

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**Second Appeal No. 573 / 2020
with
Interim Application No. 3348 / 2020**

Shri. Shivaji Ganapati Gadve

.. Appellant

Vs.

Shri. Mahadev Sakharam Gadve & Ors.

.. Respondents

Mr. Deepak A. Lad, Advocate for Appellant.

Mr. P.D. Dalvi, Advocate for Respondent No.1.

CORAM : SANDEEP K. SHINDE J.

DATE : 23rd MARCH, 2021.

P.C. : -

Heard.

1. The Respondent No.1, instituted the Regular Civil Suit No. 463/2010, seeking for relief of mandatory injunction against the Appellant (Defendant No.1) and Respondent No.2 and 3 (Defendant

No.2 and 3). The suit was decreed by the trial Court, whereby the Defendants were directed to remove unauthorized construction made on the suit way/ road. The decree was challenged in appeal by the Defendants No.1 and 2, being Regular Civil Appeal No. 235 / 2014. The Appellate Court dismissed the appeal. Feeling aggrieved, the Defendant No.1 alone has preferred this appeal.

2. At the outset, it may be stated the impugned decree of mandatory injunction was passed against the Defendant Nos. 1, 2 and 3; however it is assailed before this Court, by Defendant No.1 alone. As such, it is left open to execute against other Defendants. Be that as it may, the Courts below have relied on the evidence of PW-2 Pravin Kumbhar – Commissioner and a city survey map at Exhibit – 57 to hold and conclude that the suit way was in-existence and in use of the Plaintiffs. Finding is recorded that the appellant obstructed the access of the Plaintiffs by making construction on the suit road. The evidence point-out, that City Survey extract was admitting existence of the suit way. However, the extract has not

been challenged by the appellant by adopting the appropriate proceedings. Thus, in consideration of the facts of the case, it cannot be said that the impugned decree was perverse.

3. Therefore, in my view, the appeal does not give rise to substantial question of law. Appeal is dismissed.

4. Interim Application is disposed of accordingly.

(SANDEEP K. SHINDE, J.)