

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

936 CIVIL APPLICATION NO.4053 OF 2023  
IN AO/22/2023 WITH AO/22/2023

A. HAFIZ MOHAMMAD HARUN ANSARI AND ANOTHER  
VERSUS  
JAGADISH VISHWANATH CHAUDHARI AND ORS

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Advocate for Applicants/appellants : Mr. Savale Amit S.  
Advocate for Respondent Nos.1 to 3 : Mr. Bhale Babasaheb S.

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**CORAM : S. G. MEHARE, J.**  
**DATE : 30.08.2023**

**PER COURT :-**

1. Heard the learned counsel for the applicants and the learned counsel for the respondents.
2. The suit of the plaintiffs claiming the right to access the alleged service road passing through survey No.61/1 was dismissed. Against the said judgment and order, Regular Civil Appeal No.8 of 2023 has been preferred. In the said appeal, a temporary injunction was sought. However, the learned District Judge-1, Shahada, vide order below Exh.5, dated 15.03.2023, rejected the prayer for an injunction restraining the respondent from raising construction in Survey No.61/1.
3. The learned counsel for the appellants has referred to various maps. It is not in dispute that the appellants are the

owners of plots Nos.9 and 10 in Survey No.60. Survey No.61/1 is above Survey No.60 located. Learned counsel for the appellants would submit that the highway running Taloda-Shahada is passing through the original survey No.61/1. Hence, the field survey No.61/1 has been divided into two parts, i.e. survey Nos.61/1 and 61/2. A small strip remained adjoining survey No.60 in between the service road and the layout of the appellants. The specific case of the appellants is that there is access to the service road from survey No.60 adjoining plots Nos.8 and 9 owned by the appellants. However, the appellants illegally started construction, and the access road to the service road connecting to the Taloda-Shahada road on the north side of the said road has been blocked; hence, the right to access their property has been affected. The injunction was running against the respondents during the trial of the suit. The appellants have a *prima facie* case, the balance of convenience lies in their favour, and they will suffer injury if the temporary injunction as prayed is refused. Hence, the injunction may be granted to restrain the respondents from raising any construction.

4. Learned counsel for the respondents would submit that though the service road was proposed adjoining Taloda-Shahada road, their land was never acquired and no

compensation was awarded to them. Hence, there is no service road, as alleged by the appellants. The appellants have no right to access through plot No.61/1. However, since the highway is built, they are trying to create a new road through the property of the respondents. As per the map, there is no access to survey No.61/1 from their layout. The appellants utterly failed to prove their right exists. Since the appellants have no right to access, there is no question of violating their right to access. Hence, the appellants have no case for injunction as prayed.

5. Perused the papers. The location of the survey numbers, as discussed above, is not in dispute. The various maps reveal that the Taloda-Shahada road has passed through survey No.61/1, and 61 has been divided into two parts. Whether the service road was in existence or not is not the question. The question is whether the layout plot owners of field Survey No.60 have a right to access through survey No.61/1. The appellants have placed on record their revised proposed layout plot. A nine-meter wide internal road has been shown adjoining plot No.9. However, the map reveals a dead end of that road at the boundary of survey No.60. This road does not show any access to survey No.61/1, belonging to the respondents. So *prima facie*, it may be believed that there is no evidence at this juncture to prove that the plot owners of

survey No.60 have access to survey No.61/1. Since they have no right to access, it cannot be believed that their rights have been violated. Nothing is on record to show that the so-called construction of the respondents is violating their rights to enjoy their property. Appellants have not established their rights. Hence, there is no *prima facie* case to grant a temporary injunction as prayed. On the contrary, the balance of convenience tilts in favour of the respondents. There is nothing to show that in the event of refusing a temporary injunction, the appellants/original plaintiffs would suffer irreparable loss. None of the ingredients of Order XXXIX Rule 1 has been proven. Hence, the appeal deserves to be dismissed. No illegalities are committed by the learned District Judge refusing the temporary injunction as prayed.

### **ORDER**

- (i) The appeal stands dismissed.
- (ii) No order as to costs.
- (iii) Civil Application stands disposed of.

**(S. G. MEHARE, J.)**

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