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

**SECOND APPEAL NO.731 OF 2015
WITH
CIVIL APPLICATION NO.355 OF 2014
IN
SECOND APPEAL NO.731 OF 2015.**

Santosh Arjun Walawalkar
and ors

... Appellants.

V/s.

Gangadhar Anant Sawant
and ors

... Respondents

Mr. Manoj J. Bhatt, for the appellants.

Mr. Sudhir Prabhu, for respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the appellants and respondents.

2] Admit.

3] With the consent of learned counsels for both the parties,
this appeal is taken up for final hearing at the stage of admission
itself.

4] This Second Appeal is preferred against the concurrent

finding of fact recorded by the trial Court and the First Appellate Court.

5] The dispute pertains to the right of way. Both the trial Court and Appellate Court have held that the respondents are having easementary right by prescription, mainly on the basis of the map drawn by the Court Commissioner, which is treated to be part and parcel of the decree.

6] The only submission advanced by learned counsel for the appellants is that the the map drawn by the Court Commissioner does not show survey Number of the lands in which disputed road is constructed. Hence, it would be difficult to identify it. It is submitted that the Court Commissioner has also in his evidence admitted that he has not given survey numbers of the lands from which disputed road is passing. In view thereof, it is submitted that it would be difficult to identify the disputed way. However, in my considered opinion, when the Court Commissioner's report is forming part and parcel of the decree and it gives the survey numbers of the adjoining lands, there cannot be any difficulty in identifying it..

7] The next submission advanced is that in the plaint it is not stated that respondents are using the road since last several years. However, it can be seen that this fact is considered by both the Courts below and there is categorical finding of fact that the respondents are

using this road since last more than 20 years and therefore, they have acquired the right by prescription.

8] In the Second Appeal, therefore, no substantial question of law is raised. Hence the Second Appeal stands dismissed.

9] In view of dismissal of Second Appeal, Civil Application No.355 of 2014 becomes infructuous and the same is accordingly disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]