

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 144 OF 2013
WITH
CIVIL APPLICATION NO. 424 OF 2013**

Hanmant Maruti Kesarkar
(Since deceased Through LRs.) & Ors. ... Appellants
V/s.
Changdev Baburao Bhosale & Ors. ... Respondents

- Mr.Madhav J. Jamdar for the Appellants.
- Mr.Dilip Bodake for Respondent Nos.1, 2A to 2C, 3 and 4.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the Appellants and learned counsel for the Respondents.

2] This Second Appeal takes an exception to the concurrent finding of the fact as recorded by the trial Court and confirmed by the Appellate Court. The dispute in the present appeal pertains to the existence of ten feet road which according to the Appellants, they were using as access to their property.

3] Both the trial Court and the Appellate Court on appreciation of evidence on record including the Court Commissioner's Report, found that such road is not in existence, as claimed by the Appellants having the width of 10 feet and running through Gat No.16 and 17, owned by the Respondents. In this respect, both the trial Court and the Appellate Court had considered not only the Court Commissioner's Report (Exhibit-32) but also the City Survey Maps (Exhibit-102, 103, 106 and 112) and the photographs (Exhibit-92 to 100) in arriving at the concurrent finding that none of these maps or photographs show the existence of the disputed road.

4] In view thereof, in the concurrent finding of the fact arrived at by both the Courts below, which is on proper appreciation of evidence on record, in the Second Appeal, this Court cannot interfere in any way. Hence, as the Second Appeal does not raise any substantial question of law, it stands dismissed.

5] At this stage, it is submitted by learned counsel for the Appellant that during the *pendency* of the suit and this Appeal also, there was order of status-quo and it may be continued for further period of three months.

6] Learned counsel for the Respondents strongly resisted this request and in my considered opinion, rightly so. When the Second Appeal itself raises no question of law, far remains substantial question of law and the suit has been dismissed by both Courts below and now by this Court also, there is no question of extending the relief of status-quo. Therefore, the said request stands rejected.

7] In view of dismissal of the Second Appeal, nothing survives in the Civil Application and therefore, it stands disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]