

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.11 OF 2026
WITH
INTERIM APPLICATION NO.61 OF 2026**

Maruti Dattatray Mane

Age: 65 years, Occ.: Business

R/at. Ward No. 8 No. 786,

Shantinagar, Ichalkaranji,

Dist. Kolhapur

.....Appellant

Vs.

1. Ayesha Mustafa Jamadar,

Age. 66 years, Occu. Household.

R/at. 19/182, Ichalkaranji,

Tal. Hatkanangale, Dist. Kolhapur.

2. Pandurang Dattatray Ardhalkar

Age. 55 years, Occu. Service.

R/at. 8/803, Shantinagar, Ichalkaranji,

Tal. Hatkanangale, Dist. Kolhapur

3. The Chief Officer,

Ichalkaranji Municipal Council.

Having its office at Ichalkaranji,

Tal. Hatkanangale, Dist. Kolhapur.

.....Respondents

Adv Shriniwas Patwardhan (VC) i/b. Adv Padmanab Pise (VC), for
the Appellant.

Mr. J. P. Patil, AGP, for the Respondent Nos.3 and 4-State.

CORAM : MRS. VRUSHALI V. JOSHI, J.

RESERVED ON : 27th FEBRUARY 2026

PRONOUNCED ON : 11th MARCH 2026

JUDGMENT :-

1. Being aggrieved and dissatisfied by the Judgment and Decree dated 26th November 2025 passed by learned District Judge, Ichalkaranji, in Regular Civil Appeal No.8 of 2018, thereby confirming the Judgment and Decree dated 16th January 2018 passed by Civil Judge, Junior Division, Ichalkaranji in Regular Civil Suit No.252 of 2001 filed for mandatory injunction, the Appellant (Original Defendant No.1) has preferred this Second Appeal. The Respondent Nos.1 and 2 are the original plaintiffs and Respondent No.3 is original defendant No.2.

2. According to Appellant, the present appeal is based on the following grounds, which are the substantial questions of law:

- i) Whether the civil Court exceeded its jurisdiction in directing demolition of construction through the Municipal Council, when such relief lies within the writ jurisdiction under Article 226 of the Constitution?
- ii) Whether the relief granted went beyond the pleadings, inasmuch as the decree extended to structures not specifically challenged in the plaint?

- iii) Whether mandatory injunction can be granted without proof of prejudice or established easementary rights?
- iv) Whether directions issued by the Trial Court and District Court amount to granting relief not prayed for, thereby violating settled principles of civil jurisprudence?

3. The Appellant's pleadings are summarized as follows:

- a) The Appellant, Maruti Dattatray Mane (original defendant), is the owner of property bearing C.T.S. No. 10712, purchased in 1976, upon which he constructed a godown/factory and residential premises, later adding a first floor. He asserts that all construction was lawful and within his property boundaries.
- b) It is the case of the Appellant that the Respondent/plaintiff, having purchased adjoining property (C.T.S. No. 10707), filed Regular Civil Suit No.252 of 2001 seeking removal of a compound wall and balcony. The trial Court decreed the suit, which was challenged in appeal. However, the trial court's decree dated 15th September 2018, confirmed by the District Judge on 30th November 2025, extended beyond the pleadings

and directed demolition of the entire structure, which was never prayed for.

- c) The Appellant contends that such directions are without jurisdiction, as civil Courts cannot order demolition through municipal authorities, such powers lie only under writ jurisdiction. He further submits that mandatory injunction is an exceptional remedy requiring proof of substantial prejudice or easementary rights, none of which were established by the Respondent. No findings of encroachment was recorded by the Trial Court and District Court. The first Appellate Court is shown to have not exercised its discretion in a judicious manner.
- d) Accordingly, the Appellant challenges the impugned judgments as unsustainable, raising abovesaid substantial questions of law.

4. The Respondents' pleadings are summarized as follows:

- a) The Respondent No.1, Ayesha Mustafa Jamadar (original plaintiff No.1) is the owner of property bearing C.T.S. No. 10707, adjoining the Appellant's plot. She contends that the Appellant has raised construction of a compound wall and

balcony in such a manner that it encroaches upon her rights and obstructs lawful enjoyment of her property.

- b) It is her case that the Appellant's construction is unauthorized and illegal, and that despite objections, he continued to maintain the offending structures. She submits that the compound wall and balcony directly interfere with her possession and use of the property, amounting to encroachment and nuisance.
- c) Accordingly, she filed Regular Civil Suit No. 252 of 2001 seeking mandatory injunction directing removal of the compound wall and balcony constructed by the Appellant and perpetual injunction restraining the Appellant from continuing or repeating such illegal construction.

