

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

SECOND APPEAL NO.34 OF 2015

Sanjay Marutirao Patil & Ors.

... Appellants

Vs

Ramchandra Tukaram Patil & Ors.

... Respondents

...

Mr. S.R.Ganbawale for the Appellant.

Mr. Vinayak Kumbhar i/by Mr. Sagar Mane for the Respondent
Nos.1 to 3,5,6 and 8.

CORAM : SANDEEP K. SHINDE J.

DATE : 3rd APRIL, 2019

P.C. :

Heard learned counsel for the parties.

2 Plaintiffs had filed the suit for permanent injunction restraining the defendants from causing obstruction to use the suit road without asking declaration of easementary right.

3 Both the Courts below after appreciating evidence, recorded finding that the plaintiffs could not prove that they are using the suit road since last 50 years continuously. The trial Court thus, declined decree of perpetual injunction.

4 Plaintiffs carried decree of the trial Court in Regular Civil Appeal No.67 of 2011 before the Additional District Judge, Karad. The Appellate Court held that the plaintiffs could not prove that they were using the suit road since last more than 50 years prior to the date of the suit and as such, were not entitled to claim easementary rights.

5 It appears from the record that Court Commissioner was appointed to ascertain whether there was any alternate road available to the plaintiffs. Report of the Court Commissioner was considered by both the Courts below and held that the plaintiffs could not establish that they were using the suit road as of right or as an easementary right.

6 It also appears from the proceedings that before institution of the subject suit, plaintiffs had adopted proceedings under the Mamlatdar Court Act, 1906 seeking right of way which was declined but alternate road was suggested and was granted. Against the order of Mamlatdar, respondents herein had carried the order before the Sub-Divisional Officer who was pleased to set aside

the order passed by the Mamlatdar.

7 Thus, orders passed by the Revenue Authorities under the Mamlatdar Court Act, 1906 and the order passed by the Trial Court as well as the Appellate Court are essentially based on finding of fact that the plaintiffs could not prove their right of way to the suit land which is consistent with the evidence on record.

8 Appeal, therefore, does not give rise to substantial question of law. Appeal is, accordingly, dismissed.

(SANDEEP K. SHINDE, J.)