

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

WRIT PETITION NO. 640 OF 2026

RAGHU GANPATI SHINDE AND ANOTHER
VERSUS
PRAVIN BABASO KUMATHEKAR

...

WITH

INTERIM APPLICATION (STAMP) NO. 2780 OF 2026
IN WRIT PETITION NO. 640 OF 2026

...

Advocate for Petitioner/Applicants : Mr. Shashank Mangle,
Mr. Balwant Salunkhe and Mr. Omkar Koratkar
Advocate for Respondent : Mr. Nagesh Y. Chavan

...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 22-04-2026

PER COURT:-

1. Heard.
2. For the reasons stated in the interim application, the same is allowed in terms of prayer clause (a) and disposed of, accordingly. The amendment be carried out forthwith.
3. The petitioners raise an exception to the order dated 22.12.2015 rendered by the learned District Judge-3, Sangli, in Misc. Civil Appeal No.104 of 2023, setting aside the order dated 04.07.2023 below Exhibit-5 in Regular Civil Suit No.71 of 2023, by the learned Civil Judge Junior Division, *Kavathemahankal*, District Sangli, granting interim injunction in favour of the plaintiffs.

4. The petitioners/legal heirs are the original plaintiffs while the respondent is the original defendant (Hereinafter, the parties shall be referred to by their original status in the suit).

5. The plaintiffs instituted Regular Civil Suit No.71 of 2023 against the defendant before the Civil Judge Junior Division, *Kavathemahankal*, seeking a declaration of ownership and a perpetual injunction. The plaintiffs contended that they are the lawful owners of the suit property and that the defendant is attempting to carve out an unauthorized new road through the land.

6. According to the plaintiffs, they sold 0.21 R of land to the defendant *via*, a registered sale deed dated 09.06.2006. This deed explicitly specifies that the right of way is restricted to a road originating from the rivulet on the western side of the land. Despite these clear terms, the Tahsildar of Kavathemahankal, acting under the Mamlatdar's Courts Act, erroneously allowed an application by the defendant. The Tahsildar directed the plaintiffs to remove stone boundary protections. As the defendant continued to falsely claim a right of way through the plaintiffs' land, the suit came to be instituted.

7. Learned counsel for the petitioners/plaintiffs submits that the order under challenge is unsustainable in law. The

respondent's rights are limited by the sale deed and there is nothing on record to suggest a right of ingress or egress through the petitioners' land. The trial Court exercised its discretion correctly and the appellate court erred in substituting that view.

8. The learned counsel for the respondent resisted the petition submitting that the Appellate Court correctly assessed the matter, noting that the respondent had no other access to their land and, thus, the order warrants no interference.

9. Upon hearing both the sides and perusing the sale deed, it is clear that the right of way is predominantly confined to the streamlet. The plaintiffs have established a strong *prima facie* case for an interim injunction as the sale deed dated 09.06.2006 explicitly restricts the defendant's right of way to a specific road on the western rivulet, thereby making any attempt to carve out a new road a direct violation of registered property rights. The balance of convenience shifts heavily in favor of the plaintiffs, as the Tahsildar's order under the Mamlatdar's Courts Act, was allegedly passed in violation of natural justice without a proper hearing and its enforcement would cause irreparable injury by permanently altering the nature of the suit property and destroying established boundaries. Consequently, an injunction is necessary to maintain the *status quo*, as the physical

encroachment and creation of a new thoroughfare cannot be adequately compensated by monetary damages once the topography of the land is compromised.

10. The cardinal principles governing the grant of injunctions are dealt in detail in the verdict of ***Dalpat Kumar And Anr. vs Prahlad Singh And Ors. AIR 1993 SC 276 B***, wherein the Honourable Apex Court has held as follows:

"4. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it."

"5. Satisfaction that there is a *prima facie* case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial

mischievous or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

11. It is a settled principle of law that where the trial Court and the Courts below have concurrently declined to exercise discretion in favour of the petitioners, this Court would be cautious to interfere, particularly in view of the judgment of the Honourable Apex Court, in the case of ***Wander Limited And Another vs. Antox India P. Ltd. 1990 (Supp) SCC 727***, particularly in paragraph Nos.13 and 14 thereon, which reads as under :

"13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored

the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* :

... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

12. Thus, the trial Court correctly applied the principles of *prima facie* case, balance of convenience and irreparable loss and exercised discretion. In the absence of any perversity being recorded in the trial Court's findings, the Appellate Court ought not to have substituted same by its own reasoning.

13. Hence, the order:-

ORDER

(i) The civil writ petition is allowed.

- (ii) The judgment and order dated 22.12.2025 rendered by the learned District Judge-3, Sangli, in Misc. Civil Appeal No.104 of 2023, is set aside.
- (iii) The order dated 04.07.2023 below Exhibit-5 in Regular Civil Suit No.71 of 2023, rendered by the learned Civil Judge Junior Division, Kavthemahakal, District Sangli, granting temporary injunction in favour of the plaintiffs, shall stand restored.
- (iv) Rule is made absolute in above terms.
- (v) Needless to state that observations herein are confined to the decision of interim injunction only.

[SACHIN S. DESHMUKH]
JUDGE

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