

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.16 OF 2015

Shri Yeshwant Gopalrao Geete. .. Appellant
Vs.
Shri Machindra Narayan Ahire & Ors. .. Respondents

Mr. Pramod Joshi for Appellant.
None for Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 18th August 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant has impugned the judgment and order dated 20th January 2014 passed by the learned Ad-hoc District Judge-1 and Additional Sessions Judge, Malegaon dismissing the appeal filed by the appellant i.e. Civil Appeal No.134 of 2003. The trial Court by an order and decree dated 25th September 2003 had decreed the suit filed by the appellant herein inter alia praying for perpetual injunction in respect of the construction alleged to have been made on the road and for mandatory injunction for removal of the unauthorised structure alleged to have been constructed on the suit premises.

2. The learned trial Judge directed the defendant nos.1, 2 and 4 to 9 to remove unauthorised structure from the suit premises except the portion i.e. platform on which the idol of Lord Maroti is situated and 2 feet portion surrounding from the foundation on each side on which the idol is existing within three months. The trial Court also made it clear in the said order that in case of failure, such structure shall be removed by the Court Commissioner.

3. The learned trial Judge, however, directed the respondent no.3 (Collector) to hold a detail enquiry from the local inhabitants in so far as the Idol of Lord Maroti on the suit plot is concerned and to take appropriate action into the matter as per the law. The learned trial Judge also made it clear that after removal of unauthorised construction, the defendants shall be restrained from raising any sort of construction over the suit premises.

4. Being aggrieved by the said order and decree dated 25th September 2003 in so far as the direction to remove unauthorised structure on the suit premises is concerned, the original defendant no.1, 2 and 4 to 9 filed an appeal before the learned District Judge (Regular Civil Appeal No.133 of 2003).

5. In so far as the appellant herein is concerned, the appellant impugned the direction issued in paragraph 3 of the operative order dated 25th September 2003 by filing a separate appeal (Regular Civil Appeal No.134 of 2003). By an order and judgment dated 20th January 2014, the learned Ad-hoc District Judge-1 dismissed both the appeals. The impugned order dated 20th January 2014 passed by the learned Ad-hoc District Judge dismissing the appeal filed by the defendant nos.1, 2 and 4 to 9 has not been impugned by them. The original plaintiff who was the appellant in Regular Civil Appeal No.134 of 2003 has filed the present second appeal under Section 100 of the Code of Civil Procedure, 1908.

6. Mr.Joshi, learned counsel appearing for the appellant invited my attention to various observations made by the learned trial Judge in

the impugned order and decree dated 25th September 2003. He submits that though the Collector had filed a written statement before the learned trial Judge that the Idol of Lord Maroti was constructed recently when the suit was filed, the learned trial Judge has passed an order for conducting an enquiry by the Collector in so far as the Idol of Lord Maroti is concerned. He submit that though the appeal filed by the defendant nos.1, 2 and 4 to 9 against the order and decree dated 25th September 2003 is already dismissed by the learned Ad-hoc District Judge-1 by an order dated 20th January 2014, the authorities have not demolished the said unauthorised structure till date.

7. In so far as the challenge to the operative order recorded in paragraph 3 of the impugned order dated 25th September 2003 is concerned, a perusal of the order passed by the learned trial Judge and by the learned Ad-hoc District Judge-1 indicates that the findings recorded by the learned trial Judge for issuing such direction for conducting such detail enquiry are concurrent findings. In my view, both the Courts below are justified in passing an order for conducting a detail enquiry by the Collector. It is made clear that this Court has not expressed any views whether the Idol of Lord Maroti was unauthorised or not. The said issue is kept open.

8. Since the impugned order and decree passed by the learned trial Judge in so far as the mandatory injunction for removal of the unauthorised structure granted in paragraph 4 of the operative order is concerned and since the appeal filed by the defendant nos.1, 2 and 4 to 9 has been dismissed as far back as on 20th January 2014 and there is no stay on the said order, the authorities are directed to remove the said

portion of the unauthorised structure as directed within two weeks from the date of the appellant furnishing the authenticated copy of this order without fail. If the action is not taken by the authorities to comply with the order passed by this Court and the order and decree passed by the learned trial Court and the judgment and order passed by the learned Ad-hoc District Judge-1 within two weeks from the date of communication of this order, an appropriate action under the provisions of the Contempt of Courts Act, 1971 would be initiated against the authorities for non-compliance. If any police assistance is required for demolition of the unauthorised structure, the local police station is directed to provide police assistance to the authorities.

9. In so far as the direction issued by the two Courts below for conducting an enquiry in respect of Idol of Lord Moroti is concerned, the defendant no.3 is directed to conduct such enquiry from the local inhabitants and pass an appropriate order within three months from the date of communication of this order and if it found that the said structure is illegal, then shall remove the same and comply with the order and decree passed by the learned trial Judge which is upheld by the appellate Court.

10. Second appeal is disposed of in aforesaid terms. No order as to costs. If any order is passed by the learned Collector in compliance with the order passed by this Court and if the said order is adverse, the appellant would be at liberty to file appropriate proceedings.

R.D. DHANUKA, J.