

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

**SECOND APPEAL NO. 25 OF 2016**

1. Sau. Sunita Suresh Ghatole,  
Aged about 43 years, Occ: Cultivator,  
R/o Wadegaon, Post : Kati, Tq. Warud,  
District : Amravati.
2. Marotrao Govindrao Ghatole,  
Aged about 74 years, Occ: Cultivator  
R/o. Wadegaon, Post : Kati, Tq. Warud,  
District : Amravati.
3. Sukhdev Namdev Digraskar,  
Aged about 78 years,
4. Wasudev Namdev Digraskar,  
Aged about 80 years,
5. Ajabrao Gulabrao Sonare,  
Aged about 62 years,
6. Sudhakar Akaramji Deshmukh,  
Aged about 60 years,
7. Pralhad Gulabrao Sonare,  
Aged about 55 years,
8. Mahadev Gulabrao Mangrulkar,  
Aged about 56 years,
9. Suresh Gulabrao Mangrulkar,  
Aged about 54 years,

10. Devidas Suryabhan Bansod,  
Aged about 52 years,
11. Shriram Tukaram Mangrulkar,  
Aged about 52 years,
12. Dhanraj Gulabrao Ghatole,  
Aged about 57 years,
13. Mahadev Govindrao Bhad,  
Aged about 72 years,

R.Nos. 3 to 13 all cultivators and  
R/o Wadegaon, Post Kati, Tq.  
Warud, Dist. Amravati.

.... **APPELLANTS.**  
(Org. Deft. Nos.4 to 16)

// **VERSUS** //

1. Sheshrao Dhanuji Bhonde,  
Aged about 56 years, Occu: Agriculturist,  
R/o Wadegaon, Post Kati, Tq. Warud,  
District Amravati.
2. Babarao Dhanuji Bhonde,  
Aged about 48 years, Occ. Agriculturist,  
R/o Wadegaon, Post Kati, Tq. Warud,  
Dist. Amravati. (Org. Plaintiff 1 & 2)
3. State of Maharashtra, through  
Collector, Amravati, Dist. Amravati.
4. Taluka Inspector, Land Record,  
Office at Warud, Tq. Warud,  
Dist. Amravati.

5. Tahsildar, Warud, Office at Warud,  
Tq. Warud, Dist. Amravati.

(Org. Deft. 1 to 3)

.... **RESPONDENTS.**

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Shri Abhay Sambre, Advocate for Appellants.

Shri C.F.Bhagwani, Advocate for the Respondent No.1.

Ms Hemlata Jaipurkar, A.G.P. for Respondent Nos. 3 to 5.

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**CORAM :**         **ANIL S. KILOR, J.**

**DATE OF RESERVING THE JUDGMENT**         **: 18/11/2021**

**DATE OF PRONOUNCING THE JUDGMENT** : **22/03/2022**

**JUDGMENT :**

1.           The learned Principal District Judge, Amravati, while reversing the judgment and decree dated 4<sup>th</sup> March 2010 passed by the learned Extra-Joint Civil Judge Senior Division, Amravati in Regular Civil Suit No. 268 of 1997, allowed the suit for declaration and perpetual injunction, vide judgment and decree dated 14<sup>th</sup> September, 2015 passed in Regular Civil Appeal No. 60 of 2010.

2.           The brief facts of the present case are as follows: (The parties are referred as per their status before the trial Court.)

It is the case of the plaintiffs that they are the owners and possessors of land Gat No.39, admeasuring about 1H. 99R. Out of this agriculture land, 0 H 12 R is Potkharab. This land is purchased by the plaintiffs in the recent past. They have filed a map drawn by village Talathi of Wadegaon of this field along with plaint, showing situation of the field.

3. It is further the case of the plaintiffs that when the field was purchased by them, the approach road to the field bearing Gat Nos.71, 72 and onwards is shown from the southern side of the field of the plaintiffs i.e. Gat No.39. This approach road was in use of the villagers, when land Gat No.39 purchased by the plaintiffs. The villagers used to use said road from Rajora–Waghala till Gat No.39 and thereafter, from the southern boundary of Gat No.39. This way was continued to be in use even after plaintiffs purchased the said land.

4. The plaintiffs have alleged that besides that an application was preferred before Tahsildar, Warud by one Marotrao

Govindrao Ghatole, owner of agriculture land Gat Nos.71/1 A and 73. The said application was registered as Revenue Case No.LEN/39/5/ Wadegaon/96-97. The said application was preferred for getting approach road to the field of plaintiffs as shown in the Revenue Record and it was contended that the road, which is under use from the field of the plaintiffs is not convenient for him. Thereupon, Tahsildar, Warud called of Revenue Record to ascertain the way through the field Gat No.39 of the plaintiffs including total map of Gawthan of Mauje Wadegaon, Thiphan Utara. So also, the map of entire old survey No.20. The Tahsildar, after perusing these documents, passed order thereby directing the Talathi to inspect the spot and submit his report within the stipulated period. However, in the meantime, Tahsildar himself visited spot and as per map, the road was made clear through Gat No.39 and said road is as shown in the map of the plaint from A-D. The plaintiffs were required to sustain loss because they were required to remove about 11 trees of oranges and other trees to clear the approach road shown by Tahsildar through the land of the

plaintiffs. The plaintiffs did not resist the same because they were inclined to grant much less allow any approach road to pass through their field. They have alleged that as soon as the way was made clear as shown in the map by letters A-D in presence of villagers and party to the application before the Tahsildar, apparently the dispute in the revenue application before Tahsildar was settled. But, for one or other reason, the pendency of the application remained with the office of Tahsildar.

5. According to plaintiffs, subsequently thereof they applied to appropriate revenue authority for getting measurement of their agriculture land Gat No.39, deposited the fees of measurement and thereupon, the defendants No.2's officer viz. K.M. Bhadke had measured the field of plaintiffs and drawn a map. They have alleged that the said map drawn by said officer is erroneous as it has shown encroachment of the plaintiffs in Gat No.40. As well as the way which is shown in the Revenue Record and which has been made free on application of villagers in Revenue Case by the order of Tahsildar has been shown to be

totally different in said map drawn on 01/04/1997 the said road has been shown by letter A, D, F. They have alleged that as such, two roads shown through the field of the plaintiffs one is made free by the order of Tahsildar and other which has shown by the Measurer in recently map drawn on 11/04/1997.

6. They have alleged that some of the villagers taking disadvantage of this false and incorrect map, applied before the Tahsildar thereby claiming approach road which has been shown in the map drawn by the Measurer and created complications. They have alleged that the approach road through the field of the plaintiffs is from the corner point of Gat No.36 till the point D as shown in the map which was made free by the order of Tahsildar. However, on application from some of the villagers, Tahsildar has orally asked these plaintiffs to remove the obstructions and make free the approach road as shown in the map of Measurer. They have alleged that in the circumstances, it is an absolute illegal act on part of Tahsildar to allow the villagers to pass through the way shown in the map dated 11/04/1997. The plaintiffs have further alleged that

the description as is given by the Measurer is incorrect and therefore, acting upon said map likely to cause **electoral** loss to the plaintiffs. They will require to remove their 41 orange plants coupled with three plants of teak wood aged about 3 years to make free the approach road shown in the map dated 11/04/1997. They have further alleged that so also, their land shall be divided into pieces and as such, they would not be in a position to cultivate their land properly and thereby, shall suffer irreparable injury. Lastly, they have alleged that map drawn by Measurer dated 11/04/1997 is totally incorrect, against Revenue Record and as such, cannot be implemented. Therefore, the plaintiffs have filed this suit for the reliefs of declaration and perpetual injunction as stated earlier.

7. The defendant Nos.4 to 16 added as necessary party on their own application Exh.23 under Order 1, Rule-10 of CPC by an order dated 07/08/1997. The defendants have resisted the suit of plaintiffs by filing their Written Statement at Exh.41. According to them, they are owners of land Gat No.71/2A, 71/1, 85/2, 69, 47/1, 135, 121, 180 and 119 respect. of village Wadgaon, Tq.

Warud District Amravati. According to them, all the lands aforesaid Gat Nos. as well as plaintiffs land Gat No.39 are the parts of original land survey No.20. The said survey No.20 and owner of the portion of the land out of said survey No.20 has been renumbered as Gat numbers under the scheme of Maharashtra Land Prevention of Fragmentation and Consolidation Act.

8. They have contended that the approach road shown in the map drawn on 27/03/1997 and verified on 11/04/1997 is existence since the year 1867 and was in use by erstwhile owner of land survey No.20, as well as owner and predecessor of the land of defendants Gat Number. They have contended that the plaintiffs have purchased the land Gat No.39 just three years ago by a registered sale deed dated 07/07/1993 from one Pralhad who had purchased the same from Wasudeo M. Thakre by registered sale deed dated 25/06/1989. They have contended that the approach road running through Gat No.39 was running horizontally adjoining to common boundaries of Gat Nos.39 and 43 and straightway used to touch on western side of Warud Haterna road.

They have further contended that previous owner Pralhad had slightly bifurcated the said approach road of the defendants. However, the bifurcation was being slight not causing inconvenient to the defendants to use said road. However, after purchasing the land by the plaintiffs, they had bifurcated the way to the southern side adjoining to Gat No.40 and thereby, every year who is the same to the south. That is the way was bifurcated to the south, public had to take the turn with the vehicles and bullock-carts not even the plaintiffs were allowed the defendants and others to use said road by allowing the water flow on this way. Therefore, the defendants were compelled to file application before the Tahsildar for the clearance of the way.

9. They have contended that the application was preferred to Tahsildar to clear existing approach way through the field of the plaintiffs which exists since it exists from the year 1867. They have never applied to the Tahsildar to give and clear any other new approach way through the field of the plaintiffs. They have contended that besides that the appellant and Measurer who has

drawn first map dated 11.03.1997 showing the across way through the field of the plaintiffs and also extending through the land Gat No.37 and 38 of defendant Nos. 4 and 5. They have contended that there was never such approach way at any point of time shown in the said map. So also, there was never at any point of time approach way through the field of defendant Nos.4 and 5. Therefore, the defendant Nos.4 and 5 by their additional Written Statement Exh.37 put-forth counter claim to declare that there is approach way in and through their land Gat No.37 and 38 and declare that fare whether way is through Gat No. 39 as per survey settlement of survey No.20 according to the map on left page of the year 1867 which is also shown as per map drawn on 27.03.1997 by the defendant No.3.

10. Similarly, the defendant Nos.6 and 7 have also filed their additional Written Statement at Exh.42 and put-forth their counter claim for recovery of possession of portion of their land admeasuring 13 R out of Gat No.40 encroached upon by the plaintiffs. The said encroachment of the plaintiffs over their land

Gat No.40 has been shown in the measurement map of the plaintiffs land as well as again in the measurement of their land which was measured on their own application. Therefore, by way of counter claim, they have claimed possession of said encroached portion of land from the plaintiffs.

11. As such, by common Written Statement of all defendants Exh.41, so also, separate Written Statement of defendant Nos.4 and 5 Exh.37 and Written Statement Exh.42 of defendant Nos.6 and 7 by way of counter claim prayed to declare that the fare whether way shown in the map dated 27.03.1997 is in existence and in use by the occupants and the owner of adjoining lands since the year 1867 and the plaintiffs have no legal right to obstruct them from using said approach way and accordingly, prayed to restrain the plaintiffs by perpetual injunction from causing obstruction to them to use said approach way. Thus, they have urged for dismissal of the suit and prayed to allow their counter claim.

12. The plaintiffs have resisted the counter claim of the defendants by filing their Written Statement Exh.86 to the counter claim of defendant Nos.4 and 5 and Written Statement at Exh.48 to the counter claim of defendant Nos.6 and 7. They have denied the counter claim of defendants contending that there was no fare weather way through their land as alleged by the defendants. They have also denied that they have made encroachment over the land Gat No.40 of defendant Nos.6 and 7. They have further contended that the defendants are not entitled to decree of counter claim and urged for dismissal of the counter claims of all defendants.

13. The learned trial Court after scrutinizing and appreciating the oral as well as documentary evidence, dismissed the suit vide judgment and decree dated 4<sup>th</sup> March 2010 passed in Regular Civil Suit No. 268 of 1997. The plaintiff No.1 carried the same in appeal namely Regular Civil Appeal No. 60 of 2010, which came to be allowed by setting aside the judgment and decree passed by the trial Court, vide judgment and decree dated 14<sup>th</sup> September 2015, which is impugned in this appeal.

14. This Court, while issuing notices in this appeal, on 23<sup>rd</sup> February 2017, framed the following substantial question of law:

*“If the facts are proved on the basis of evidence brought on record, then whether the lower Appellate Court has committed an error in reversing the finding of the Trial Court only on the ground that the authorities under the State Government, who were parties to the suit, have not come forward with such a plea?”*

15. I have heard the learned counsel for the respective parties.

16. Shri Sambre, learned counsel for the appellants submits that the learned first appellate Court while reversing the well reasoned judgment and decree passed by the trial Court, has not dealt with all the points on which the findings were recorded by the learned trial Court and in a cryptic manner the judgment and decree of the trial Court has been reversed.

17. It is submitted that the learned First Appellate Court wrongly shifted the burden of proving the case of the plaintiff by observing that it is for the defendants No.8 to 16 to establish right

of way through the field of the plaintiffs. It is pointed out that the whole findings are based on non-discharge of such burden by the defendants. It is therefore, submitted that the impugned judgment and decree is erroneous.

18. The learned counsel for the appellants has drawn attention to the statement of the plaintiff recorded by this Court in the order dated 16<sup>th</sup> January 2020, wherein the plaintiffs have shown their readiness to give a strip of land admeasuring 0.13 R adjacent to the strip as shown in Exh.74 in a East-West direction, which could form the approach way in place of the strip of the land as shown by the orange strip in Exh.74. It is further pointed out that the appellant did not act upon the said statement and for not complying with such statement an evasive reply was given by way of an affidavit.

19. Per contra, Shri Bhagwani, learned counsel for the plaintiff No.1/respondent No.1 supports the judgment and decree passed by the learned First Appellate Court, which is assailed in the

present appeal. It is submitted that the learned First Appellate Court has rightly reversed the judgment and decree of the trial Court and hence, according to him, no interference is required.

20. To consider the rival contentions of the parties, I have perused the record and both the judgments and decree passed by the Courts below.

21. The Hon'ble Supreme Court of India in a case of *U. Manjunath Rao ..vs.. U. Chandrasekhar & anr.*, reported in **(2017) 15 SCC 209** has held thus:

*“7. It is well settled in law that the reason is the life of law. It is that filament that injects soul to the judgment. Absence of analysis not only evinces non-application of mind but mummifies the core spirit of the judgment. A Judge has to constantly remind himself that absence of reason in the process of adjudication makes the ultimate decision pregnable. While dealing with the first appeal preferred under Section 96 CPC, the Court in *State of Rajasthan v. Harphool Singh* took note of the exception to the judgment passed by the first appellate court by observing that there was no due or proper application of mind or any critical analysis or objective consideration of the matter, despite the same being the first appellate court.*

8. *A three-Judge Bench in Santosh Hazari v. Purushottam Tiwari*, while discussing about power of the first appellate court, has opined that it is the final court of facts and, therefore, pure findings of fact remain immune from challenge before the High Court in second appeal. It is necessary to note that the Court had also held thus (SCC p.188, para 15):

“15. .... The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi v. Bijendra Narain Choudhary*). We would, however, like to sound a note of caution. Expression of general agreement with the

*findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. ...”*  
[Emphasis supplied]

9. The aforesaid passage has to be appositely understood. While reversing the finding and conclusions of the trial Court, the duty of the first appellate court is different than while affirming a judgment. Be it stated, the Court has also held that it is a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law is a substantial one. In the said case, the Court, after referring to the decision in *Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh*, has further opined that: (*Santosh Hazari case*, SCC p. 189, para 15)

“15... while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. We need only remind the first appellate courts of the additional

*obligation cast on them by the scheme of the present Section 100 substituted in the Code. ...”*

*The purpose of referring to the said decision is to highlight the responsibility cast on the first appellate court or a court hearing the first appeal.*

*10. In Madhukar v. Sangram, the Court noticed that the High Court has framed two questions and thereafter had set aside the judgment and decree of the trial court and allowed the first appeal. Discussing about the duty of the first appellate court, the Court had referred to the decision in Santosh Hazari and reiterated the principles stated therein.*

*11. In H.K.N. Swami v. Irshad Basith, the two-Judge Bench ruled: (SCC p.244, para 3)*

*“3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title. The order of the High Court is cryptic and the same is without assigning any reason.”*

*The said principle has been reiterated in SBI v. Emmsons International Ltd. Thus, in the first appeal the parties have right to be heard both on the questions of facts as well as on law and the first appellate court is required to address itself to all the aspects and decide the case by ascribing reasons.*

12. In this context, we may usefully refer to Order 41 Rule 31 CPC which reads as follows:

**“ORDER 41**

**APPEALS FROM ORIGINAL DECREES**

**31. Contents, date and signature of judgment.-**

*The judgment of the Appellate Court shall be in writing and shall state—*

*(a) the points for determination;*

*(b) the decision thereon;*

*(c) the reasons for the decision; and*

*(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”*

13. On a perusal of the said Rule, it is quite clear that the judgment of the appellate court has to state the reasons for the decision. It is necessary to make it clear that the approach of the first appellate court while affirming the judgment of the trial Court and reversing the same is founded on different parameters as per the judgments of this Court. In *Girijanandini Devi*, the Court ruled that while agreeing with the view of the trial court on the evidence, it is not necessary to restate the effect of the evidence or reiterate the

*reasons given by the trial court. Expression of general agreement with reasons given in the trial court judgment which is under appeal should ordinarily suffice. The same has been accepted by another three-Judge Bench in Santosh Hazari. However, while stating the law, the Court has opined that expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage to be adopted by the appellate court for shirking the duty cast on it. We are disposed to think, the expression of the said opinion has to be understood in proper perspective. By no stretch of imagination it can be stated that the first appellate court can quote passages from the trial court judgment and thereafter pen few lines and express the view that there is no reason to differ with the trial Court judgment. That is not the statement of law expressed by the Court. The statement of law made in Santosh Hazari (supra) has to be borne in mind.”*

22. It is thus, clear from the above referred judgment of the Apex Court that the appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First Appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for re-hearing both on question of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by

reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. It is further clear that while reversing a finding of fact, the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different findings. This would satisfy the court hearing a further appeal that the first Appellate Court had discharged a duty expected of it.

23. In the teeth of above referred well settled principles of law, it is necessary to see whether while reversing the judgment of the trial Court, whether the learned first Appellate Court has come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding.

24. After going through the judgment passed by the trial Court, it will be seen that while dealing with the issue namely which was the approach way through the land of plaintiff for adjoining land owners and which map is correct showing the

disputed question of point and approach way, the learned trial Court has recorded its findings and reasons from para No.17 onwards, some of the material findings recorded by the trial Court are as follows :

- a) The learned trial court has observed that the plaintiffs have not pointed out exact position as to how the map under challenge was not correct and valid.
- b) The onus of proving the map is accurate lies on the party to produce it and the map must be proved by the person who has prepared it.
- c) The plaintiffs have not examined surveyor and the defendants examined him.
- d) The evidence given by the Surveyor supports that he has prepared the map showing accurate position. There is nothing on record to disbelieve his evidence. On the contrary, various documents produced on record support that there exists approach through the land of the plaintiff as shown in the map Exh.70.

- e) P.W. 1 Sheshrao Bhonde has admitted that land Gut Nos. 30 to 41 are parts of original land survey No.20. He has also admitted that there exists approach way through their field and till the date on which the plaintiffs have purchased land gut No.39, the adjoining land owners were using said approach way and even, after purchasing the land for some time they were using same. Moreover, vital evidence in this matter is of documentary evidence. Exh.71 is the village map, Exh.72 is a Tiffan extract of Survey No.20 and Exh.110 is certified copy of left hand page of measurement book of the year 1968.
- f) The appellant's witness P.W. No.1 has not denied that there was no such approach road. According to the plaintiffs, they have purchased said land in the year 1993. Therefore, P.W. No.1 has given answer that he does not know whether the said road was in existence from the year 1968 and it was in exists till they purchased the said land. Moreover, it has also come on record that the suit land Gut No.39 was purchased by the plaintiffs from earlier owner from Pralhad Suratlal Barde. The said Pralhad Barde had also purchased said land Gut No.39 from one Shri Thakre. The P.W. No.1 has also admitted that in the sale deed in between Shri

Thakre and Barde approach road through the field Gut No.39 has been shown. He has further admitted that whenever there is a road within the field is always shown in the Sale-Deed. It is pertinent to note that the sale deed in between plaintiffs and Pralhad Barde of Gut No.39 shall be in the custody of the plaintiffs being purchaser of the said land. But they have not produced the sale deed. Besides that, P.W. No.1 has admitted the approach road shown in the sale deed Exh.90 through field Gut No.39 is correct. Thus, it proves that there exists approach road as shown in the map Exh.70 in faint blue colour is in existence since the year 1868.

- g) The measurement was carried in presence of all persons including plaintiffs. Moreover, said measurement was carried on application of the plaintiffs.
- h) In said map encroachment of 13 R of the plaintiffs over Gut No.40 has been shown in yellow colour. The learned counsel for the plaintiffs submitted that while taking measurement, the Surveyor D.W. No.3 was having no agreed map and in absence of such agreed map the measurement taken by D.W. No.3 and map Exh.70 prepared thereon is not correct.

- i) The P.W. No.1 has admitted in his cross-examination that as dispute about approach road was started, the Tahsildar directed all adjoining land owner to get measured their lands. He has also admitted that accordingly, owner of land Gut Nos. 37, 38 and 40 have got measured their lands. D.W. No.3 Surveyor has also admitted that he had measured land Gut No.38, 37 and 40 respectively on 26/03/1997, 25/03/1997 and 28/03/1997. He has proved the measurement maps of all these Gut Numbers which are at Exh.115, 116 and 164 respectively. Thus, it proves that most of the land adjoining to plaintiffs' land were measured by the same surveyor who had measured the land of the plaintiffs. The measurement of all these land carried within 4 days i.e. from 25/03/1997 to 28/03/1997 including measurement of plaintiffs' land dated 27/03/1997. Thus, it proves that D.W. No.3 Surveyor has made measurement of all these land one after another.
- j) This relocated approach road shows totally different than the earlier existing approach road shown in map Exh.70. The learned advocate for the defendants submitted that the existing road since the year 1867 was shown in map Exh.70 in measurement dated

27/03/1997. Besides that, the plaintiffs have not allowed to the adjoining owner to use said approach road. Therefore, the villagers preferred application to the Tahsildar to direct the plaintiffs to clear said approach road and allow the adjoining owner to use said approach way. They have not claimed another way. Besides that, the plaintiffs in collusion with said surveyor had got relocation of approach road shown in the map Exh.74. The P.W. No.1 has admitted in cross-examination that the adjoining owners have preferred application to the Tahsildar requesting to remove the obstructions of the plaintiffs to use said road by villagers. He has further specifically admitted that they have not asked to relocate new approach way. The P.W. No.1 has also admitted that he has also not applied to relocate the demarcate new approach way. Therefore, it appears that this approach way shown in Exh.74 in revised map dated 26/06/1997 is prepared and shown by the Surveyor in collusion with the plaintiffs. In that regard complaints were made by the villagers against the Surveyor. Moreover, the Surveyor has admitted in his evidence that there was no order in writing either from the Tahsildar or TILR to relocate new approach way. He has given answer that he had

shown said relocated approach was in the map as per oral instructions of Tahsildar and other staff who were present at the time of measurement. Therefore, the said relocated approach way shown in Exh.74 is the act of Surveyor is without any order from the Competent Authority.

- k) Thus, the plaintiffs have failed to prove that there was approach road by southern boundary of land Gut No.39 as shown in rough map submitted along with the plaint. The plaintiffs have also failed to prove that measurement map Exh.70 is incorrect and against Revenue Record. So also, defendant Nos. 4 and 5 proved that fare weather way is not in existence through Gut Nos. 37 and 38 and also proved that the straightway as shown in Exh.17 are in use by adjoining land owners since long i.e. from 1867. They have also proved that relocated way shown in map dated 26/06/1997 i.e. Exh.74 is incorrect and invalid. The defendant Nos. 6 and 7 have also proved that the plaintiffs have made encroachment to the extent of 13 R land out of Gut No.40. Therefore, the learned trial Court answered the Issue Nos. 1 and 2 in the negative and Issue Nos. 5, 6, 7 and 9 in the affirmative.

25. In the backdrop of above referred findings and the reasonings recorded by the trial Court, if we look at the findings recorded by the learned first Appellate Court, I have no hesitation to say that in a cryptic manner the judgment of the trial Court has been reversed by the learned first appellate Court. Though the plaintiffs have filed suit for declaration that the map drawn on 27/03/1997 verified on 11/04/1997 by the office of defendant No.2 of measurement of Survey No.20, Gut No.39 of Mouza : Wadgaon, Taluka : Warud in measurement Case No.244 of 1996 is incorrect and against the revenue record, the learned first appellate Court has observed that as the defendant Nos. 8 to 16 are claiming right of way through the field of the plaintiff, it is for them to establish such rights, as such the burden was shifted by the learned first appellate Court over the defendant Nos. 8 to 16.

26. Similarly, the learned first Appellate Court by discarding the map Exh.70, has relied upon Exh.74 without giving sufficient reasons for reversal of the findings recorded by the learned trial Court that the said map Exh.74 was prepared by the

Surveyor in collusion with the plaintiffs and in that regard a complaint was also made by the villagers against the Surveyor. Moreover, the Surveyor has admitted in his evidence that there were no order in writing either from Tahsildar or TILR to relocate new approach way. The learned trial Court has further observed that map Exh.74 is contrary to the legal provisions and beyond the powers of the revenue authorities.

27. Despite the above referred findings of the learned trial Court, the learned first appellate Court, without justifying why Exh.74 be relied upon and not Exh.70, discarded map Exh.70 and reversed the judgment the trial Court relying upon the map Exh.74.

28. From the judgment of the learned first appellate Court it can also be said that the learned first appellate Court has not even touched many of the findings of fact recorded by the learned trial Court, while reversing the judgment and decree of the trial Court. It can therefore, be said that the reasoning recorded by the first

appellate Court do not reflect its conscious application of mind on all the issues arising along with the contentions put forth and pressed by the parties for decision.

29. In the light of the findings recorded herein above and in view of the fact that the learned first appellate Court has failed in its duty cast upon it as a first Appellate Court. Being first appeal is a valuable right of the parties, I am of the considered opinion, that present matter needs to be referred back to the learned first appellate Court for a decision afresh.

30. Accordingly, I have answered the substantial question law and pass the following order:

- i) The appeal is partly allowed.
- ii) The judgment and decree dated 17/04/2010 passed by the Principal District Judge, Amravati in Regular Civil Appeal No.60 of 2010 is hereby quashed and set aside.

- iii) The matter is referred back to the Principal District Judge, Amravati for deciding it afresh on restoration of the Regular Civil Appeal to its original number.
- iv) The learned Principal District Judge, Amravati is requested to decide the appeal expeditiously and in any case not beyond 31<sup>st</sup> December 2022.
- v) Record and Proceedings be sent back to the First Appellate Court, forthwith.

The Second Appeal stands **disposed of** accordingly. No order as to costs.

In view of disposal of the Second Appeal, the Civil Application(s), if any, shall stand **disposed of**.

( ANIL S. KILOR, J )

*RRaut...*