

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

**SECOND APPEAL NO.177 OF 2014
WITH
CIVIL APPLICATION NO.437 OF 2014**

Shri. Mohan Vasantrao Patil Appellant

Vs.

Mr. Jalindar Bhimrao Jadhav & Ors. Respondent

Mr. S.C. Wakankar, Advocate for the Appellant
Mr. Vaibhav Gaikwad, Advocate for the Respondent.

Coram : Smt. R.P. SondurBaldota, J.
Date : 25th February, 2015.

P.C.

1 The appellant is the original plaintiff, who by this Second Appeal challenges the concurrent findings of facts and law by the trial court as well as the lower appellate court. He had filed suit for a permanent injunction to restrain the respondents from disturbing his access, as described in the plaint to his own property and for mandatory order directing the respondents to remove the material by which the access was obstructed. The trial court dismissed the suit by the judgment and order dtd.8th December, 2005 holding that the appellant had failed to establish existence of the access pleaded in the

plaint and his easementary right of access. Being aggrieved by the order, the appellant had preferred appeal to the District Court being Regular Civil Appeal No.51 of 2006. The District Court dismissed the appeal by its judgment and order dtd. 26th June, 2013.

2 The appellant claims in the plaint that he is the owner of half portion of the land at city survey No.4062 situate on the Western side, where he has his house occupied by him and his family members. It is his further claim that he and the other citizen have been using the suit access for more than 50 years. He alleges that on 11th July, 1994, respondent no.1 closed the access by putting up a fencing.

3 The courts below held that since the appellant had not adopted the procedure under Order 1, Rule 8 Code of Civil Procedure for filing the suit in representative capacity, the same was not maintainable. Mr. Wakankar, the learned advocate for the appellant submits that the appellant's was for pleading his own right of easement of way and not a representative suit. Therefore, there was no need for him to follow the procedure under Order 1, Rule 8 CPC.

4 Perusal of the pleadings of the appellant shows that he had in fact pleaded the access not just for himself, but also for others. In any case, even if the argument of Mr. Wakankar is to be accepted that the suit was filed for exercising the right of easement of the appellant alone, the record shows that the right claimed by the appellant is not

established. The appellant does not plead the date of acquisition of the land in respect of which he seeking the right of easement. His claim of use of the access for the last 50 years is to be rejected outright, since the age of the appellant as shown in the cause title of the plaint is of 34 years. Therefore, in the absence of the basic evidence for establishing the right of easement as to the date of occupation of the property by the appellant and use of access thereafter, the courts below have correctly held that the appellant has failed to establish his right of easement. There is no substantial question of law involved in the appeal. The concurrent findings of the courts below are supported for the material on record. Hence, the appeal is dismissed.

(Smt. R.P. SondurBaldota, J.)