

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

**APPEAL FROM ORDER STAMP NO. 5048 OF 2019
WITH
CIVIL APPLICATION STAMP NO. 5049 OF 2019**

Dinesh Muddanna Shetty and others	... Appellants
Versus	
The State of Maharashtra and another	... Respondents

.....
Mr. P. J. Thorat for the Appellants.
Ms Tanya Goswami, AGP for the State.
.....

CORAM : SANDEEP K. SHINDE, J.
DATE : 15th FEBRUARY, 2019.

P. C.:

1. Not on board. Upon mentioning, taken on production.
2. Heard learned Counsel for the appellants and learned AGP for the State.
3. The Assistant Engineer (Grade-I) - respondent No.2 had issued notice dated 4th February, 2019 and called upon the appellants to remove the encroachment allegedly made abutting the Check-Naka No. 136/900 at Mankhurd to enable the office of respondent No.2 to undertake the construction of the service road.

4. Apprehending the demolition of the existing structures and execution of notice dated 4th February, 2019, the appellants have filed S.C. Suit No.370 of 2019 on 12th February 2019 and sought ad-interim relief to prevent the respondents from demolishing the suit structures. The learned trial Judge refused ad-interim relief and posted the hearing of the suit/Notice of Motion therein, on 18th February, 2019. It is against this order of refusal of ad-interim relief passed by the learned Judge, this appeal is preferred.

5. Considering the urgency the matter was mentioned, as the appellants were apprehending the demolition of the suit structures by the respondents in absence of any protection. That, as such the production was allowed and the appellants were directed to give notice to the respondent-State. Learned AGP has appeared for the respondents. However, she has no instruction since she has served today at 11.00 a.m.

6. Learned Counsel for the appellant has taken me through the plaint and annexures thereto. It appears, there are three suit structures in the possession of each of the appellants.

7. I have perused the order passed by the Deputy Collector (Encroachment) dated 24th July, 1992, which relates to the

structure of Dinesh Shetty. It shows the structure in the possession of Dinesh Shetty was in existence at least since 1968.

8. So far as the suit structure in possession of the appellant Suresh Shetty is concerned, reliance is placed on pitch holder's card, which was issued by the Controller of Slum, Bombay B.S.D. Old Custom House, some where in 1980. It shows that Suresh is occupying the area of structure is 100' x 8' and runs "Pav-Bhaji" centre at Mankhurd.

9. So far as the appellant Navneena Shetty is concerned, she claims her possession in the suit structure since 1980 and reliance is placed on the pitch holder's card issued by the Controller of Slum Bombay B.S.D. Old Custom House. This document shows Navneena Shetty, is in possession of structure admeasuring 21' x 23' at Mankhurd, wherein the business of Juice Centre is conducted.

10. *Prima-facie*, I am of the view that these documents show plaintiffs' possession in the suit structure since before 1st January, 2000. In view of this the execution of the suit notice dated 4th February, 2019 issued by respondent No.2 is stayed till 8th March, 2019.

11. The learned trial Judge shall make an endeavor to dispose of the Notice of Motion finally preferably before 8th March, 2019. The respondent-State is directed to file reply in Motion on or before 25th February, 2019. The learned trial Judge shall hear the Notice of Motion on 28th February, 2019 and decide the same before 8th March, 2019.

12. With the aforesaid directions Appeal From Order and Civil Application are disposed of. It is clarified that the observations made in this order are *prima-facie* and the learned Judge shall decide the Notice of Motion on merits without being influenced by the observations made in this order.

13. Learned AGP shall communicate this order to the respondents on telephone which is given at page No.116 of the compilation of this appeal.

14. Parties to act upon an authenticated copy of this order.

(SANDEEP K. SHINDE, J.)