IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

27 WRIT PETITION NO. 12245 OF 2025

RAMCHANDRA POPAT SATAV
VERSUS
DATTATRAY GANPAT SATAV AND ORS
...
Advocate for Petitioner : Mr. R. M. Haridas i/by Mr. Prasad Pradeep Kulkarni a/w Adv. Nakul Shukla
Advocate for Respondents : Adv. Bhagyashri Mangle a/w Adv. Ketan Patil i/by Jagadish Anand Dagade
...

CORAM : SHAILESH P. BRAHME, J.

DATE : 07.10.2026

PER COURT :

Heard both sides.

2. The petitioner is challenging the concurrent findings of facts in rejecting his application for temporary injunction in Regular Civil Suit No. 228/2023.

3. Learned counsel for the petitioner submits that both the Courts below committed apparent error of jurisdiction in failing to project enquiry qua the suit land. The consideration of customary road from Western boundary of the suit land, its existence and plea of alternate road are extraneous. It is submitted that the petitioner has made out *prima facie* case qua the suit land and there is no dispute about his ownership. Both Courts below is stated to have taken into account the material, which does not pertain to

cause of action in the present suit and misdirected enquiry is conducted.

4. The learned counsel for the respondents supports the impugned orders. It is submitted that the concurrent findings of facts have been arrived at, which cannot be disturbed the writ jurisdiction. It is further submitted that the existence of the road is evident from the enquiry report of Circle Officer. As the petitioner has obstructed the respondents from customary use of the road, the application is rightly rejected. It is further submitted that the petitioner failed to prove alternate road. The findings of both the Courts below are plausible and reasonable.

5. I have considered the rival submissions of the parties. The petitioner has filed Regular Civil Suit No. 228/2023 for perpetual injunction along with application Exh. 5 for temporary injunction. He claims to be owner of land Gat No. 630/2 measuring 1-H 20 Are situated at Mhaisgaon Tq. Madha, Dist. Solapur. The cause of action stated in paragraph nos. 3 and 4 is the obstruction by respondents/defendants while cultivating the land.

6. I have carefully gone through the written statement filed by defendant no. 5 as well as defendant nos. 1, 10, 12 and 13. Besides denying the claim of the petitioner, they have put forth additional plea that there existed 12 feet approach road from the Western side bandh inside Gat No. 630/2, which is being used since 70 or more years. They have further come up with stand that the petitioner obstructed the villagers as well as respondents from using the road. It appears that the proceedings under Section 5 of the

Mamlatdar's Courts Act have also been lodged by the respondents, which are pending, claiming removal of obstruction from the approach road pleaded by them.

7. I have gone through the findings recorded by the both Courts below. The ownership of the petitioner over land Gat No. 630/2 is not disputed. His possession over the suit land is also not disputed. Both Courts below misdirected themselves on a plea raised by the respondents/ defendants claiming easementary right from the Western boundary of the suit land. That was not the cause of action for the petitioner. If the ownership and possession of the petitioner over the suit land have not been challenged, only conclusion would be that *prima facie* case is made out.

8. It is trite law that the Court, dealing with application under Order 39 Rule 1 and 2 of the Code of Civil Procedure is obliged to take into consideration the prima facie case, balance of convenience and irreparable loss. In the present case, the *prima facie* case and balance of convenience are dealt with from respondents point of view, which is error apparent on the face of the record. The respondents have neither filed counter claim nor filed any independent suit on the cause of action that there was obstruction to the easementary right. The proceedings initiated under Section 5 of the Mamlatdar's Courts Act cannot be said to be the circumstance to belie the petitioner's theory. The existence of the road, the obstruction to it or alternate road would be independent enquiry, which cannot fall within

realm of the present controversy.

9. The findings recorded by the Courts below would indicate that the report of the Circle Officer regarding existence of the road is given undue weightage. The existence of the road or failure on the part of the petitioner to show alternate road are extraneous consideration for the claim under Order 39 Rule 1 and 2 of C. P. C. The petitioner has made out *prima facie* case and if the obstruction is continued, he is likely to face irreparable loss. The petitioner is an agriculturist and being owner he is entitled to cultivate his land without any obstruction. Under these circumstances, I find that case is made out to cause interference in the impugned judgments and orders.

10. Writ Petition is allowed. The order dated 06.09.2024 passed below Exh. 5 in Regular Civil Suit No. 228/2023 as well as judgment and order dated 01.11.2025 passed by District Judge -1 Barshi in Misc. Civil Appeal NO. 56/2025 are quashed and set aside.

11. The application Exh. 5 in Regular Civil Suit No. 228/2023 shall stand allowed.

12. There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

mkd/-