

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 281 OF 2017
WITH CA/11194/2016 IN SA/281/2017**

**DAGDU GOPAL KAPSE AND OTHERS
VERSUS
SANGITA SANDIPAN GHADGE AND OTHERS.**

...

Advocate for the Appellants : Mr. V. S. Bedre h/f Mr. Murge Estling S.
Advocate for the Respondent No. 1 : Mr. L. H. Kawale.
A.G.P. for Respondent Nos. 2 and 3 : Mr. S.W. Mundhe.

CORAM : MANGESH S. PATIL, J.
DATE : 04.05.2022.

PER COURT :

Heard learned advocates of both the sides on the point of admission.

2. The respondent No. 1 filed a suit for perpetual injunction restraining the appellants who were arrayed as defendant Nos. 1 to 3 from creating any new cart way through her land Gat No. 78.
3. The appellants contested the suit. They did not dispute that she was the owner of the land Gat No. 78 but contended that a way has been in existence across her land and is being used by several farmers apart from they themselves.
4. The trial court dismissed the suit precisely referring to the evidence in the form of record from the office of Tahsildar in a proceeding under Section 5 of the Mamlatdars' Courts Act as also the vital admissions given by respondent No. 1's witness regarding existence of an old cart way across her land Gat No. 78. Conspicuously, though the lower appellate court reversed

the judgment and order of the trial court it has not specifically dealt with the grounds which had weighed with the trial court in dismissing the suit.

5. The second appeal is **admitted** on following substantial question of law :

(i) Whether the lower appellate court is justified in reversing the judgment and order of the trial court without expressly meeting the grounds on which it had dismissed the suit ?

(ii) Whether the lower appellate court has ignored the relevant evidence and has relied upon the circumstances which are not relevant ?

6. In view of admission of the second appeal, considering the nature of the dispute, the operation of the judgment under challenge shall stand stayed till final disposal of the second appeal.

7. Civil Application No. 11194/2016 is disposed of.

(MANGESH S. PATIL, J.)

mkd/-