

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.59 of 2015
(Shyamrao s/o Rodbaji Suryawanshi v. Ramkrishna s/o Sitaramji
Suryawanshi and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's order

Court's or Judge's orders

Smt. V.P. Thakre, Advocate for Appellant.

Coram : R.K. Deshpande, J.

Date : 4th January, 2017

This second appeal is by the original plaintiff, who filed
Regular Civil Suit No.157 of 1986, claiming the reliefs as under :

“PRAYER :- It is, therefore, prayed that, this Hon'ble Court may kindly be pleased to pass decree of perpetual mandatory injunction against the defendant preventing them from obstructing the plaintiff or his joint family members while passing through the suit way and further be pleased to direct the defendants to remove the otta adjacent to the Eastern wall of the house of the defendant no.1 to 3 and the Otta adjacent to the Western wall of the defendant no.1's house. And further be pleased to direct the defendant nos.1 to 3 to remove the hut portion coming in the suit way as shown by letters B.C.D.E. In red colour in the plaint map.

2) *The costs of the suit be saddled on the defendants.*

3) *Any other relief which deems fit and proper be granted to the plaintiff.”*

Both the Courts below are concurrent in holding that the suit is based on prescriptive easementary right and there is no relief of declaration claimed in the suit, and unless such declaration is claimed, the suit for grant of mandatory injunction was not maintainable. I do not find that any substantial question of arises in this second appeal.

The second appeal is dismissed.

Judge.