

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

SECOND APPEAL NO. 734 OF 2011

Sadashiv s/o Ranba Hindole
& Ors.

..... **APPELLANTS**

V E R S U S

Arjun s/o Mahada Phule & Ors.

..... **RESPONDENTS**

.....

Mr. K.M.Babhulgaonkar h/f P.G.Rodge,
Advocate for Appellants.

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CORAM : T.V.NALAWADE, J.

DATE : 1st APRIL, 2016

ORAL ORDER :-

. The original plaintiffs have filed the present proceeding against the Judgment and Decree of R.C.S. No. 291/2008 which was pending in the Court of the Civil Judge [Sr. Division], Ausa, district Latur and also against the Judgment and Decree of R.C.A. No. 196/2009 which was pending in the Court of the District Judge - 1, Latur. The Suit was filed by the present appellants for relief of permanent and mandatory injunction. The Suit is dismissed. Heard learned counsel for the appellants.

2. The plaintiffs are real brothers inter-se and they together own G.No. 45. They are cultivating their shares separately. Defendant No. 1 is the owner of land G.No. 25. Defendant Nos. 2 and 3 are sons of defendant No. 1. The lands are situated in village Bhusani, Tahsil Ausa, district Latur. Bhusani – Shivni State road is situated on northern side of the land of defendants. To the East side of the land of the defendants, there is land of one Suryawanshi. On the southern side of land of Suryawanshi, there is land of plaintiffs.

3. It is the case of plaintiffs that between the lands of defendants and Suryawanshi, there is approach road from the aforesaid State road for going to the land of plaintiffs and it is north south road. It is the case of plaintiffs that the said road has been in existence from the time immemorial. It is contended that the defendants have illegally brought said portion of road under cultivation and they have virtually destroyed the approach road which was available to the plaintiffs. It is contended that in the past also there was dispute between the plaintiffs and the defendants and the dispute was taken to the villagers and the dispute was amicably settled by executing one document and in the presence of mediator, defendant No. 1 had admitted the right of plaintiffs to use such road. Along with plaint, plaintiffs have filed hand sketch map to show the location of lands and road. Relief was claimed for giving direction to the defendants to open disputed road again.

4. The defendants filed joint Written Statement and

contested the matter. They denied that such road was in existence in the past. They also denied that they had destroyed road passing through the land. They contended that in the past, one Govt. road was passing through both lands G.Nos. 45 and 25 and that road is now constructed and it is tar road. They contended that no other road is in existence in the land G.No. 25.

5. It is the case of defendants that the civil Court has no jurisdiction to decide the dispute raised by the plaintiffs. They contended that 'shiv' [boundary] of village Bhusani is adjacent to the land G.No. 45 and it has width of 9 – 10 feet. They contended that by using this 'shiv', plaintiffs can approach their land. They contended that plaintiffs want to use the land of defendant as way with malafide intention, to cause loss to the defendants.

6. Issues were framed on the basis of aforesaid pleadings. In view of the nature of pleadings, the plaintiffs were expected to prove either easementary right acquired due to prescription or the easement of necessity. It was also open to show that under agreement, the defendants are bound to keep some space for their use as road.

7. The record shows that Court Commissioner was appointed and his report is not disputed. The report of the Court Commissioner and the map prepared by him show that no such road was in existence.

8. The contentions made in the plaint and the

evidence show that the plaintiffs want to use not only the common bandh situated in between the lands of the defendants and Suryawanshi, but they want to use more portion situated beyond the bandh for taking even their vehicles. In view of the nature of the relief claimed, it can be said that Suryawanshi was also necessary party to the Suit, though such defence was not taken. Common bandh situated between two survey numbers can be used as foot-path but that can not be used as cart road in view of the provisions of the Rules made under Maharashtra Land Revenue Code. The width and height of such bandh is described under the Rules and such bandhs are available for their use as foot-path. Such bandh can not be destroyed by the adjacent owners. If the bandh was destroyed, it was open to the plaintiffs to approach the revenue authority. That was not done. The map prepared by the Court Commissioner is not consistent with the case of the plaintiffs and it shows that the plaintiffs want to use some portion situated beyond common bandh for taking their vehicles.

9. Admittedly, in revenue record, the existence of such road is not shown. The plaintiffs have proved the aforesaid agreement as Exh. 54. This document shows that Baburao and Arjun [defendant No. 1] executed it in favour of Ranba [predecessor in title of plaintiffs]. In this document it is mentioned that Ranba was at liberty to use common bandh situated between the lands of Arjun and Baburao for going to his land. In view of the material already discussed, it can not be said that this agreement is in respect of common bandh situated between the lands of defendants and Suryawanshi.

Suryawanshi is not signatory to this document. Further, the agreement was made in favour of Ranba and it is the case of plaintiffs that they are separately enjoying their shares from G.No. 45. Such shares are not shown in the map. Thus, Exh. 54 is in no way of use to the plaintiffs to get the relief against the defendants.

10. Creating a road inside the land of the farmer, is serious thing. Such road divides the area of the land and further cultivation of adjacent portion is also affected. That certainly causes loss to the farmer. So, in such cases, unless there is convincing evidence, the relief of injunction or mandatory injunction can not be given. This Court has no hesitation to observe that in view of the aforesaid material, it was not open for the Courts below to grant the relief. The Courts below have considered the aforesaid material. No substantial question of law is involved in the present Appeal.

11. In the result, Second Appeal stands dismissed.

[T.V.NALAWADE, J.]