

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

WRIT PETITION NO. 1446 OF 2026

Kisan Alias Krushna Eknath Pharande
Through POA Hanumant K. Pharande

VERSUS

Pushpa Bapurao Pharande And Ors.

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Mr. Vaibhav R. Gaikwad, Advocate for Petitioner.

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CORAM : SACHIN S. DESHMUKH, J.

DATE : 2nd APRIL, 2026

P. C. :

1. The Petitioner raises an exception to the order dated 24th February, 2026 rendered by the learned District Judge, Phaltan in Misc. Civil Appeal No. 3 of 2026, endorsing the order dated 20.12.2025 below Exhibit-5 in Regular Civil Suit No. 322 of 2025 by the learned 2nd Joint Civil Judge, Junior Division, Phaltan.

2. The Petitioner is a 97-year-old father and has presented this Petition through his power of attorney, the younger son, against the elder son. After retirement, has engaged himself in agricultural operation. On account of obstruction by the Petitioner herein, recourse was taken to proceedings under Section 5 of the

Mamlatdars' Courts Act. The Mamlatdar, after carrying out the necessary panchanama and recording the existence of a road and obstruction to it caused by the Petitioner herein, directed to undo the obstruction against which a revision was preferred before the SDO, which was eventually withdrawn.

3. Preceded by the same, the Petitioner approached the Civil Court seeking injunction by filing an application at Exhibit-5, the learned Trial Court taking into account the material on record and failure to demonstrate prima facie case, declined to exercise discretion in favour of the present Petitioner, the same is endorsed by appellate Court. As such, the Petitioner is before this Court under Article 227 of the Constitution of India.

4. Learned counsel for the Petitioner, Mr. Gaikwad, submits that both the Courts have erred in declining to exercise discretion in favour of the Petitioner, in spite of the fact that the Petitioner has made out a prima facie case; the balance of convenience also lies in favour of the Petitioner, and irreparable loss would be caused to the Petitioner if the relief is not granted, particularly in respect of the access road sought to be restored pursuant to the order of the Revenue Authorities.

5. Upon considering the submissions advanced by Mr. Gaikwad and upon perusal of the material on record, the Courts below have taken into account the conduct of the present Petitioner in restraining his own elder son and daughter-in-law, as well as the fact that the obstruction to existing road was notably created at the instance of the Petitioner, and have therefore properly declined to exercise discretion in favour of the present Petitioner.

6. 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. AIR1993 SC 276 B**, wherein the 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 mischief 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.”

7. 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 Petitioner, this Court would be cautious to interfere, particularly in view of the judgment of the *Hon’ble Apex Court in Wander Limited And Another vs. Antox India P. Ltd. 1990 (Supp) SCC 727*, in particular, para 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.

8. Thus, Petitioner having failed to demonstrate *prima facie* case as well as refusal to exercise discretion is contrary to settled principles of law.

9. In view of the aforesaid facts and precedents, no case is made out for interference.

10. Resultantly the Petition stands dismissed.

[SACHIN S. DESHMUKH, J.]