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

SECOND APPEAL NO. 297 of 2017

1. Bandu S/o Tukaram Ghodke,
age 47 years occupation agriculture
2. Mahadeo S/o Babu Ghodke,
age 59 years occupation agriculture

Both R/o Aarali (Kd) Taluka Tuljapur Dist. Osmanabad

... APPELLANTS.

VERSUS

Nagnath Gajendra Patil,
age 57 years occupation agriculture
R/o Chincholi Taluka Tuljapur Dist. Osmanabad.

...RESPONDENT.

Mr Ajay Shinde, Advocate for appellants.

Mr G.V. Patil, Advocate for respondent sole.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th September, 2017

ORAL ORDER :

The present appellants/original plaintiffs filed Regular Civil Suit No. 90 of 2012 in the Court of Civil Judge (Junior Division), Tuljapur, for permanent injunction. The nature of relief claimed was

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the respondent/defendant be restrained from passing through the agricultural land of the present appellants/plaintiffs being block No. 126 admeasuring 3H.60R. It is not in dispute that both the appellants and respondent have inherited the property of their share out of common ancestor.

2. The Trial Court decreed the suit for injunction, moved by the appellants, thereby restraining defendant/ respondent from passing through the suit property and causing obstruction to the plaintiffs' peaceful possession over the suit property as described in claim clause of the plaint.

3. The respondent/defendant feeling aggrieved, preferred the appeal being Regular Civil Appeal No. 93 of 2015 in the Court of the District Judge at Osmanabad. The learned District Judge-2, Osmanabad, vide Judgment and decree dated 9th December 2016 reversed the finding by modifying order passed in the Regular Civil suit by observing that the injunction order passed by the Trial Court shall remain in force. However, ordered that the perpetual injunction will not operate till the disputed portion of road/way, a subject matter sub-judiced before the Revenue Forum is finally decided.

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4. It is the Appellate Court's judgment, which is questioned by the plaintiffs in the present Second Appeal on the ground that the decision of the Civil Court will finally govern the issue about right of way end. According to him, order of Revenue Authority is always subject to the finding recorded in Civil suit by competent Civil Court on the said issue.

5. Per contra, learned Counsel for the respondent/original defendant would urge that there was a pre-existing right of way, which was encroached upon by one Kadam and plaintiff. Hence defendant including other agriculturists started using the way through property of plaintiff.

6. Considered the rival submissions on the question of law, which can be framed as under:

Whether the lower Appellate Court has committed an error of law in recording finding that the order given by the Revenue Authority will prevail over the findings recorded in civil proceedings and not other way round ?

7. It is settled position of law that findings recorded by the Revenue Authorities lack originality. Hence the findings recorded by the Civil Court as regards use of right of way are binding on the

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parties and such findings shall over rule the findings recorded by Revenue Authority. The Revenue Authorities are required to act on the Judgment of Civil Court.

8. Perusal of the judgment of the Appellate Court depicts that the Appellate Court lost sight of the said principle and has proceeded to record to the contrary that the decision of the Revenue Forum shall govern the lis between the parties in relation to claim of right of way.

9. In my opinion, while recording such findings, the learned District Judge has committed an error of law, and as such, the judgment delivered in Regular Civil Appeal No. 93 of 2015 on December 9, 2016 passed by the District Judge-2, Osmanabad, is not sustainable. As such, the same is quashed and set aside. However, this should not result in denying the opportunity of pursuing the First Appeal by the appellant because of incorrect findings of law recorded by the lower Appellate Court. As such, this Court restores Regular Civil Appeal No. 93 of 2015 to the file of the District Judge, Osmanabad, who shall decide said appeal within a period of three months from the date of appearance of the parties. The parties hereto agree that they shall appear before the learned District Judge,

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Osmanabad, before whom the appeal will be assigned for hearing by the Principal District Judge, on 9th October 2017. The learned District Judge shall make every endeavour to decide the appeal at-least by 31st January 2018.

10. Parties undertake that they shall co-operate by submitting their written notes of argument alongwith documents, if any, before the Appellate Court.

11. Needless to say that the proceedings before the Tahsildar in relation to the alleged right of way claimed by the parties if not decided, shall stood terminated in view of the verdict of the Civil Court.

12. With above observations, Second Appeal shall stand partly allowed.

13. In consequence of disposal of the appeal, Civil Application, if any, stands disposed of.

14. No costs.

(NITIN W. SAMBRE, J.)

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