

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 899 OF 2016**

Ashok Jayendra Magdum Appellant.
V/s
Dhulappa Surendra Magdum and Anr. Respondents.

Mr. Saurabh Oka for the Appellant.
Mrs. Jyoti Kawade i/b Mr. Anant Vadgaonkar for Respondent Nos. 1
and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 16, 2019

P.C.:-

1] This second appeal is by the original Defendant who suffered decree of declaration and injunction vide judgment and order dated 22/01/2010 in Regular civil Suit No.29 of 2007 passed by Civil Judge, Senior Division. The said judgment came to be confirmed by the learned District Judge vide judgment and Order dated 06/08/2010 in Regular Civil Appeal No. 14 of 2010 filed at the behest of the Appellant/original Defendant.

2] Heard Mr. Oka, learned Counsel for the Appellant/original Defendant. According to him, the relief claimed in the Plaint and one

ordered by the Courts below, if appreciated in the background of the requirement of Section 34 of the Specific Relief Act, decree itself is not sustainable, as there no relief of possession/mandatory injunction of removal of the gate and wall was claimed in the suit.

3] The learned Counsel appearing on behalf of Respondent Nos. 1 and 2 supports the judgments.

4] Apart from the fact that there are concurrent findings recorded by both the Courts below, the part of CTS No.1084 of which the Appellant/original Defendant claims to be the owner, itself is not identified and still Appellant/original Defendant appears to have carried out construction. Fact remains that pursuant to the prayer made by the Respondents/Plaintiffs before the Trial Court, Trial Court decreed the suit to the extent of granting injunction, thereby recognizing easementary right/right of way of the Respondents/Plaintiffs. The present Appellant is also restrained from creating any hurdle or interference in the use of right of way. Such reliefs as are ordered by the Court below are in tune with the requirement of Section 34 of the Specific Relief Act. Fact remains that

the Appellant/original Defendant himself is unable to identify the location of his property, as is observed by both the Courts below, which appears to be the basis for grant of such declaration and injunction. No case for interference is therefore made out. Appeal fails and the same stands dismissed.

(NITIN W. SAMBRE, J.)