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

SECOND APPEAL NO.466 OF 2016

Gauri Sudhir Malpathak ... Appellant.

V/s.

Dr. Shri. Dhruv Sajan Pagar
and anr ... Respondents

Mr. Milind M. Sathaye, for the appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the appellant.

2] By this Second Appeal, concurrent finding of fact as recorded by both the Courts below, is challenged by learned counsel for the appellant, by submitting that while appreciating the evidence on record, both the Courts have committed an error. They have not considered the contents of the sale deed under which respondents' predecessor has purchased the property and in which there is mention of the existence of the road on eastern side of the property of the appellant.

3] It is submitted that the appellant is the plaintiff and she is seeking easementary right of way by prescription and also grant over the disputed road.

4] According to learned counsel for the appellant the trial Court has held that the respondent has made entry in the City Survey Record of the area more than that which was purchased by his predecessor-in-title. Hence, it has to be held that the respondent is taking disadvantage thereof to deny the appellant her right of way.

5] However, in this respect, it has to be observed that in the earlier litigation, the appellant's husband has claimed the right of way over the same disputed road, may be in respect of his separate property, but the issue involved was same. In that suit, he failed to prove this right of way. Now the appellant is claiming the same right in respect of her property. None of the documents produced on record prove such right either by prescription or by way of grant. It is pertinent to note that appellant's predecessor-in-title has filed R.C.S.No.977 of 1994, in respect of the same subject matter that is the right of disputed way through C.T.S.No.55 for approaching C.T.S.No.56, which also came to be dismissed for default. Merely because the appellant's house is facing towards the eastern side, it does not mean that the appellant is also having right of way on the disputed road from eastern side.

6] In such circumstances, in the concurrent finding of fact and in the appreciation of evidence done by both the Courts below, this Court cannot enter into those aspects by becoming third Court of fact finding .

7] The Second Appeal raises no substantial question of law.

8] The appeal, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]