

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 66 OF 2014

Abhay s/o Puroshottam Shelke
and another

APPELLANTS

VERSUS

The State of Maharashtra and others

RESPONDENTS

Mr. Amol S. Gandhi, Advocate for the appellants
Mr. S.R. Palnitkar, A.G.P. for respondent/State
Mr. C.V. Korhalkar, Advocate for respondents
No. 3 to 7

CORAM : M.T. JOSHI, J.

DATE : 16/07/2015

ORAL ORDER :

1. Heard both sides.
2. Upon hearing both sides, it has become clear that no civil right is claimed against defendants No. 1 and 2 though the learned Civil Judge Senior Division has wrongly observed that a mandamus is sought against defendants No. 1 and 2 and therefore, the Civil Judge Senior Division would not have jurisdiction to grant mandatory injunction. Ultimately, as no relief is sought against defendants No. 1 and 2, the conclusion of the learned Civil Judge Senior Division that the names

of defendants No. 1 and 2 be struck off from the array of the defendants and therefore, direction to return of the plaint for its presentation before the proper court, cannot be faulted with.

3. Mr. Amol Gandhi, learned counsel for the appellants, submits that liberty be granted to the appellants to file appropriate proceedings against the defendants No. 1 and 2 in view of the rules and regulations of vesting of the roads in these defendants may be granted.

4. In the circumstances, the present appeal from order is hereby dismissed without any order as to costs, with liberty as sought for.

5. In view of above order, the application dated 02.01.2015, sent by the present appellant No. 2, alleging contempt of the order of this court, does not survive and hence, stands disposed of.

[M.T. JOSHI]
JUDGE