

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 106 OF 2025
WITH
INTERIM APPLICATION NO. 1471 OF 2025
IN
SECOND APPEAL NO. 106 OF 2025**

Kaluram Pandharinath Choudhari ... Appellants
Through Lrs.

vs.

Grampanchayat Mouje Golegaon and Anr. ... Respondents

Mr. Prashant B. Darandale for the Appellant.

Mr. Namitkumar S. Pansare for the Respondent.

CORAM : GAURI GODSE, J.

DATED : 10th FEBRUARY 2025

ORDER:

1. Heard learned counsel for the appellants.
2. This appeal is preferred by the heirs of the plaintiff to challenge the concurrent judgments and decrees dismissing the suit for simplicitor injunction. The suit was filed for injunction restraining the respondent gram panchayat from encroaching upon the plaintiff's property for extension of the public road.
3. Learned counsel for the appellants submits that the plaintiff's ownership of Gat No.153 is not in dispute. Hence, according to the

learned counsel for the appellant, the gram panchayat should have initiated the proceedings under Section 53 of Maharashtra Village Panchayat Act before extension of road. He further submits that both the Courts have not taken into consideration the requirement under the law for initiating proceedings for widening the road, which is admittedly abutting the plaintiff's land. He, therefore, submits that the second appeal would raise substantial questions of law, as the procedure under the law is not being followed by the gram panchayat.

4. Learned counsel for the respondent submits that the appellant would not be entitled to any injunction beyond the land, which is owned by the appellant. He submits that the map produced on record as per the joint survey clearly indicates that the appellant has encroached upon the road. He, thus, submits that the appellant would not be entitled to any injunction as prayed in the suit.

5. I have perused the papers of the second appeal to examine the contentions raised by both the parties. The first appellate Court has referred to a Court Commissioner's map at Exhibit 46, which indicates that the plaintiff has carried out encroachment on the public road. After verifying the evidence on record including the supporting evidence of the map at Exhibit 46, the first appellate

court held that the plaintiff failed to prove that the defendants are illegally widening the road. Nothing is shown on record to indicate that any part of the land belonging to the appellants is sought to be encroached at the time of widening the road.

6. In the absence of any evidence to indicate that any of the area belonging to the appellants is sought to be encroached upon by the defendants, the plaintiff would not be entitled to seek any injunction. There is no dispute that there is an existing public road, abutting the plaintiff's land. Hence, in the absence of any evidence to indicate that area owned by the plaintiff is sought to be encroached at the time of widening the road, the plaintiff would not be entitled to any injunction.

7. Both the Courts recorded concurrent findings after examining the evidence on record, I do not see any illegality or perversity in the reasons recorded by both the Courts.

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

9. In view of the dismissal of the second appeal, the interim application is dismissed as infructuous.

(GAURI GODSE, J.)