

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

WRIT PETITION NO. 1405 OF 2026

Tukaram Aakaram Kharat And Ors.

VERSUS

State of Maharashtra Thr. The District Collector, Sangli And Ors.

...

Mr. S. P. Patil Advocate for Petitioners.

Mr. Sanjay D. Rayrikar, AGP for the Respondent Nos.1 and 2 - State

...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 27th MARCH, 2026.

P. C. :

1. The Petitioners raise an exception to the order rendered by the District Judge while dismissing Misc. Civil Appeal No. 98 of 2025, endorsing the order of the learned Joint Civil Judge, Junior Division, Atpadi, below Exhibit-5 in R.C.S. No. 234 of 2025.
2. The Respondent presented an application under Section 5 of the Mamlatdars' Courts Act, seeking removal of obstruction by the present Petitioners. After conducting the necessary panchanama and extending an opportunity of hearing to the parties, the Mamlatdar allowed the application presented by the Respondent below Exhibit-5.

3. It is thereafter, the Petitioners instituted Regular Civil Suit No. 234 of 2025 seeking an order of injunction, and in that process, filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, seeking injunction against the defendants from creating a road and from disturbing the peaceful possession of the suit property. The trial Court, taking into account the existence of the road, rejected the said application, holding that the Petitioners failed to establish triple test i.e. a prima facie case, balance of convenience & irreparable loss.

4. Further challenge in Misc. Civil Appeal No. 98 of 2025 was carried; however, the order of the trial Court has been endorsed while dismissing the appeal. Being aggrieved, the Petitioners have approached this Court.

5. The learned counsel for the Petitioners submits that the panchanama is defective, as it does not bear the signatures of the Petitioners. However, fairly, on instructions of client present in Court, submits that the Petitioners were present at the time of the panchanama. As such, the presence of the Petitioners is undisputed. Therefore, the contention that the panchanama does not bear signatures does not warrant consideration.

6. Apart from the aforesaid aspects, the trial Court has declined to exercise discretion in favour of the present Petitioners, taking into account the existence of the road and the alleged obstruction at the instance of the Petitioners, said finding has been endorsed while dismissing the appeal. As such, I am of the considered opinion that both the Courts below are justified in not exercising discretion in favour of the Petitioners, in view of existence of road and obstruction to it by the petitioners. Resultantly, the Petition, being devoid of merit, is accordingly dismissed.

7. Needless to state that it will be open for the parties to agitate the matter on its own merits. This Court has not delved into the merits of the case in detail. The observations rendered herein shall not be construed as an expression on the merits of the case before the trial Court.

[SACHIN S. DESHMUKH, J.]