

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

902 SECOND APPEAL NO. 357 OF 2016
WITH CA/7926/2016 IN SA/357/2016

TUKARAM BHAGWANRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR
OSMANABAD AND ANR

...
Advocate for Appellant : Ghogare Rani V.
AGP for Respondent/State : S.P. Sonpawale
...

CORAM : T.V. NALAWADE, J.
DATED : 7th June, 2016.

ORDER :

1. The appeal is filed by original plaintiff of Regular Civil Suit No. 556/2014, which was pending in the Court of Civil Judge, Senior Division, Osmanabad against the decision of the Trial Court and also against the decision of Regular Civil Appeal No. 129/2015, which was pending in District Court, Osmanabad. Heard the learned counsel for appellant.

2. The suit was filed by present appellant against State Government and Public Works Department of State Government for relief of injunction. It is the case of plaintiff that Municipal House No. 3020, having area of 10 ft. x 15 ft. is given to him by Sub Divisional Officer, Bhoom, revenue authority for use on payment of some charges. It is his case that since the year 1999

he is doing the business of hotel on this property. It is his case that on 23.9.2014 the defendants entered in the suit property and started digging at east-north corner and they tried to destroy the road. It is his case that his customers enter the hotel from that corner. It is his case that the defendants are trying to make construction of compound wall at that place and that will close the road which is in existence at that place. To prevent them from making such construction, the suit was filed.

3. The defendants filed written statement and contested the matter. They admitted that the space of 10 ft. x 15 ft. was given to the plaintiff for running canteen in front of the office of the defendants. It is contended that the plaintiff was expected to make construction of temporary nature, but he made construction of two storied building. It is contended that the office of defendant has undertaken the exercise of construction of compound wall to protect the Government Building and this compound wall is not within the space allotted to the plaintiff. It is contended that plaintiff has access to his canteen from other side and he has no right to prevent the defendants from making such construction.

4. The evidence was given before the Trial Court. On

the basis of evidence, the Trial Court came to the conclusion that from western side, there is access to the canteen and due to the construction of compound wall, the access will not be closed. Further, there is nothing with the plaintiff to show that the road at the aforesaid corner was in existence at any time. If there was the open space, it cannot be said that the plaintiff had acquired the right to use that open space as a road and the defendants cannot be allowed to make construction over their own open space. Thus, there were no merits in the suit and the Trial Court rightly dismissed the suit. These findings are confirmed by the First Appellate Court and concurrent findings are on questions of facts. No substantial question of law as such is involved in the matter. No notice is required to be given to other side. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

SSC/