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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.585 OF 2012
WITH
CIVIL APPLICATION NO. 9879 OF 2012

Sugriv Digambar Surwase
Age - 43 years, Occ - Agriculture
R/o Nagarsoga, Taluka - Ausa,
District - Latur

APPELLANT

VERSUS

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| <p>1. Harishchandra Ganpati Shahapure
Age - 63 years, Occ - Agriculture
R/o Nagarsoga, Taluka - Ausa,
District - Latur</p> <p>2. Dhondiram Bhimrao Gangle,
Age - 71 years, Occ - Agriculture
R/o Nagarsoga, Taluka - Ausa,
District - Latur</p> <p>3. Rajendra Ganpati Shahapure,
Age - 62 years, Occ - Agriculture</p> <p>4. Shyamrao Ganpati Shahapure,
Age - 73 years, Occ - Agriculture</p> <p>5. Waman Apparao Surwanshi,
Age - 67 years, Occ - Agriculture</p> <p>6. Janak Vithal Kale,
Age - 42 years, Occ - Agriculture</p> <p>7. Shivdas Vithoba Surwanshi,
Age - 67 years, Occ - Agriculture</p> <p>8. Pintu Manmathappa Mashalkar,
Age - 32 years, Occ - Agriculture</p> <p>9. Madhav Sakharam Jawalge,
Age - 67 years, Occ - Agriculture</p> | <p>RESPONDENTS</p> |
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All R/o Nagarsoga, Taluka - Ausa,
District - Latur

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Mr. R. D. Biradar, Advocate for the appellant
Mr. B. N. Patil, Advocate for respondents No.1 and 2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 20th JANUARY, 2016

ORAL ORDER :

1. Heard learned advocates for the parties quite at length.
2. The appellant is original plaintiff who had instituted Regular Civil Suit No.436 of 2004 seeking perpetual injunction in respect of claimed way proceeding from his gut No.213 running in east-west direction, on the boundaries of lands gut No.207 and 211, situated at village Nagarsoga, Taluka - Ausa, District - Latur.
3. After hearing learned advocates for the parties and perusal of the judgments of the trial as well as appellate courts, clear position emerges that the appellate court, as the last fact finding court, has considered evidence adduced by the parties and appreciated the same threadbare. The appellate court had considered sketch map of the lands in paragraph No.7 of the order, upon points framed for determination and has found that

according to plaintiff's own case, as on the date of the suit, it cannot be said that the claimed road had ever been existing. The appellate court had also considered that the road, referred to under the orders of the Tahsildar was not given in the proceedings upon initiation by the plaintiff and that said road was given by Tahsildar in the proceedings by some other persons upon request of the plaintiff, wherein the defendants were not parties. This is the only solitary lean evidence upon which the suit claim is based. However, after making proper inquiry, the position has emerged as aforesaid that the road was not subsisting on the date of the suit and the record in respect of the road had been generated in some other proceedings and not the substantive one for considering the road and further that the defendants had been not parties to said proceedings.

4. Perusal of the trial court's judgment shows that the court had dwelt upon a lot on other aspects with regard to possession of the properties rather than existence of the road. The appreciation, in the circumstances, by the appellate court, does not appear to be strayed one and it is on appreciation of evidence as has been adduced by the parties. It cannot be said that it does not adhere to the evidence at all.

5. In the circumstances, the appreciation of evidence by the appellate court can hardly be faulted with. The second appeal thus, may not be said to give rise to any substantial question of law. As such, the second appeal is not being entertained and is dismissed.

6. In view of dismissal of the second appeal, the civil application No.9879 of 2012 does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]

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