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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 43 OF 2025

Ibrahim Kalubaig Mirza,
Age; 72 years, Occ; Business,
R/o: Main Road, Balwant Bhuvan,
Shrirampur, District; Ahmednagar.

...Appellant.

VERSUS

1. The Collector,
Collector Office, Ahamadnagar.
2. The Chief Executive Officer,
Shrirampur Nagar Parishad,
Shrirampur, District; Ahmednagar.
3. Jagdish Tukaram Thete,
Age; 58 years, Occ; Agril,
R/o; Near Thatte Ground,
Shrirampur, District; Ahmednagar.

...Respondents

.....
Mr. P. R. Katneshwarkar, (Senior Advocate i/b Mr. S.S. Wagh, Advocate
for Appellant
Mr.V.R. Dhorde, Advocate for Respondent No. 2,
Mr. V.S. Badakh, AGP for respondent No. 1/State.
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CORAM : S.G. CHAPALGAONKAR, J.

DATE : 3rd FEBRUARY, 2025.

ORDER :-

1. Appellant/original plaintiff filed the Second Appeal

aggrieved by judgment and decree dated 06.11.2024 passed in Regular Civil Appeal No.35/2023 by learned District Judge, Shrirampur, District Ahmednagar, thereby upholding judgment and decree dated 03.05.2023 by Civil Judge Senior Division, Shrirampur in Regular Civil Suit No.275/2017 (For sake of convenience, parties are referred by their original status).

2. The appellant/plaintiff filed suit seeking decree of perpetual injunction against defendants contending that he is possessing a shop situated on Eastern side of main road within municipal limits of Shrirampur. Plaintiff is running his business in the said shop for more than 20 years. The plaintiff has shop license. For his business, he obtained electric connection with consent of municipal council. Plaintiff categorically state that, he constructed the shop in the open space of Gujrati Samaj, but some portion of it falls within boundaries of public road on Western side. The Municipal Council issued illegal notice directing removal of encroachment and Officers are now threatening the plaintiff to remove construction by force. The action of the respondent is discriminatory. The plaintiff is entitled to enjoy possession over suit shop unless evicted by following due process of law.

3. The respondent No.2/Municipal Council refuted claim of the plaintiff and asserted that the construction made by plaintiff by encroaching on public road in unauthorized manner, which is creating obstacle in development of Shrirampur City. The plaintiff is already served with notice for removal of the encroachment within authority of the Municipal Council, as such, due process of law is undertaken.

4. The Trial Court framed issues, recorded evidence of the parties and relying upon the Map of Town Planning Authority dismissed the suit. Aggrieved plaintiff filed appeal before District Court, which has been dismissed confirming the decree of Trial Court.

5. Mr. Katneshwarkar, learned Senior Advocate appearing for the appellant/plaintiff contends that plaintiff is in peaceful possession of property for so many years. The respondent authorities cannot dispossess him without following due process of law. He would submit that the Municipal Council has given no objection to the plaintiff while obtaining electricity connection and they are also collecting the taxes. The Municipal Council is aware about long standing peaceful possession of the plaintiff and the fact that he is running business, which is the only source of livelihood. He would further submit that unless the competent authority measures land and evidence as to the area encroached upon public place is brought on record, the defendant cannot be permitted to evict plaintiff using the authority of law.

6. Per contra, Mr. V. R. Dhorde, learned Advocate appearing for respondent No.2/Municipal Council submits that the Courts below have recorded concurrent finding of fact that plaintiff is encroacher on public street and does not possess any right to continue over the suit property. The Municipal Council is under statutory obligation to remove unauthorized encroachments on public road, consequently, notice was served upon plaintiff. Therefore, he urges to dismiss the appeal.

7. Per contra, Mr. V. R. Dhorde, learned Advocate appearing for respondent No.2/Municipal Council submits that Courts below have

recorded concurrent finding of fact that plaintiff is encroacher on public street and does not possess legal right to continue over the suit property. The Municipal Council is under statutory obligation to remove unauthorized encroachments on public road, consequently, notice was served upon plaintiff. Therefore, he urges to dismiss the appeal.

8. Having considered submissions advanced, it can be observed that plaintiff claims that major portion of his shop is on land owned by Gujrati Samaj and some portion of shop is encroachment on public street. However, he could not place on record document depicting ownership of Gujrati Samaj or his permissive possession under the license of its owner. The plaintiff examined himself before trial Court but could not bring on record documentary evidence to suggest that his shop is constructed on land owned by Gujrati Samaj or Gujrati Samaj holds ownership of land adjacent to public street. Eventually, plaintiff's case is without foundation. Although, plaintiff contends that the construction has been raised with consent and knowledge of the Municipal Council, no documentary evidence in support of such contention is placed on record. Only because applicant managed to get electricity connection, his possession cannot be rendered legal.

9. Admittedly, Shop Act license would not constitute evidence as to authorized occupation of land or plot. The contents of license suggest that it cannot be treated as evidence as to right over land beneath tenement or establishment. In fact, the plaintiff himself admitted that he is encroacher over property of the Municipal Council.

10. If the evidence adduced by defendant/Municipal Council is seen, particularly copy of development plan, area encroached by plaintiff shop is specifically shown in red mark. it has presumption of correctness.

11. In light of observations recorded by Courts below, there is no reason to accede to the contentions of the plaintiffs. Both courts have recorded concurrent finding that plaintiff's shop is encroachment on public road and he has no right to continue his unauthorized possession. The public authority like Municipal Council is certainly under obligation to remove unauthorized structures on the public road and implement the development plan. It is not the case of plaintiff that he holds title over the land. There is nothing on record to hold that otherwise plaintiff is entitled to continue over suit property. In result, no substantial question of law arise for consideration in appeal.

12. At this stage, Mr. Katneshwarkar, learned Senior Advocate, on instructions, submits that applicant is submitting an undertaking on affidavit to this Court that he will remove shops/structures over the suit properties as specified in the plaint within period of 3 months from today and hand over peaceful and vacant possession to the Municipal Council.

13. He tendered such undertaking affidavit on record of this Court which is duly verified before Notary. Mr. Katneshwarkar on instructions from the appellant, who is personally present in the Court submits that in furtherance of undertaking, appellant would vacate premises, remove structures at their own cost and would not claim any right over the suit property. The written undertaking as well as

statement made by learned Senior Advocate on specific instructions from the appellant is accepted as undertaking to this Court. In result, the Second Appeal is dismissed with costs.

14. However, the appellant shall be entitled to continue his possession over the suit property up to maximum period of three months from today on undertaking that he removes shop/structure over the suit property as described in the plaint on his own expenses and hand over vacant peaceful possession to the Municipal Council, before expiry of three months.

15. Second appeal stands disposed of accordingly. Civil application, if any, stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-