

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**(Civil Appellate Jurisdiction)**

**SECOND APPEAL NO. 225 of 2011**

(Hambirrao Anandrao Patil thr L.Rs and ors vrs Krishna  
Balal Patil thr L.Rs and ors)

Mr. P.M.Arjunwadkar, Advocate for Appellants

**CORAM : R.K.Deshpande, J.**  
**DATED : 09<sup>th</sup> JUNE, 2015.**

**P.C.**

The trial court has dismissed the suit for grant of mandatory injunction to direct the defendants to remove the obstruction created in common passage which is CTS No. 230 to 235 denoted by letters ADYR. The appellate Court has dismissed the appeal. Hence, the original plaintiff is before this Court in this second appeal.

The claim of the appellant/plaintiff in the plaint was exclusively based upon the decree passed in Regular Civil Suit No. 11 of 1943. During the course of evidence, the appellant/plaintiff has waived this plea and has urged that subsequent to passing of decree in Regular Civil Suit No. 11 of 1943, the parties had decided to keep open the common passage, having width of 3 feet 6 inches. The appellate Court has recorded the finding that the appellant/plaintiff has taken inconsistent pleas. It is not the case of the plaintiff that subsequent to passing of a decree, there was an agreement between the parties to keep the common passage in question, open. No substantial question of

law arises. The second Appeal is dismissed.

**(R.K.DESHPANDE, J.)**

Rvjalit