

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2362 OF 2026

Anjanabai Tanaji Birari

...Petitioner

Versus

Ambadas Mahadu Birari and ors.

...Respondents

Mr. Khushnood Akhtar, i/b S. R. Nirmale, for the Petitioner.

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CORAM: N. J. JAMADAR, J.

DATED: 11th MARCH, 2026

Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 16th January, 2026, whereby an application preferred by the petitioner – appellant in Regular Civil Appeal No.112 of 2025 for interim relief purportedly under the provisions of Order XLI Rule 5(1) of the Code of Civil Procedure, 1908, came to be rejected.
3. Respondent Nos.1 to 4 – original defendant No.1 to 4 preferred an application under Section 143 of the Maharashtra Land Revenue Code, 1966 (“the Code, 1966”) for a right of way over the boundaries of Survey Nos.730 and 729. The Tahsildar conducted an inquiry and by an order dated 15th December, 2020 granted a right of way over the boundaries of Gat No.729

and Gat No.726 for approaching the defendants field i.e. Gat Nos.727/1 and 727/2. The Tahsildar recorded that the said right of way was the most appropriate way that could be granted to defendant Nos.1 to 4.

4. Being aggrieved, the petitioner instituted a suit before the Civil Judge, Senior Division, Satana. By a judgment and decree dated 9th October, 2025, the learned Civil Judge dismissed the suit. The learned Civil Judge, upon appraisal of the evidence and material on record found that there was no infirmity in the order passed by the Tahsildar under Section 143 of the Code, 1966. A categorical finding was recorded that there was no alternate way for defendant Nos.1 to 4 to access their field. The petitioner – plaintiff failed to demonstrate that any prejudice would be caused to the plaintiff in the event the right of way was granted over the boundaries of Gat Nos.726 and 729.

5. Being further aggrieved, the petitioner preferred an appeal before the District Court. In the said appeal, an application for interim relief in the nature of restraining the defendants from acting upon the order passed by the Tahsildar granting a right of way, was filed. The learned District Judge rejected the application observing that the Tahsildar had granted the right of way in the year 2020. Defendant Nos.1 to 4 could not cultivate

their lands for want of access. Having regard to the object of the provisions contained in Section 143 of the Code, 1966, and the time that had elapsed from the date of the order passed by the Tahsildar, in the view of the learned District Judge, further stay to the execution and operation of the order passed by the Tahsildar would cause grave prejudice and irreparable loss to defendant Nos.1 to 4.

6. Mr. Akhtar, the learned Counsel for the petitioner, made an endeavour to demonstrate that the order passed by the Tahsildar was infirm. It was submitted that when the prayer of defendant Nos.1 to 4 before the Tahsildar was to grant a right of way over the boundaries of Survey No.730 and 729, the Tahsildar could not have granted a right of way over the boundaries of Gat No.729 and 726. It was further submitted that the Tahsildar had drawn the panchnama behind the back of the petitioner. As the proceedings before the Tahsildar were riddled with infirmities, the trial Court could not have dismissed the suit. It was submitted, if the execution, operation and implementation of the order passed by the Tahsildar was not stayed the petition would be rendered infructuous and the petitioner remediless.

7. I find it rather difficult to accede to the submissions of Mr. Akhtar. The learned Civil Judge has recorded a finding in clear and explicit terms that defendant Nos.1 to 4 had no alternate access to their field. The learned Civil Judge has adverted to the admissions made during the course of the cross-examination of the plaintiff in regard to the legality and correctness of the proceedings before the Tahsildar.

8. Secondly, the impugned order reveals that the learned District Judge, had provided an opportunity to the plaintiff – appellant to allow respondent Nos.1 to 4 to approach their field through any of the three options. It is categorically recorded that the plaintiff – appellant declined to provide access to defendant Nos.1 to 4 through any of those three options. The learned District Judge has further recorded that after the decision of the Tahsildar, the boundaries between Block Nos.729 and 726 were removed by the plaintiff with a view to deprive the access to defendant Nos.1 to 4.

9. At this juncture, it is necessary to note that what was essentially in challenge in the suit before the Civil Court was the legality and validity of the order passed by the Tahsildar under Section 143 of the Code, 1966. The object of grant a right of way over the boundaries of the other survey numbers, under

Section 143 of the Code, 1966, is to ensure that the landlocked agriculturists are not deprived of access to their fields. The Tahsildar has recorded justifiable reasons for granting the right of way over the boundaries of Gat Nos.729 and 726. The learned District Judge has categorically recorded why the access over the boundaries of Gat Nos.730 and 729 is not feasible.

10. In this backdrop, when defendant Nos.1 to 4 have been deprived of access to their field for over five years and thereby rendering their lands uncultivated, the exercise of discretion by the learned District Judge in declining to grant stay to the execution and operation of the order passed by the Tahsildar, after the plaintiff did not succeed before the trial Court, cannot be said to be either perverse or unreasonable.

11. Thus, in exercise of the supervisory jurisdiction, this Court is not inclined to interfere with a purely discretionary and interlocutory order. The writ petition, therefore, does not deserve to be entertained.

12. The writ petition stands dismissed.

[N. J. JAMADAR, J.]