

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

SECOND APPEAL NO.214 OF 2014

1. Ravindra s/o Eknath Tandale,  
Age 52 years, Occu.Agril.,
2. Mahendra s/o Eknath Tandale,  
Age 42 years, Occu.Agril.,
3. Surendra s/o Eknath Tandale,  
Age 37 years, Occu.Agril.,

All R/o Handalwadi, Tq.Pathardi,  
District Ahmednagar

..Appellants  
(Orig.Defendants)

Versus

- Baburao s/o Ganpat Handal,  
Age 63 years, occu.Agril.,  
R/o Handalwadi, Tq.Pathardi,  
District Ahmednagar

..Respondent  
(Orig.Plaintiff)

Mr D.R.Jayabhar, Advocate for appellants  
Mr Mehul V.Navandar, Advocate for respondent

**CORAM : N.W. SAMBRE, J.**

**DATE : 30th January 2015**

**PER COURT**

1. This appeal is by original defendant. The learned trial Court decreed the Regular Civil Suit No.248 of 2006 preferred by the present respondent, by judgment and order dated 21<sup>st</sup> February 2009 thereby the trial Court has clamped injunction against defendants 1 to 3 or anybody claiming through them from interfering/obstructing the plaintiff's peaceful possession and enjoyment over the suit property except the land under cart way.

2. Since the plaintiff was not satisfied with the judgment delivered by the learned trial Court, he preferred an appeal bearing Regular Civil Appeal No.86 of 2009, as according to him, his claim for the perpetual injunction for land under cart way ought to have been granted.

3. The learned lower appellate Court has allowed the said appeal by judgment and order dated 30<sup>th</sup> September 2013 by passing the following order :

ORDER

*"1. Appeal is allowed.*

*2. Reg.C.S.No.248/06 stands decreed in toto.*

*3. The defendants No.1 to 3 or anybody claiming through them are hereby permanently restrained from interfering/obstructing the plaintiff's peaceful possession and enjoyment over their S.Nos.13/1 and 13/2 ad-measuring 1 Hectare 28 R land, as described in para Nos.1A and 1B of plaint.*

*4. The defendants are hereby restrained from creating new bullock cart road or using the bull cart through plaintiff's field to approach their land S.Nos.13/1 and 13/2 (northern 80 R land), except due process of law.*

*5. In peculiar circumstances of the case, the parties are directed to bear their own costs throughout."*

4. Mr Jayabhar, learned Counsel for the appellants submits that the document Exh.81, a sale-deed is wrongly interpreted and the same can be termed as question of law.

5. He further submits that as the decree before the trial Court qua the injunction in relation to the suit property, except the cart way was not challenged in first appeal by a counter appeal or otherwise, the matter be remanded back to the learned lower appellate Court which will enable him to prefer an appeal.

6. So far as the above referred contentions are concerned, the learned Counsel for the respondent objects the same. According to him, the document Exh.81, a sale-deed was rightly interpreted by both the Courts below. He submits that once the appellants herein have accepted the judgment delivered by the trial Court in relation to clamping the injunction as regards the suit property, except the cart way, the same was not objected by filing an appeal.

7. Having considered the rival contentions of the parties, it is noticed that the judgment and decree passed by learned trial Court in Regular Civil Suit No.248 of 2006 for injunction was to the extent of granting perpetual injunction in relation to the suit property, except the cart way. As the said judgment and decree passed by the Joint Civil Judge, Jr.Division, Pathardi on 21<sup>st</sup> February 2009 was not questioned by the present appellants/defendants in the cross appeal or by filing first appeal, the said judgment and decree has attained finality.

8. Once the Courts have interpreted the document Exh.81, a sale-deed coupled with the fact that the injunction as regards the suit

property except cart way was not questioned in cross appeal or first appeal by the present appellants, the judgment and decree passed by the lower appellate Court cannot be said to be illegal or perverse.

9. As such, no question of law is involved in the present second appeal, which is devoid of merit, stands rejected.

**( N.W. SAMBRE, J.)**

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