5. The Respondent No.1 asserts that both the trial Court and the Appellate Court rightly decreed the suit in her favour, confirming her ownership and easementary rights, and directing demolition of the offending structures.

6. It is argued by the counsel for the Petitioner that Section 9 CPC

confers jurisdiction on civil Courts to try suits of a civil nature unless expressly barred. However, directions to the Municipal Council for demolition amount to relief in the nature of writ jurisdiction under Article 226 of the Constitution, which civil Courts cannot exercise. The civil Courts exceeded their jurisdiction in issuing such directions.

7. It is further argued that the plaint was confined to the compound wall and balcony. The decree, however, extended to the Appellant's entire structure. Relief must be confined to pleadings; granting relief not sought violates settled principles of civil jurisprudence.

8. Mandatory injunction is an exceptional remedy under the Specific Relief Act, granted only upon proof of substantial prejudice or established easementary rights. The Respondent failed to establish such prejudice, and no findings were recorded by the lower courts. The decree thus lacks a proper legal foundation.

9. The Appellant has relied on the Judgments of the Hon'ble Apex Court in the case of *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.*¹ and *Santosh Hazari v. Purushottam Tiwari (Deceased by LRs)*²

1 (1999) 3 SCC 722.

2 (2001) 3 SCC 179.

10. The Trial Court and District Court did not record specific findings of encroachment, obstruction, or injury. Relief was granted without proof, thereby denying the Appellant fair adjudication. This amounts to violation of principles of natural justice.

11. Heard learned counsel appearing for both the parties.

12. While considering the second appeal, it needs to be considered the requirement of Section 100 of the Code of Civil Procedure ('CPC'). It is obligatory on the part of the Appellant to precisely state the substantial question of law involved in the appeal, which the Appellant proposed to urge before the Court. It is, therefore, needed to be seen whether the substantial question of law arises in this appeal, which needs to be considered. *Prima facie*, on perusal of the grounds raised by the Appellant, it indicates that it is like first appeal and no substantial question arises.

13. The first ground raised by the Appellant is about exceeding its jurisdiction by directing demolition of construction, which according to Appellant is a substantial question of law. Though, it is observed in body of Judgment that it would not be appropriate to order

demolition of the entire structure, yet in the operative portion the Court proceeds to direct the municipal authorities to take steps, which effectively render the Appellant's structure vulnerable to demolition. This patent inconsistency between the reasoning and the relief granted vitiates the decree in law.

14. It is the contention of the Appellant that the suit was confined to an alleged encroachment over a street admeasuring 3 feet x 45 feet forming part of common passage of approximately 6 feet width and there was no prayer for demolition of the entire structure standing on CTS No.10712 owned by Appellant since 1976. In absence of precise demarcation, specific identification of the encroached portion and restriction of relief strictly to the pleaded cause of action, the sweeping direction issued is disproportionate and travels beyond the pleadings and amounts to substantial question of law.

15. On perusal of record it reveals that the Appellant has suppressed from the Court that a suit filed by the Appellant seeking regularization of its illegal structure is dismissed by a reasoned judgment. The said judgment conclusively determines the rights of

Appellant and is the most evident proof and testimony of illegal construction done by the Appellant. The trial Court has referred the said suit in judgment. It further reveals that the land surveyor, who is examined as P. W. No.2 has measured the property by giving notice to both the parties and has specifically referred the encroached portion in its report and map. Any dispute regarding the said report or re-appreciation of this report would amount to factual appreciation of the evidence, which is impermissible in second appeal. The plaintiff i.e., Respondent has adduced substantial documentary evidence in the form of map, plans, judgment dated 7th September 2012 in the Regular Civil Suit No.409 of 2005, report of independent surveyor and also oral evidence in the form of plaintiff and independent surveyor. The trial Court rightly considered the issue of encroachment. After going through the operative portion of Judgment of trial Court as per Clause 4, it appears that the direction is given to take appropriate action for removal of illegal construction, which is in context of earlier suit, which is referred by the Court in Judgment.

