

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**SECOND APPEAL NO. 606 OF 2011
WITH
CIVIL APPLICATION NO. 1459 OF 2011
WITH
CIVIL APPLICATION NO. 1589 OF 2011**

Bapu Bhau Chougule & Ors. ... Appellants
V/s.
Mahaveer Tatya Sakale & Ors. ... Respondents

Mr. Amit Sale for the appellant.
Mr. S.G. Deshmukh i/b Rakesh Patil for the respondent no.1.

**CORAM : K. K. TATED, J.
DATED : 23/10/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This Appeal is preferred by defendants challenging the concurrent findings of fact recorded by both the Courts below about the availability of the road to them.

3 In the present proceeding, the respondent plaintiff filed Regular Civil Suit no. 612 of 1995 challenging the order passed by the Tahasildar in Vahivat Case no. 5 of 1994 dated 28.09.1995 by which the Tahasildar granted 5 ft. access road to the appellant defendant from the plaintiff's agricultural land.

4 The Trial Court by the Judgment and Decree dated 09.08.2007

declared the order dated 28.09.1995 passed by the Tahsildar as illegal and cancelled the same. At the same time, the Trial Court cancelled the mutation entry no. 8558 which was certified pursuant to the order passed by the Tahasildar.

5 Being aggrieved by the decree passed by the Trial Court, the Appellant original defendants preferred Regular Civil Appeal no. 372 of 2007. The Appellate Court allowed the Appeal preferred by defendants holding that Civil court has no jurisdiction to set aside the Mutation entry no. 8558, which was certified pursuant to the order passed by the Tahasildar. But, the Appellate Court upheld the decree passed by the Trial Court to the extent of cancellation of order dated 28.09.1995 passed by the Tahasildar in Vahivat Case No. 05 of 1994 by which the Tahasildar directed defendant to provide 5 ft. access road to the defendants. Hence, the present Second Appeal.

6 It is to be noted that the Appellate Court in paragraph 11,12 and 13 specifically recorded that the defendants were and are using the another road for transportation of agricultural products. They filed application for creation of new road. It is to be noted that if the road is available then in view of Section 143 of the Maharashtra Land Revenue Code, 1966, the defendant is not entitled to any additional road.

7 Considering the fact that both the Court concurrently held that the defendants were and are using the another road for transportation of their agricultural goods, I do not find any question of law involved in the present Second Appeal.

8 Hence, Second Appeal stands rejected.

9 In view of rejection of Second Appeal, nothing survives in the Civil Application no. 1459 of 2011 as well as Civil Application no. 1589 of 2011. Hence, same stand dismissed as infructuous.

10 At this stage, the learned Counsel for the appellant seeks continuation of ad-interim relief granted by this Court.

11 Considering the facts of the present matter that the appellants have already another existing road which they are using for last several years, I do not find any reason to continue the ad-interim relief. Hence, oral request made by the learned Counsel for the appellant is rejected.

(K.K.TATED, J.)