

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

SECOND APPEAL NO.346 OF 1993

Popatrao P. Chaskar & Anr.	.. Appellants
Vs.	
Nana P. Chaskar & Anr.	.. Respondents

....
Mr. Nitin Pujari i/b. Mr.P.N. Joshi, Advocate for the Appellants.
....

CORAM : R. K. DESHPANDE, J.

DATED : AUGUST 6, 2015.

P.C.

The trial Court had passed a decree in Regular Civil Suit No.9 of 1990 on 31st July, 1986 restraining the defendant no.2 permanently from obstructing the plaintiff from using suit way to go to his field block no.130. The decree passed by the trial Court was subject matter of challenge in Regular Civil Appeal No.57 of 1987 which was allowed on 3rd March, 1993. The decree passed by the trial Court is set aside and the suit has been dismissed. The plaintiff is before this Court in this Second Appeal.

2 The Second Appeal was admitted on 20th August, 1993 on the substantial questions of law raised in ground nos. 1

and 2. The ground no.1 pertains to the finding of the Lower Appellate Court that the suit simpliciter for injunction without prayer for declaration about the elementary right is not maintainable. The question no.3 pertains to the finding of the Lower Appellate Court given in ignorance of the provisions of the Specific Reliefs Act entitled the appellants to file a suit simpliciter for injunction.

3 During the pendency of this Second Appeal, this Court had passed a detailed speaking order on 20th August, 1993 on Civil Application No.3424 of 1993. The said order is reproduced below

“ Rule, Mr. Abhale waives notice for Respondent No.2 Mr. Joshi states that no relief is sought against respondent No.1 Nana Pandharinath Chaskar and service of rule upon respondent no.1 may be dispensed with.

Having regard to the nature of dispute between the parties involved in the appeal following interim order is passed in the Civil Application.

- (i) The appellants affidavit shall file an application before the Tahsildar, Sinnar under Section 143 of the Maharashtra Land Revenue Code, 1966 within a period of one month from today for deciding his claim in respect of right of way as claimed in the present suit.*

- (ii) *After the aforesaid application is received, the Tahsildar shall issue notices to both the respondents i.e. Nana Pandhrinath and Kacheshwar Nandu.*
- (iii) *The Tahsildar shall thereafter decide the claim by holding necessary enquiry under Section/43 of the Land Revenue Code. The Tahsildar shall not refer to the evidence of the parties or the judgment of the Civil Court which are subject matter of the Second Appeal and shall independently arrive at his own conclusion as a result of the enquiry. It will be open to the Tahsildar to take all the relevant circumstances into account including whether any of the parties have any alternate way to reach their respective lands. He may also refer to the village map and such other revenue record as may be found material.*
- (iv) *The Tahsildar shall complete the enquiry within period of three months from today and shall forward his decision together with material considered at the time of enquiry to this Court through the Registrar immediately after the enquiry is completed and decision is given.*
- (v) *The finding so received shall be part of the present Civil Application.*
- (vi) *The findings so received shall be taken into consideration at the time of hearing of the Civil Application and both the parties will be at liberty to raise their contentions on merits of the Civil Application including the findings received from the Tahsildar.*
- (vii) *The Civil Application is adjourned to 6th December 1993 for hearing. In the*

meantime, the ad-interim order in terms of prayer(s) granted on 1917.1993 shall continue.

(viii) Writ to be sent down immediately.

(ix) Certified copy expedited.”

4 The dispute involved in the suit pertains to right of way suit boundaries of survey no.131 belonging to the defendant and the plaintiff is the owner of survey no.130. Sub-section (2) of Section 143 of the Maharashtra Land Revenue Code states that any person who is aggrieved by the decision of Tahsildar under Section 143, may within a period of one year from the date of such decision, institute a civil suit to have it set aside or modify.

5 In view of this provision, it is open for the parties aggrieved by any order of Tahsildar to file suit challenging such order. Hence, the Second Appeal is allowed in terms of the aforesaid order dated 20th August, 1993, passed by this Court with the observations made above.

6 The Interim order granted by this Court on 19th July, 1993, shall continue to operate pending the proceedings before the Authorities concerned.

JUDGE