

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 480 OF 2015
WITH
CIVIL APPLICATION NO. 10760 OF 2015**

Shrikant S/o Aba Mane and others ...APPELLANTS

versus

Arjun Kalyan Kande and others ...RESPONDENTS

.....
Mr. M.B. Kolpe, Advocate for appellants- applicants
Mr. S.A. Wakure, Advocate for respondents No. 1 to 8
Mr. V.G. Shelke, A.G.P. for respondents No. 9 and 10
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 10th FEBRUARY, 2016.

Order :-

1. Heard learned counsel for the parties.
2. Perused the judgment and decree dated 05-02-2012 in regular civil suit no. 174 of 2011 passed by joint civil judge, senior division, Osmanabad as well as judgment and order dated 13-03-2015 in regular civil appeal No. 15 of 2013 passed by District Judge-2, Osmanabad.
3. It appears that the 'way' which had been made available to the appellants under order of tahsildar in 2000 has been reportedly hindered by installation of electric D.P. and in the circumstances, an application referred to had been moved for having road for access to field of appellants.

4. Under order dated 18-05-2011, the tahsildar having regard to panchnama dated 18-12-2010 and resolutions of Gramsabha and Tanta Mukti Samiti and the committee for creation of road from public participation, had granted the application and further that road accordingly had been constructed after carrying out due measurement and since then the appellants and others have been using the same.

5. Learned counsel for respondents No. 1 to 8, however, disputes this proposition and contention and refers to that civil courts had concurrently decided that order of tahsildar is not referable to section 143 of the Maharashtra Land Revenue Code, 1966 and, therefore, avenue had been made available under observations for prosecution of proper remedy. He further submits that accordingly it appears that application had been moved before the tahsildar under section 5 of the Mamaltdar's Court Act.

6. On perusal of the application, it appears to be general. It appears that the applicants-appellants intended to have a road, and as such, have applied under the proceeding instituted after decision by the district court in 2015.

7. In view of this position, since appellants appear to have taken recourse to an avenue as has been expressed, I do not deem that there is any propriety in proceeding with second appeal, for, it would be open for the parties to take up all such contentions as are available to them factually and legally and the same should be accordingly decided by the authority concerned on the basis of evidence as may be adduced by

the parties before it and treatment accordingly be given to the application made by the appellants before the tahsildar.

8. As such, second appeal is being not entertained and stands disposed of.

9. In view of disposal of second appeal, pending civil application does not survive and stands disposed of.

10. At this stage, learned counsel for the appellants points out that decree of injunction had been stayed by the District Judge during proceeding of regular civil appeal. Learned counsel for respondents, however, submits that already an application for interim relief has been moved by the appellants before the concerned authority.

11. In view of aforesaid submission, learned counsel for the appellants requests to maintain *status-quo* as on the date till decision of application before the tahsildar.

12. As such, till decision of the application before tahsildar, parties to maintain *status-quo* as on the date.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK