

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

**SECOND APPEAL NO.286/2022**

**APPELLANTS:**

(Ori.Pliff)

1. Nandu S/o Ramchandra Chikhale  
Aged about 54 Years, Occ : Agriculturist,  
R/o Chikhal Sawangi, Tah. Morshi,  
Distt. Amravati.  
Mobile No.9146623246
2. Arvind Ramchandra Chikhale (Dead)  
Through their legal heirs :
  - i) Smt. Pushpa Arvind Chikhale,  
Aged about 54 years, Occu : Household.
  - ii) Devesh Arvind Chikhale,  
Aged about 34 years, Occ : Agriculturist
  - iii) Ku. Sunita Arvind Chikhale,  
Aged 32 years, Occu : Household
  - iv) Ku. Bhagyashri Arvind Chikhale,  
Aged about 29 years, Occu : Agriculturist

All i to iv are R/o Chikhal Sawangi,  
Tah. Morshi, Dist. Amravati.
3. Mahadeo Dayaram Chikhale  
Aged about 50 years, Occu : Agriculturist.
4. Namdeo Dayaram Chikhale  
Aged about 52 years, Occu : Agriculturist

Deleted as per  
Court's order dt.  
5-9-2022

- { 5. Shalikram Motiramji Chikhale  
Aged about 63 years, Occu : Agriculturist

Amended as  
per Court's  
order dt.05-9-  
2022

- { 5. Vaibhav Rajaramji Chavhan  
Aged about 40 years, Occu. Agriculturist  
R/o Morshi, Distt. Amravati.

6. Kisana Pralhadrao Chikhale  
Aged about 54 years, Occu : Agriculturist

All 3 to 6 are R/o Chikhale Sawangi,  
Tah. Morshi, Dist. Amravati.

7. Madhukar Tulshiramji Chikhale (Dead)  
Through legal heirs :-

- i. Smt. Shalinibai Madhukarrao Chikhale  
Aged about 76 years, Occ : Housewife.
- ii. Pradip Madhukarrao Chikhale  
Aged about 35 years, Occu : Agriculturist
- iii. Pravin Madhukarrao Chikhale,  
Aged about 44 years, Occu : Agriculturist
- iv. Ravindra Madhukarrao Chikhale,  
Aged about 43 years, Occu : Agriculturist
- v. Sau. Ujwala Shrikantrao Nimbhorkar  
Aged about 40 years, Occu : Housewife.

All 7 i to v are R/o Naya Wathoda,  
Tah. Morshi, Dist. Amravati.

8. Baban Raghunathrao Chikhale  
Aged about 52 years, Occu : Agriculturist

9. Sheshrao Diwatuji Chhapane,  
Aged about 80 years, Occu : Agriculturist

10. Shivram Vyankatrao Khandare,  
Aged about 68 years, Occu : Agriculturist

All 8 to 10 are R/o Chikhal Sawangi,  
Tah. Morshi, Dist. Amravati.

11. Annaji Tulshiramji Chikhale (Dead)  
Through his legal heirs :-

- i. Vijay Annaji Chikhale  
Aged about 60 years, Occu : retired.
- ii. Pramod Annaji Chikhale (Dead)  
Through his legal heirs :-
  - a. Rasika Pramod Chikhale,  
Aged about 42 years, Occu : Housewife
  - b. Jay Pramod Chikhale,  
Aged about 8 minor, Occu : Student  
Through mother Rasika Pramod Chikhale

All i to ii a and b are R/o Chikhal Sawangi  
Tah. Morshi, Dist. Amravati.

Amended as per  
Court's order dt.  
05-9-2022

- iii. Varsha d/o Annaji Chikhale after marriage  
Varsha w/o Pradip Gawande,  
aged bout 38, Occ. Household,  
R/o C/o Vijay Annaji Chikhale, Chikhal  
Sawangi, Tah. Morshi, Dist. Amravti.

**...VERSUS...**

**RESPONDENTS :**  
(Ori.Deft.)

- 1. Devidas Ramraoji Chopade (Dead)
- 2. Sau. Pramila Devidas Chopade (Dead)  
Through their legal heirs :-
  - i. Yogendra Devidasrao Chopade  
Aged about 54 years, Occ : Service.
  - ii. Pankaj Devidasrao Chopade  
Aged about 48 years, Occ : Agriculturist

- iii. Sau. Chanda Rajeshrao Gharpure  
aged about 48 years, Occu : Housewife.

All i to iii are R/o Chikhal Sawangi,  
Tah. Morshi, Dist. Amravati.

- iv. Sau. Archana Rajeshrao Nimbhorkar  
aged about 50 years, Occu : Housewife,

R/o Radhakrushna Colony, Near Church,  
Morshi, Tah. Morshi, Dist. Amravati.

3. Kishor Devidas Chopade  
Aged about 45 years, Occu : Agriculturist  
R/o Chikhal Sawangi, Tah. Morshi.  
Dist. Amravati.

Amended as per  
Court's order dt.  
05-09-2022.

4. Madhukar Tulshiramji Chikhale  
(Dead) through legal heirs :
- i. Smt. Shalinibai Madhukarrao Chikhale (Dead)  
LRs. already on record)
  - ii. Pradip Madhukarrao Chikhale  
Aged 35 yrs., Occu. Agriculturist,
  - iii. Pravin Madhukarrao Chikhale  
Aged 44 yrs., Occ. Agriculturist.
  - iv. Ravindra Madhukarrao Chikhale  
Aged 43 yrs., Occ. Agriculturist.
  - v. Sau. Ujwala Shrikantrao Nimbhorkar,  
Aged about 40 yrs. Occu. Housewife.

All 4i to v are R/o Naya Wathoda,  
Tah. Morshi, Distt. Amravati.

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 14/09/2022**

**P. C.**

1. Heard Smt. Deshpande, learned counsel for the appellants. Learned counsel appearing for the respondents is absent. The second appeal challenges the judgment of the Appellate Court dated 11/04/2022 (pg.25) by which the judgment and decree passed by the Trial Court in Regular Civil Suit No.90/2012 dated 24/02/2020 decreeing the suit and declaring that the plaintiffs are legally entitled to use the way as an easement shown by letters “F, G, H” in the plaint map and a further direction to the defendants to remove the encroachment made over the said way within one month and restraining the defendants from interfering and obstructing the said way, has been quashed and set aside and the suit filed by the plaintiffs has been dismissed.

2. What is material to note is that the suit is based upon an easement. A perusal of the plaint in Regular Civil Suit No.90/2012, however, would indicate, that the pleadings in respect of the easement alleged are only found in para 4 of the plaint and except for a solitary word that the plaintiffs have an easementary right of way for cultivation of their land there is no other pleading on record

to substantiate this plea. The written statement of the defendants denies the existence of any easement and any use of the way as claimed in the plaint. Though a Commissioner was appointed by the learned Trial Court and the report of the Commissioner is at Exh.51, a perusal thereof, would indicate, that it is an incomplete report as it does not indicate how the land of Survey No.76 was approached through the boundary between the lands of Survey Nos.75/1, 75/2 and 75/3, on the one hand and the boundaries of Survey Nos.73 and 74 on the other hand. The Commissioner, himself in his report at Exh.51 indicates, that in the land of Survey No.75/3 there were orange trees aged 15 years standing and in Survey No.74 there was a crop of cotton standing. Though he records that at a distance of 3 to 4 feet from the orange trees in Survey No.75/3, which are 15 years old again there are orange trees which are one year old, the same however does not clarify the situation. The Commissioner has been examined as PW-6 at Exh.99. His examination-in-chief also does not clarify the situation at all. On the contrary, in his cross-examination he admits that though in the Commissioner writ it was directed that the boundaries of Survey Nos.74 and 75 were to be mentioned, however, the report of the Commissioner at Exh.51 does

not indicate the boundaries between Survey Nos.74 and 75. He further admits that he has not measured any field when he had gone to inspect the spot. He further admits that the road which is indicated in his report at Exh.51 ends at line “E, F” and thereafter he does not know where the road has gone forward. It is material to note that the plaintiffs claim right over the properties which are part and parcel of Survey No.76 and lands thereafter. On behalf of the plaintiffs eleven witnesses have been examined and on behalf of the defendants two witnesses have been examined.

3. A perusal of the judgment of the learned Trial Court does not indicate the consideration of the evidence of the witnesses, on the contrary, it merely goes upon a presumption that the user of the word “since long” by the plaintiffs, would indicate the establishment of the easement. It is also material to note that there is no averment in the plaint that the user of the alleged way was enjoyed by the plaintiffs, for the last 20 years without interruption as a matter of right as an easement peacefully and openly. The evidence of the plaintiffs’ witnesses also does not speak anything in this regard with any ascertainable clarity. That being the position, it was not permissible for the learned Trial Court to have decreed the suit

merely on the basis of a presumption by relying upon the report of the Commissioner, which also did not mention that the open space as indicated therein said to be a so-called road to have indicated any approach to the lands of the plaintiffs. In fact, in para 16 while answering issue no.2 the learned Trial Court himself records that the pleadings are vague and there is no mention that the plaintiffs were using the alleged way as an easement since last 20 years without an interruption, however, considering the dictum of the Hon'ble Apex Court in ***Ram Sarup Gupta (dead) by L.Rs. Vs. Bishun Narain Inter College and others, AIR 1987 SC 1242***, that the pleadings have to be liberally construed, the requirement of pleadings and establishing an easement appears to have been done away. The learned Trial Court also observed that there was an alternate way available to the plaintiffs, which they were in fact using with the consent of the owners of the lands through which the alternate way was passing. He however ignores the alternate way on the plea that the question of any alternate way would arise when there is an easement of necessity, failing to appreciate that even for establishing an easement by way of prescription under Section 15 of the Indian Easements Act, 1882 there have to be pleadings as well as proof on record.

4. A perusal of the judgment of the Appellate Court on the other hand indicates that it has succinctly considered the evidence led on record by analyzing the evidence of PW-3, PW-4, PW-6, PW-7, PW-11 and so also of plaintiffs' witness Nandkishor Lekurwale, all of whose evidence indicates that the documents which they were relying upon to contend that there was right of way did not indicate so. The evidence of the Commissioner and the Commissioner's report have also been duly considered by him in para 18 by rightly observing that the way between field Survey Nos.74 and 75/3 is not extended to field Survey Nos.76, 78 and 79. There are also no revenue entries in the revenue record recording any right of way as alleged.

5. I therefore do not see any substantial question of law made out so as to enable me to interfere with the well reasoned judgment of the learned Appellate Court for the reasons stated above. There is no merit in the appeal. The second appeal is accordingly dismissed. No order as to costs.