.121 of 2018, whereby order dated 12.07.2018 passed by Joint Civil Judge Junior Division, Sillod below Exhibit-5 in R.C.S. No.240 of 2016 is modified by setting aside Clause No.3 of operative order.

3. The petitioner is original defendant in R.C.S. No.240 of 2016. The respondent no.1 filed suit for seeking decree of perpetual injunction under Section 37 and 38 of Specific Relief Act, 1963 contending that he is owner of area to the extent of 95 R from Gat No.57 situated at Mahol, Taluka Sillod, District Aurangabad. It is contention of respondent that he has purchased said property under two different sale deeds from original owner in the year 2015-16. Since then, he is in continuous enjoyment and possession of property. However, petitioner/defendant who is unconcern with said property is disturbing his possession. The respondent also filed an application below Exhibit-5 seeking temporary injunction against petitioner.

4. The petitioner filed written statement. He admitted ownership and possession of respondent over suit property. However, pleaded that there was a existing cart way which was used by him and other villagers from bandh of Gat No.57. The respondent/plaintiff is obstructing its use without any authority under law. It is also pleaded that petitioner has filed independent suit seeking injunction against respondent from obstructing use of cart

way. In light of rival contentions, Trial Court considered application below Exhibit-5 filed by respondent in suit. The Trial Court allowed application to the extent of granting temporary injunction against petitioner from interfering peaceful possession of respondent over suit property till disposal of suit. However, refused to grant prayer clause 3 in the application to grant injunction against petitioner for creating new cart way in respondent's land and granted liberty in favour of petitioner to move before competent authority against respondent. The respondent assailed aforesaid order by filing miscellaneous civil appeal before District Judge at Aurangabad, who modified order thereby setting aside Clause No.3 and granted liberty in favour of petitioner to proceed against respondent before competent authority. Aggrieved by aforesaid modification, present writ petition is filed.

5. Mr. P.S. Chavan, learned advocate appearing for petitioner submits that although Trial Court has granted temporary injunction against petitioner from disturbing peaceful possession of respondent over suit property, liberty was maintained with petitioner to move before competent authority without impeded by injunction order. However, Appellate Court modified Trial Court's order and withdrew liberty kept in favour of petitioner to move before competent authority. Mr. Chavan would submit that petitioner had already moved for grant of way under Section 143 of Maharashtra Land Revenue Code before Sub-Divisional Officer. However, because

of impugned order, said proceeding is kept in abeyance. The petitioner has no alternate way to approach his land. The order passed by District Judge is contrary to Section 41 (b) of Specific Relief Act, which prescribes that Court cannot grant an injunction restraining a person from initiating proceedings in Court of Co-ordinate or superior jurisdiction. According to Mr. Chavan Section 143 of Maharashtra Land Revenue Code provides an independent parallel remedy in favour of a person who has no approach way to cultivate his land. In support of his contention, he relies upon observations of Hon'ble Supreme Court in case of ***Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others*** reported in ***AIR 1983 SC 1272***.

6. Per contra, Mr. Sonpethkar, learned advocate appearing for respondent no.1 would urge that petitioner as well as respondents have filed independent suits seeking relief of perpetual injunction against each other. Although respondent/plaintiff sought injunction against petitioner/defendant in respect of entire suit property, petitioner has filed suit seeking injunction in respect of cart way. As such, controversy regarding to rights over property as well as right to way as claimed by petitioner are subjudice before Civil Court. In this backdrop, petitioner cannot be permitted to exhaust parallel remedy under Section 143(1) of Maharashtra Land Revenue Code, whereby possibility of conflicting orders of one and same subject matter cannot

be ruled out. When petitioner had already invoked jurisdiction of Civil Court seeking remedy in respect of way, he cannot be permitted to proceed under Section 143(1) of Maharashtra Land Revenue Code before Sub-Divisional Officer. In support of his contention, he relies upon observations of this Court in case of ***Jaglal s/o Premlal Jayaswal Vs. Waman s/o Shyamraoji Dhobale and another*** reported in **2008 (4) Mh.L.J. 467**.

