

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

946 SECOND APPEAL NO. 251 OF 2018
WITH
CA/4268/2018 IN SA/251/2018

HARICHANDRA NAGNATH MANE AND ANOTHER
VERSUS
SHASHIKALA SIDRAM RACHATTE AND ANOTHER

...

Advocate for Appellants : Mr. Sunil P. Koli
AGP for Respondent Nos. 1 and 2: Mr. B.R. Sontakke Patil

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CORAM : V.L. ACHLIYA, J.

DATED : 07th SEPTEMBER, 2018

PER COURT:-

1. The appellants have preferred this Second Appeal challenging the concurrent decisions rendered by the Courts below.

2. Heard the learned counsel for the appellants and perused the impugned judgments of the Courts below. The appellants had filed suit simplicitor for injunction as against the respondents-defendants claiming that they are the owners of field survey nos.16 and 20. The land owned by the defendants is adjacent to the land owned by the plaintiffs. Since the time of their forefathers, the plaintiffs were using the cart way which passes from the *Bandh* of field survey no.19 and 20, which further passes from *Bandh* of field survey nos.9, 17, 15, 16. The defendants have illegally obstructed the cart way, which passes from the said *Bandh*, which is in use since the time of their

forefathers. The defendants appeared in the suit and disputed the case of the plaintiffs and specifically urged that no such cart way is in existence. They have specifically pleaded that the plaintiffs have access to their field from Sastur-Ausa road situate towards the western side of land survey no.19.

3. On due consideration of the rival pleadings the trial Court has reached to the conclusions that the plaintiffs have failed to prove their case and dismissed the suit. Being aggrieved, the appellants have preferred R.C.A. No.28/2015 before the first Appellant Court. On due scrutiny of the evidence in the light of the challenge raised in the appeal, the appellate Court found no merit in the appeal filed by the appellants and dismissed the same vide judgment and order dated 23.01.2018. Being aggrieved, the appellants have preferred this Second Appeal.

4. Learned counsel for the appellant strenuously contended that subsequent to filing of the suit, the revenue authorities have rendered the decision in favour of the appellants-plaintiffs. Since at the time of forefathers of the appellants, the appellants were in use of the cart way and the evidence adduced in the case was not properly appreciated by the Courts below.

5. On due consideration of the submissions advanced in the light of the grounds raised in the appeal, I am of the view that no case is made out to entertain this appeal. In order to entertain the Second Appeal, it is necessary that the appellants must make out a case of existence of substantial questions of law. In the case in hand, the Courts below have recorded the concurrent findings holding that the appellants have failed to prove the

existence of the cart way. It also appears that in trial Court, the Court Commissioner was appointed to visit the site and submit report as to the factual situation exist on the spot. The report of the Commissioner also indicates that no such way found to be in existence. What was found on spot found to be foot way. Looking to the concurrent findings recorded by the Courts below, I am not inclined to entertain the appeal. Accordingly the appeal is dismissed.

6. The Civil Application, if any, stands disposed of in terms of the disposal of the Second Appeal.

(V.L. ACHLIYA)
JUDGE

SPR