

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 883 OF 2005
WITH
CIVIL APPLICATION NO. 5711 OF 2005**

Bhimaji Raoji Gunjal and others

...APPELLANTS

versus

Tukaram Tatyaba Kale and others

...RESPONDENTS

.....
Mr. L.V. Sangeet, Advocate holding for
Mr. V.J. Dixit, learned Senior Advocate for appellants
Mr. D.D. Pokarikar, Advocate for respondents No. 1, 2, 4A to 4D, 5
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 1st DECEMBER, 2015

Order :-

1. After hearing learned counsel for quite sometime, position emerges that question of ownership of disputed road considered by both the courts, concurrently finding the same having not proved by plaintiffs. The appellate court has discussed the contentions of the parties with respect to certain litigations and proceedings and that during process, possession of erstwhile possessors of concerned land has also been discussed in quite some details. In the process, both the courts have considered having regard to the facts and on appreciation of evidence that the defendants are making use of disputed road for access to their land bearing survey no. 771/1A+1B/1/1 and said user is from longtime from respective dates of the decision in the litigation in respect of concerned land bearing survey no. 771/1A+1B/1/1, leaving

road in dispute for access to defendants. The trial court has appreciated evidence finding that talathi in his evidence has categorically stated that no way passes through the field of plaintiffs and plaintiffs' contention about its non user by the defendants does not survive for consideration. The trial court has observed that plaintiffs have not adduced evidence or uttered single word about demolition of bandh and encroachment.

2. Appellate court has framed necessary points for determination and recorded findings that plaintiff has failed to prove that disputed road goes exclusively from his land and further that plaintiff has failed to show that defendants have caused any damage to said road and committed encroachment.

3. Aforesaid findings recorded by the courts, would have to be considered vis-a-vis reliefs claimed by the plaintiff in the suit. Suit had been filed for perpetual injunction seeking restraint on defendants from encroaching upon suit property by demolishing western portion and using road in question. Eventually, findings have been recorded that plaintiffs have failed to establish that road passes through their land and that there there is no evidence about demolition of bandh. There has been no relief operating hitherto in favour of plaintiffs in respect of user road. Findings appearing are not shown to be having no bearing with factual position.

4. In view of the same, it does not appear that second appeal gives rise to any substantial question of law. All the questions, which have

been addressed to are in respect of the factual position.

5. Having regard to the same, it is not a fit case wherein concurrent findings on facts deserve to be disturbed and second appeal as such is not being entertained and stands dismissed.

6. In view of dismissal of appeal, nothing survives in civil application and same stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK