

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

SECOND APPEAL NO.183 OF 2019

(Gajanan s/o Shatrughna Dhakare and another ..vs.. Leela d/o Gopal Pise and another)

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

Court's or Judge's orders

Smt. S.W. Deshpande, Counsel for the appellants,
Shri C.A. Joshi, Counsel for respondent 2(iv).

CORAM : ROHIT B. DEO, J.

DATED : 18-04-2019

The unsuccessful plaintiffs are in appeal under Section 100 of the Code of Civil Procedure.

2. The plaintiffs brought Regular Civil Suit 45/2003 for declaration and injunction. The suit is predicated on the assertion that there is a public way which to the North of the house of plaintiff 1, which is to the West of the house of plaintiff 2 and to the East of the house of plaintiff 3, which the defendant is attempting to encroach. During the pendency of the suit, the plaint is amended to include the relief of removal of encroachment contending that the defendant constructed a hut on the portion delineated by letters A,B,C,D,E,F,G,H on the plaint map.

3. By judgment and decree dated 09-4-2008 in Regular Civil Suit 45/2003, the trial Court dismissed the suit. The plaintiffs carried the judgment of the trial Court in Regular Civil Appeal 19/2008 which is dismissed by the judgment and decree dated 21-6-2016.

4. Perusal of the plaint shows that the case of the plaintiffs is that the land in question is public road. Both the Courts below have, however, recorded a finding of fact that the land is owned by the defendant and the construction is on the land owned by the defendant. Having scrutinized the judgments of the Courts below, I do not find any infirmity in the finding of fact which is based on evidence on record much less an infirmity warranting interference in jurisdiction under Section 100 of the Code of Civil Procedure.

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

JUDGE

adgokar