7. Having considered submissions advanced by learned advocates appearing for respective parties, it can be observed that respondent/plaintiff instituted R.C.S. No.240 of 2016 seeking relief of perpetual injunction and also filed an application below Exhibit-5 seeking relief of temporary injunction. The petitioner did not dispute title of respondent over suit property and even did not challenged order granting temporary injunction, whereby he is temporarily restrained from interfering in peaceful possession of respondent over suit property till disposal of suit. The only controversy that is raised before this Court is about directions under Clause No.3 of order passed by Trial Court. The operative part of order dated 12.07.2018 is reproduced herewith for ready reference, which reads thus :

- “1) The application below Exh. 5 is partly allowed.*
- 2) Defendants, their servants and persons acting on behalf of them are hereby restrained temporarily from interfering the peaceful possession of plaintiff over the suit property till disposal of suit.*

3) *The decision on this application will not act as a bar for defendants to proceed against plaintiff before competent authority.*

4) *Cost in cause.”*

8. However, in appeal filed by respondent/plaintiff, the District Judge set aside Clause No.3 of operative order, whereby liberty was maintained in favour of petitioner to proceed against respondent before competent authority. Apparently, such liberty was maintained so that petitioner can proceed under Section 143 of Maharashtra Land Revenue Code and seek grant of way for cultivation of his land.

9. Pertinently, in application for temporary injunction filed by respondent, prayer clause 3 was added thereby seeking injunction against petitioner from creating cart way. The Trial Court refused to grant said relief on the ground that this cannot be considered till recording of entire evidence of both parties. Eventually, at present there is no interim injunction prohibiting petitioner from creating approach way from suit land. Now, Appellate Court has set aside Clause No.3 of operative part that grants liberty in favour of petitioner to approach competent authority.

10. At this stage, reference can be to Section 143 of Maharashtra Land Revenue Code, which reads thus :

“143. Right of way over boundaries.

(1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.

(3) The Tahsildar's decision under this Section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this Section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.”

11. Apparently, Section 143 provides an independent remedy where a claim by a person for right of way over boundaries of survey numbers can be considered and decided by Tahsildar having regard to need of cultivators for reasonable access to their fields. The decision of Tahsildar is subservient to order to be passed by Civil Court in suit instituted under sub-clause (4) of Section 143. Therefore, this Court has no hesitation to hold that remedy under Section 143 is an independent remedy. As rightly pointed out by Mr. Chavan, learned advocate appearing for petitioner, Section 41(b) of Specific Relief Act prohibits grant of injunction by Court with a view to restrain any person from instituting or prosecuting any proceeding. The Hon’ble Supreme Court in case of **Cotton Corporation** (supra) has specifically

hold that expression 'injunction' in Section 41(b) is not qualified by an adjective and therefore, it would comprehend both interim and perpetual injunction. In this backdrop, injunction order passed in favour of respondent in R.C.S. No.240 of 2016 cannot be taken as impediment for exhausting independent remedy available to petitioner.

12. In so far as contention of Mr. Sonpethkar, learned advocate appearing for respondent that possibility of inconsistent orders being passed cannot be ruled out in case petitioner is permitted to prosecute his remedy under Section 143, however, this Court finds no substance in such contention. In facts of case, respondent is seeking injunction to protect his possession over suit property. So far as granting way from bandh looking to need of land holders is an independent power vested with Tahsildar. Of course, such power is subservient to final decision to be taken by Civil Court. Therefore, this Court finds that Appellate Court committed error in interfering with order passed by Trial Court, thereby setting aside Clause No.3 of operative part, which was in consonance with statutory scheme under Section 143 of Maharashtra Land Revenue Code. Needless to state here that, in case Tahsildar exercises jurisdiction under Section 143, that would be subservient to decision of Civil Court, if such decision is assailed before Trial Court.

13. In result, writ petition is allowed in terms of prayer clause (B).
14. Rule is made absolute in above terms.

(S.G. CHAPALGAONKAR, J.)