



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 79 OF 1996

Shaikh Pirmohammad Jeevanbhai And Another.

VERSUS

Bhagwandas Popatmal Chandani And Others.

- Mr. S. T. Shelke, Advocate for the Appellants
- Mr. S. V. Dixit, Advocate for the Respondents

CORAM : R. M. JOSHI, J

DATE : AUGUST 04, 2025

PER COURT :

1. This Second Appeal filed under Section 100 of the Code of Civil Procedure takes exception to the concurrent findings of fact recorded by the Trial Court as well as First Appellate Court in RCS No. 63/1989 and RCA No. 513/1991.

2. This Court by order dated 14.07.1998 has framed following substantial question of law:

"the jurisdiction of the Civil Court to entertain the Regular Civil Suit filed by the Plaintiff and the present Respondents, in view of Section 68 read with Section 23 of the Bombay Highways Act, 1955."

3. Learned Counsel for the Appellants/Original

Defendant Nos. 3 and 4 submits that Trial Court as well as First Appellate Court committed error in ignoring the bar created by Section 68 read with Section 23(5) of the Maharashtra Highways Act, 1955 (for short '**the Act**') to the jurisdiction of Civil Court. It is his submission by referring to the plaint that there is allegation against these Defendants in respect of carrying out encroachment on the Government land i.e. on Highway by constructing temporary shed. It is his submission that once such claim is raised, the bar as provided by Section 23(5) read with Section 68 of the Act would attract. It is his submission that both Courts below have committed error in ignoring the said embargo created by the law.

4. Learned Counsel for Respondent supported the impugned judgment and decree.

5. There is no dispute about the fact that the suit filed by Plaintiff is for mandatory injunction against the Defendants/Appellants. There is specific pleading in the plaint with regard to the obstruction being caused by the Defendants to the ingress and egress of the Plaintiff from his property. Moreover,

evidence on record indicates that the construction of the shed has been made on the Government land i.e. on Highway. The report of the Commissioner also indicates that the said construction is in the front of the property of the Plaintiff. Merely because some way available for the Plaintiffs, he cannot be denied the relief of mandatory injunction. Such findings of fact cannot be interfered with in this Second Appeal.

6. At this stage, it would be relevant to take note of the provisions of the Act. Maharashtra Highway Act has been enacted to regulate construction, maintenance as well as development of Highways in the State. It also aims at removal of encroachments on highways and makes suitable provisions giving powers to the authorities under the Act. Chapter IV of the Act, deals with prevention of unauthorized occupation and encroachments on a highway and removal thereof. Section 21 prohibits any occupation on Highways without written permission of Highway Authority or Officer authorized under the Act. As per sub-section 2 such provision could be granted for purposes specified in clauses (i) to (iv). Such permission can be cancelled under Section

22. Section 23(1) permits Authority to restore the position of Highway by issuing notice to the encroacher and removal of encroachment. Assistance of police is also permissible for such removal of encroachment. Section 68 prohibits jurisdiction of Civil Court in respect of matters required to be dealt with by Highway Authority.

7. In so far as the substantial question of law framed by this Court, Section 68 read with Section 23(5) of the Act indicates that it is open for the Highway Authorities to remove the encroachment which is of temporary nature. Such summary powers are vested with the Authority in order to ensure that there is no blockage to the free flow of the traffic on highways and also for safety of the commuters. Though the summary powers of removal of encroachment would be with Authority under the Act and any action of Authority cannot be taken exception in Civil Court, this, however, can not be construed of taking away general powers of the Civil Court to entertain suit for mandatory injunction.

8. Here in this case, the Appellant/Defendant has admittedly encroached upon the Highway and the portion in front of property of Plaintiff, causing obstruction to his ingress and egress. It is not case of Appellant that the said construction has been done with written order/consent of the Authority. The Appellant, therefore, has no right to retain the suit structure. As per provisions of the Act, it is obligation of the Highway Authority to remove such unauthorized structure. More particularly, when the right of Plaintiff of free and unobstructed ingress and egress is violated, the suit for mandatory injunction could certainly be maintained. Thus, substantial question of law framed deserves to be negatived in the peculiar facts of the case.

9. In view of above, Second Appeal stands dismissed.

(R. M. JOSHI, J.)