16. The Respondent has relied on Judgments, where the Hon'ble

Apex Court has observed about the scope in second appeal. Nothing argued by the Appellant which may amount to Substantial question of law' which will warrant judicial interference with the concurrent findings on facts. In the case of ***Narayan Rajendran and Anr. v. Lekshmy Sarojini and Ors.***,³ the Hon'ble Supreme Court has observed that:

"26. Again in Roop Singh v. Ram Singh, this Court has expressed that the jurisdiction of a High Court is confined to appeals involving substantial question of law para 7 of the said judgment reads. (SCC p. 713)

7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC. That apart, at the time of disposing of the matter the High Court did not even notice the question of law formulated by it at the time of admission of the second appeal as there is no reference of it in the impugned judgment."

17. The scope of interference in the Second Appeal is very clearly set out by the Hon'ble Supreme Court in catena of judgments. In fact

³ (2009) 5 SCC 264.

the Supreme Court has gone to the extent that even the erroneous findings of fact cannot be interfered in the Second Appeal. The Hon'ble Supreme Court in the *Narayan Rajendran (Supra)* has further observed that:

"56. Again this Court in State of Kerala v. Mohd. Kunhi has reiterated the same principle that the High Court is not justified in interfering with the concurrent findings of fact. This Court observed that, in doing so, the High Court has gone beyond the scope of Section 100 of the Code of Civil Procedure."

18. The scope of Second Appeal is set out by the Supreme Court in this case is as below:

"57. Again. in Madhavan Nair v. Bhaskar Pillai, this Court observed that the High Court was not justified in interfering with the concurrent findings of fact This Court observed that it is well settled that even if the first appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same."

58. Again, in Harjeet Singh v. Amrik Singh, this Court with anguish has mentioned that the High Court has no jurisdiction to interfere with the findings of fact arrived at by the first appellate court. In this case, the findings of

the trial court and the lower appellate court regarding readiness and willingness to perform their part of contract was set aside by the High Court in its jurisdiction under Section 100 CPC This Court, while settling aside the judgment of High Court observed That the High Court was not justified in interfering with the concern findings of fact arrived at by the Courts below

19. Moreover, in the case of ***Nafees Ahmad & Anr v. Soinuddin & Ors.***,⁴ it has been observed by the Hon'ble Supreme Court that:

“7. We propose to follow the dictum as laid by this Court in the case of "G. Amalorpavam And Others RC Diocese of Madurai And Others reported in (2006) 3 SCC 224, wherein this Court observed that whether in a particular case, there has been substantial compliance, with the provisions of Order 41 Rule 31 CPC should be determined on the nature of the judgment delivered in each case Non-compliance with the provisions, by itself, may not vitiate the judgment and make it wholly void and may be ignored if there has been a substantial compliance with it.

14. Thus, this Rule does not make it incumbent on the Appellate Court to refer to any part of the proceedings in the court from whose decree the appeal is preferred. The Appellate Court can refer

⁴ (2025) INSC 520.

after hearing the parties and their pleaders, to any part of these proceedings to which reference be considered necessary It is in the discretion of the Appellate Court to refer to the proceedings. It is competent to pronounce judgment after hearing what the parties or their pleaders submit to it for consideration. It follows therefore that if the appellant submits nothing for its consideration, the Appellate Court can decide the appeal without any reference to any proceedings of the courts below and, in doing so, it can simply say that the appellants have not urged anything which would tend to show that the judgment and decree under appeal were wrong."

20. The second ground raised is about framing of proper points for determination by first Appellate Court and did not re-appreciate the entire evidence on record in accordance with law. The Respondent has placed reliance on Judgment of the Hon'ble Apex Court in the case of *Kondiba Dagadu Kadam (Supra)* in support of his argument that if the Appellate Court wants to affirm the findings of the trial Court, the general approval shall suffice and there need not be independent reiteration of the findings.

21. On perusal of the Judgment of the Appellate Court, it appears

that it sets out points of determination and gives elaborate findings on every issue.

22. It is observed by the Hon'ble Apex Court in *Santosh Hazari (supra)* that :

“15.... The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the Trial Court, expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice.”

23. As per the observations of Hon'ble Apex Court failure to independently frame issues by the Appellate Court is not factor. On perusal of judgment of Appellate Court, it appears that Appellate Court has given findings on encroachment by appreciating oral and documentary evidence. Therefore, this ground cannot be termed as substantial question of law.

24. Though the Appellant has argued that there are four substantial questions of law, he has failed to demonstrate single substantial question of law.

25. After considering the ground raised in Appeal, it appears that

there is nothing which will warrant judicial interference as none of the grounds amount to substantial question of law.

26. In view of the above said observations, as no substantial question of law arises in appeal, the Second Appeal stands dismissed.

27. In view of disposal of Second Appeal, Interim Application pending therein shall also stand disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

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signed by
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