

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

SECOND APPEAL NO.232 OF 2021

Deepakkumar s/o Dwarkadas Agrawal
Aged about 61 years, Occ. Business,
R/o. Rajputpura, Akola,
Tq. & District Akola

...APPELLANT

VERSUS

Smt. Kantabai w/o Ramesh Balapure,
Aged about 66 years, Occ. Household work,
R/o. Rajputpura, Akola,
Tq. & District Akola

...RESPONDENT

Shri C.A. Joshi, Advocate for the appellant.
None for the respondent.

CORAM : SMT. M.S. JAWALKAR, J.
DATED : JANUARY 14, 2022.

ORAL JUDGMENT

Heard learned counsel for the appellant.

2. The present second appeal is preferred being aggrieved by the judgment and order in Regular Civil Suit No.372/2000 and judgment and order in Regular Civil Appeal No.182/2002.

3. The facts in short to file regular civil suit is that the plaintiff who is the owner in possession of the house situated on Sheet No.28-C, plot No.103, Rajputpura, Akola having approached way. It is contended that the said approach way was obstructed by the defendant by constructing a wall, therefore, the plaintiff had filed the suit for perpetual mandatory injunction and declaration. The defendant/present appellant has filed his written statement and resisted contention in plaint.

4. Learned trial Court after framing issues and recording evidence of the parties decreed the suit upholding the contention of the plaintiff and granted relief of perpetual mandatory injunction and declaration. The said judgment is impugned in Regular Civil Appeal No.182/2002. It is contended by the learned counsel for the appellant that there is no proper appreciation of evidence by both the Courts and perverse finding is recorded.

5. It is also contended that evidence of surveyor and admission of plaintiff is not properly considered by both the Courts.

6. I have gone through the judgment of the trial Court as well as appellate Court. The learned trial Court considered the evidence of plaintiff witnesses including Cadastral Surveyor. The learned trial Court also considered evidence of defendant.

7. I do not see any perversity in the finding recorded by the learned trial Court which was confirmed by the appellate Court. There is no substance in the contention of the appellant that evidence of Surveyor is not considered at all. Both the Courts below have elaborately discussed the evidence and came to the conclusion that it is a matter of record that the map prepared by Surveyor shows that plot No.103 has a way through plot No.112 which is shown as road. It is admitted by the appellant that sale-deed by which he has purchased plot No.112 refers to this five feet wide and nine feet long road in existence.

8. Considering all these documents along with deposition of witnesses, the trial Court came to the conclusion that there was approach way of the plaintiff from plot No.112. The learned appellate Court confirmed the finding recorded by the trial Court. Thus, appeal is directed against concurrent finding of fact which is

not the scope of Section 100 of the Code of Civil Procedure, 1908. There is no substantial question of law made out by the appellant to be considered in this second appeal.

9. It is also contention of the appellant that in view of Section 41 of the Indian Easement Act, 1882, easement of necessity extinguished. However, both the Courts have dealt with this aspect and come to the conclusion that there was no alternate way to approach the house of the plaintiff. As such there was no termination of necessity.

10. In my considered opinion, both the Courts have rightly evaluated evidence before it and I do not find any perversity in it. As such no interference is warranted and appeal is liable to be dismissed. Accordingly. I pass the following order :

ORDER

- i) The second appeal is dismissed with costs.
- ii) The decree be drawn accordingly.