

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1023 OF 2026

Vijay Uttam Patole

VERSUS

Shobha Balasaheb Salunkhe And Ors

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Adv Sumit Chavan a/w Ms. Komal Sawant Advocate for Petitioner

Mr. Sanjay D. Rayrikar, AGP for the State

Mr. Kirankumar Phakade a/w Mr. Rushikesh Jagadale, Advocate for
Respondent Nos. 1 and 2.

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CORAM : SACHIN S. DESHMUKH, J.

DATE : 26th MARCH, 2026.

P. C. :

1. Heard learned counsel for the petitioner.
2. The challenge is raised to the order rendered by 9th Civil Judge Senior Division, Satara in Regular Civil Suit No. 5/2026 which is endorsed by the District Judge-2, Satara in Misc. Civil Appeal No. 4/2026.
3. The issue is in relation to the access road blocked at the instance of the present petitioner was sought to be addressed by the respondents by approaching Mamalatdar under Section 5 of the Mamalatdar's Courts Act, 1906.

4. After carrying out the spot inspection & taking into account the material position on the site, the authorities allowed the application presented by the respondents. Same was further subjected to revision before the Sub-Divisional Officer, Koregao which has resulted into rejection.

5. Preceded by same, the present petitioner approached the Civil Court by presenting the aforestated suit seeking declaration *vis-a-vis* injunction. The Trial Court after considering the material on record and applying settled principles of law governing grant of injunction, eventually declined to exercise the discretion in favour of present petitioner thereby rejecting the application below Exhibit 5 which is further endorsed by the District Court in Misc. Civil Appeal No. 4/2026.

6. Learned counsel for the petitioner submits that the Courts below have grossly erred in not exercising the discretion in favour of present petitioner despite the fact that the prima facie case was made out and further ignoring balance of convenience lies in favour of the present petitioner and irreparable loss would be caused as trees planted by the petitioner will be destroyed by use of such road.

7. *Per contra*, learned counsel for the respondents and learned AGP have supported the order and prayed for dismissal of the Petition.

8. Upon considering the rival submissions and material placed on record, *prima facie*, it appears that the Trial Court has properly declined to exercise the discretion in favour of the petitioner considering the fact that the claim of the petitioner that his land is divided due to the streamlet and owns part of the land even beyond the streamlet is unfounded in absence of material to that effect.

9. The proceedings under Order XXXIX Rule (1) of the Code are discretionary in nature and the object of interlocutory injunction is to protect the right of litigating sides and to avoid damages which could not be adequately compensated if the uncertainty were resolved in favour of such party at the trial. Such protection essentially is to be weighed against the corresponding need of the litigating side for which the party could not be adequately compensated.

10. In the process, the Court must weigh one need against another between the litigating sides and determine where the balance of convenience lies. The interlocutory remedy is intended to preserve

the status-quo rights of the parties which may appear on a prima facie case. The Court also while restraining a litigating side ought to put into the scales the rights of the parties and give a relevant consideration whether the other side had access to the said rights or consider if the same were being infringed.

11. Thus, the proceedings against interlocutory order are essentially the appeal against the discretion. In the present case, the trial Court after appreciating the material on record has taken into account, the fact that the plaintiff has utterly failed to demonstrate any prima facie case as well as balance of convenience and eventually irreparable loss as is sought to be asserted and resultantly, the Court has declined to exercise the discretion which is further endorsed by the Appellate Court while dismissing the Appeal, does not warrant reconsideration by this Court.

12. The said principle is no more *res integra* in the wake of authoritative pronouncement of the Hon'ble Apex Court in the case of *Wander Ltd. And Anr Vs. Antox India P Ltd*¹ which is followed by in the case of *Mohd. Mehtab Khan and ors Vs. Khushnuma Ibrahim and Ors*².

¹ 1990 SUPP(1) SCC727

² 2013 (9) SCC 221

13. In view of circumstances stated herein above and precedents, I am of the considered view that no case is made out warranting substitution of the said discretion which is rightly declined by the Trial Court, further endorsed by the first Appellate Court.

14. Writ Petition stands dismissed.

15. Needless to state that the observations rendered hereinabove, are confined to the decision on the issue of interlocutory intervention only raised in the petition. It is open for the litigating sides to raise all the issues before the concerned Court to decide the same on its own merits.

[SACHIN S. DESHMUKH, J.]

**IRESH
MASHAL**

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