

ORDER BELOW (EXH.12) IN REGULAR CIVIL
APPEAL NO. 79 OF 2010
(Date: 11th of April, 2011)

(1) Perused application (**Exh.12**) filed by appellant No.2 for grant of temporary injunction restraining the respondent/defendant not to carry out any construction in front of his mutton shop, so that the approach way to suit property i.e. mutton shop should remain open and accessible from road till mutton shop. Perused reply (**Exh.23**) filed by respondent/defendant, in the light of impugned Judgment and Decree.

Heard Shri.S.D.Kothari, learned Advocate for appellants/plaintiffs and Shri.F.M.Dingankar, learned Advocate for respondent/defendant.

(2). Evidently, the learned Lower Court has dismissed the suit claim in respect of perpetual injunction pertaining to open land existing in front of mutton shop which is but owned by respondent/defendant. Considering the grounds of appeal, in case, if the respondent/defendant is permitted to carry out construction in front of mutton shop belonging to appellant No.2, then the appellants/plaintiffs will be put to suffer an irreparable loss in the sense that they will not be able to carry out their business through mutton shop. At this juncture, I need to mention that suit is partly decreed and the

respondent/defendant is directed not to obstruct or interfere the appellants/plaintiffs from utilising shed of mutton shop till evicted in due course of law. Thus, in view of above factual aspects as the appellant No.2 is admittedly running mutton shop in the suit premises he is naturally entitled for an approach way from road till his mutton shop so as to enable his customers to reach his mutton shop.

(3). Thus, taking into consideration the above background, the appellants/plaintiffs are held to have made out a prima-facie case for grant of temporary injunction; the balance of convenience exists in their favour and, as such, respondent/defendant needs to be directed not to carry out any construction in front of mutton shop till road subject to condition that except the 15 feet wide space meant for approach way from road till mutton shop the respondent/defendant will be at liberty to carry out construction after securing due permission from Gram-Panchayat. Hence, I pass the following order.

ORDER

The application (**Exh.12**) is hereby allowed on following terms till decision of appeal on merits.

The respondent/defendant is hereby directed by an

order of temporary injunction not to carry out any construction in front of mutton shop of appellants/plaintiffs on condition that, the respondent/defendant will be at liberty to carry out construction on the land Survey No.60-A 1 Hissa No.8 B and Survey No.60-A Hissa No.2 after securing due permission from Gram-Panchayat, but while doing so the respondent/defendant shall have to leave an area of open space of 15 feet wide which may be used as an approach way/road from main road till mutton shop of appellants/plaintiffs.

Costs shall be in cause of appeal.

Date: 11.04.2011

(T.M.Lalwani)
District Judge – 1,
Khed.