

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

SECOND APPEAL NO.750 OF 2017

(Shankar Damodhar Patil and others ..vs.. Ramdas Tukaram Bawane)

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

Court's or Judge's orders

Shri G.S. Lahoti, Counsel for the appellants.

CORAM : ROHIT B. DEO, J.

DATED : 19-03-2019

The appellants are original defendants in Regular Civil Suit 113/2004 instituted by the respondent-plaintiff for declaration and mandatory injunction. By judgment and decree dated 01-3-2006, the Joint Civil Judge (Junior Division), Malkapur dismissed the suit. The judgment and decree of the trial Court is reversed in Regular Civil Appeal 30/2012 which is allowed by the District Judge-1, Link Court, Malkapur on 04-7-2016.

2. The suit way is 10 feet wide road situated on the western side of the residence of the plaintiff. The substratum of the plaint averments is that the suit way is a public road-layout road and that the defendants do not have exclusive right to use the same. The plaintiff contends that the defendants erected barbed wire fencing and prevented the public from using the suit way.

3. Perusal of the written statement would reveal that the defendants did not assert ownership over the suit

way. The defence is that the suit way is for the exclusive user of some plot owners. The defence is that the plaintiff is using the road on the southern portion to approach his residence and therefore, has no right or locus to claim the declaration or mandatory injunction for removal of the barbed wire fencing.

4. The trial Court recorded a finding that the suit road is a layout road. However, the further finding that the plaintiff does not prove that the suit road is used by the public has led to the dismissal of the suit.

5. The appellate Court has held, and rightly so, that once the suit way is held to be public road, the defendants cannot be permitted to restrict the use of the said road by the public by erecting barbed wire fencing and it is of no significance that the plaintiff is or is not using the suit road. The suit road is a public road and must be kept unobstructed for use of the members of the layout. The finding of fact recorded by the appellate Court is unexceptionable.

6. The appeal does not involve any substantial question of law much less a substantial question of law and is dismissed with no order as to costs.

JUDGE