

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

**SECOND APPEAL NO.347 OF 2021
WITH
INTERIM APPLICATION NO.1918 OF 2021
IN
SECOND APPEAL NO.347 OF 2021**

Rajendra Phattu Gadhari and Ors. ...Appellants/Applicants

Versus

Chetram Gyar Siyaji Chaurasia
and Anr. ...Respondents

....

Mr. A.V. Anturkar, Senior Advocate i/b. Mr. Ashok B. Tajane for the
Appellants.

Ms Ruchita Patel for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 8th MARCH, 2022.

P.C.:-

1. The Appellants herein have filed the second appeal challenging the judgment and order dated 10/03/2021 whereby the learned Principal District Judge, Thane, has dismissed the Regular Civil Appeal No.94 of 2015 and thereby confirmed the judgment and decree dated 27/03/2015 passed by the learned C.J.J.D., Wada in R.C.S. No.8 of 2007.

2. The Appellants (hereinafter referred to as 'Plaintiffs') claims to be the owner of the property under Survey No.62(Part) admeasuring about 1½ acres at Village-Kelthan, Taluka Post Tukdi-Wada, District-Thane (hereinafter referred to as the 'suit property'). The grievance of the Plaintiffs was that Respondents (hereinafter referred to as 'Defendants') have been trespassing in his property even though they have no right of access through the suit property. The Plaintiffs therefore filed a suit for permanent injunction seeking to restrain the Defendants from entering into or passing through the suit property.

3. The Defendants resisted the suit on the ground that a public road of 10 to 12 ft wide is passing through the suit property and the same is used by the residents in the vicinity. The Defendants claimed that the Plaintiffs have been obstructing them from using the said road, which they have been using since long.

4. The Trial Court as well as the First Appellate court has recorded a finding that the Plaintiffs have admitted existence of the road and the use of the road by the villagers. On these concurrent findings the suit and the appeal came to be dismissed. Being aggrieved by these orders, the Plaintiffs have filed this appeal.

5. The Plaintiffs have sought the relief of permanent injunction on a specific plea that the Defendants have no right of access through the suit property. In this regard, it is pertinent to note that PW2 -Madhukar Jadhav has admitted that the Defendants and other villagers have been using the road passing through the suit property. He has further admitted that the Defendants have no other access except the subject road. Similar statement is made by Plaintiff No.3- Anay Gogate. He has admitted that the road was in existence even prior to the purchase of the land by the Plaintiffs and that the same is used by the Defendants. In the light of these categorical admissions the trial court and the first appellate court have recorded a finding that the Defendants have right of way through the suit property. The findings are based on evidence on record and cannot be termed to be perverse. No substantial question of law is involved. Hence, the appeal is dismissed.

6. Interim/civil applications, if any, stand disposed of in view of dismissal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)