

(1)

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

**SECOND APPEAL NO.163 OF 2016
WITH
CIVIL APPLICATION NO.2223 OF 2016**

Prabhakar s/o Laxman Ambure
and ors.

..APPELLANTS

VERSUS

Hashmuddin s/o Nabikhan Bapude

..RESPONDENT

Mr M.L. Dharashive, Advocate for appellants;
Mr Dhananjay Deshpande, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th June, 2017

ORAL ORDER

Regular Civil Suit No.472 of 2009 filed by the appellants-plaintiffs came to be decreed with an order of injunction against the present respondent-defendant, thereby restraining him from causing any obstruction on the way of the plaintiffs in respect of the disputed way.

2. In Regular Civil Appeal No.63 of 2013 at the behest of the respondent-defendant, the lower appellate court reversed the aforesaid decree. Thus, the present Second Appeal.

3. Amongst other, the substantial question of law as is sought to be raised by Mr Dharashive, learned Counsel appearing on behalf of the appellants is, whether the lower appellate court has failed to appreciate the

(2)

evidence, particularly the revenue record in relation to the road made available to Dr. Apte ?

4. Upon perusal of the evidence and findings recorded by the lower appellate court it reveals that the lower appellate court has given positive finding that there exists a road which is provided pursuant to the order of the revenue authorities i.e. Tahsildar to one of the land owners i.e. Dr. Apte, which road itself is sought to be used by the appellants.

5. Once such findings were recorded by the lower appellate court, in my opinion, it was expected of the lower appellate court to respect the findings of the Trial Court on the said issue of granting way.

6. In view thereof, **admit**.

7. There shall be stay to the judgment and decree of the lower appellate court.

8. Civil Application No.2223 of 2016 stands disposed of accordingly.

(N.W. SAMBRE, J.)

amj