

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 440 OF 2019

Madhao Ruprao Gawande and ors.

..VS..

Vijaykishor Deviprasad Dubey and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.R. Tekade, Adv. for appellants.

Shri G.G. Mishra, Adv. a/w Shri G.P. Tiwari, Adv. for respondent
no.1

CORAM : VINAY JOSHI, J.

DATED : 19th NOVEMBER, 2019

Heard.

Initially the respondent no. 1 had filed suit for removal of encroachment. The suit claim was based on easmentary right of way. The Trial Court decreed the suit and the First Appeal filed by the defendants/present appellants was dismissed.

Learned Counsel for the appellants submits that in Trial Court mistakenly earlier Advocate representing them, had filed evidence closer Pursis which was not within the knowledge of defendant. For that purpose in First Appeal the appellant had sought permission of Court under Order XLI Rule 27 of Code of Civil Procedure, 1908 seeking permission to adduce additional evidence. It is his submission that the said application was not decided nor considered at the time of final disposal but, First Appeal came to be dismissed.

The appeal can be disposed finally at the stage of admission.

Issue notice, returnable on 17.12.2019, on following substantial questions of law :

“(i) Whether the First Appellate Court erred in non considering the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 which resulted into miscarriage of justice?

(ii) Whether both the Courts below erred in holding that the original plaintiff had easmentary right over the disputed portion?”

Learned Counsels Shri G.G. Mishra with Shri G.P. Tiwari waives service for respondent no. 1. Hamdast granted.

CIVIL APPLICATION (CAS) NO. 865 OF 2019

By way of this application the applicants/appellants seeking stay to the execution and implementation of the impugned order. Today, notice was issued to respondents on proposed substantial questions of law.

Considering the said aspect, the execution of impugned judgment and decree is stayed till appearance of all respondents. The Civil Application stands disposed accordingly.

JUDGE