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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 105 OF 2025**

Shaikh Siraj Isaq and Others ... Appellants
Vs.
Rizwan Mahamadalli Shaikh and Others ... Respondents

Mr. V. Y. Sanglikar i/b. Ms. Siddhi Chavan for the Appellants.
Mr. Omkar Nagwekar for Respondent No.1.

CORAM : GAURI GODSE, J.

DATE : 21st MARCH 2025

ORDER :

1. This second appeal is preferred by original defendant nos. 1, 2 and 3 to challenge the concurrent judgments and decrees granting mandatory injunction in favour of the plaintiff directing defendant nos. 1 to 3 to remove the road constructed by defendant nos. 1 to 3 on the plaintiff's property. Respondent no. 1 is the original plaintiff.

2. Learned counsel for the appellants submits that the trial court had framed additional issues on 13th March 2014, after the evidence was closed. He submits that though additional issues were framed defendants were not permitted to lead evidence. He submits that as per the additional issues framed defendants were entitled to lead their evidence to prove the contention that they had a right to way

by way of prescription and thus plaintiff would not be entitled to obstruct defendants' easementary right. He submits that since the defendants were not permitted to lead evidence, their substantive rights are affected. He therefore submits that the second appeal would raise substantial questions of law.

3. Learned counsel for the appellants further submit that as per the defendants' case the disputed road was constructed as a municipal road and lighted by the concerned municipality. He therefore submits that the defendants' substantive right to use the road has affected in view of the mandatory decree passed by both the courts. He therefore submits that both the aforesaid grounds raise substantial questions of law in the second appeal.

4. I have perused the papers of the second appeal as well as the paper book of the first appeal. The plaintiff prayed for mandatory injunction against the defendants on the ground that the plaintiff is owner of the suit property. The suit property is described as Survey No. 569, Hissa No. 17.

5. Defendant nos. 1 to 3 filed written statement and claimed that there is a municipal road on the eastern side which is constructed by Malwan Municipality. Pleadings in paragraph nos. 4 to 9 of the written statement are relied upon by the learned counsel for the

appellant to support his submissions that the disputed road is a municipal road and the defendants have right to use it. A perusal of the contents of paragraph nos.4 to 9 of the written statement nowhere indicates that the defendants have pleaded that there is a municipal road going through the plaintiff's property. There is no dispute that the suit property described by the plaintiff is owned by the plaintiff. Hence, even the pleadings of the defendants do not indicate that defendants are claiming any easementary rights to use municipal road which is constructed on plaintiff's property. Hence, I do not find any substance in the argument raised on behalf of the appellants that the disputed road, i.e. suit road is a municipal road.

6. The argument regarding the defendants' right to lead evidence on the additional issues, is based on an order passed on 24th March 2014 which records that evidence is closed. I have perused the order dated 13th March 2014 by which additional issues were framed. The defendants had led evidence after the issues were framed. However, after the arguments of the plaintiff were completed, learned Advocate for the defendants had requested that additional issues were required to be framed based on the pleadings regarding right of easement by way of prescription.

Hence, the trial court framed additional issues on 13th March 2014.

7. On the next date i.e. 24th March 2014 learned Advocate for the plaintiff submitted that he did not wish to lead any further evidence. On that date the defendants' Advocate was absent. Defendant no. 2-A was present. Hence, the trial court closed the evidence and decided the suit. It is not the defendants' case that an application was made for leading any evidence after the additional issues were framed. From the order dated 13th March 2014 and 24th March 2014 it is clear that the learned trial Judge had listed the suit for the purpose of leading evidence on the additional issues. However, nothing is shown to indicate that an attempt was made by the defendants to lead evidence on the additional issues. Hence, based on the evidence on record, the trial court proceeded with the suit and decreed the suit.

8. A perusal of the first appellate court's judgment also does not indicate that any such application was made. The first appellate court after reexamining the pleadings and evidence on record has confirmed the trial court's decree for mandatory injunction. However, the trial court's decree directing defendants to pay compensation is set aside by the first appellate court.

9. Considering the orders passed by the trial court, to enable the

parties to lead evidence on additional issues, and failure on the part of the defendants to lead any additional issues is evident from the record. Hence, I do not find any substance in the arguments raised on behalf of the appellants that the defendants were deprived from leading any evidence. Even otherwise a perusal of the pleadings and the written statement do not indicate that the defendants are claiming any easmentary rights on the suit property as described by the plaintiff on which road is constructed by defendant nos. 1 to 3. The existence of the road constructed in the plaintiff's private property is accepted concurrently based on the map at Exhibit 166.

10. I do not find any illegality or perversity in the reasons recorded by both the courts in granting mandatory injunction to remove the road constructed by defendant nos. 1 to 3 on the plaintiff's property. In the absence of any substantive pleadings or evidence to support defendant nos.1 to 3's case that they have right in the plaintiff's property, the reasons recorded by both the courts cannot be faulted. Hence, I do not find any substance in the argument raised on behalf of the appellants.

11. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]