

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

**SECOND APPEAL NO. 188 OF 2022
WITH
INTERIM APPLICATION NO. 1345 OF 2022
IN
SECOND APPEAL NO. 188 OF 2022**

Pramod Mallappa Kodale and ors. Appellants
v/s.
Prabhavati Basavraj Kodale and ors. Respondents

Mr. Akshay Kapadia for the Appellants.
Mr. A.S. Kulkarni for Respondent Nos.1 to 5.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th OCTOBER, 2023.

P. C. :-

. The Appellants herein have challenged the judgment and order dated 04/12/2021 passed by the learned District Judge, Solapur in Regular Civil Appeal No.224/2019. By the impugned judgment, the learned District Judge allowed the Appeal and set-aside the judgment and decree dated 26/09/2019 in Civil Suit No.220/2015 and consequently decreed the suit and restrained the Respondent herein from interfering and/or obstructing the access/passage passing from Gat No.60 from passage delineated in the sketch annexed to the plaint.

2. The dispute is in respect of 12 meter wide passage between Gat No.360 and Gat No.361. The Respondent Nos.1 to 5 are in possession of land under Gat Nos.355, 356/1, 356/2, 357/2 and 358 of village Valsang, Dist. Solapur. These Respondents, who shall be hereinafter referred to as 'the plaintiffs', claimed that the said passage passes through Gat No.360 and that they have been using the said passage/access to go their property. The Plaintiffs filed the suit for perpetual injunction with a grievance that the Appellants herein were obstructing and preventing them from using the said passage.

3. The Respondent Nos.6 and 7 who are the owners in possession of the Gat No.360, admitted that the said access passes through their property and further admitted that the Plaintiffs are using the said passage. The Appellants herein denied the existence of the passage between Gat Nos.360 and 361. They further denied having obstructed the Plaintiffs from using the access passing through Gat Nos.360.

4. The learned Judge framed the issues and upon considering the evidence on record held that the Plaintiffs had failed to prove the existence of the passage and further that the Appellants herein had obstructed them from using the same and hence dismissed the suit.

Being aggrieved by the said judgment, the Plaintiffs preferred an appeal under Section 96 of the CPC.

5. The learned Judge observed that the owners of Gat No.360 have admitted that the 12 feet wide passage passes through their property and that the Plaintiffs have been using the same. The learned District Judge further held that the Appellants herein have also admitted the existence of the said passage and in the light of the said admission, it was not necessary for the Plaintiffs to adduce any further evidence to prove the existence of the passage. The learned Judge also took note of the fact that the Appellant has admitted in his cross-examination that the said passage does not pass through his property and that the same does not affect his property and further that the Plaintiffs have not interfered with their property. It is in the light of these admissions that the Appellate Court held that the suit passage passes through the property under Gat No.360 and that the Appellants have no right to interfere and/or obstruct the Respondents from using the said passage. Being aggrieved by this order, the Appellants (Defendant Nos.1 to 3) have filed this Appeal under section 100 of CPC.

6. The learned counsel for the Appellants submits that the Appellate

Court has erred in holding that the subject passage passes through Gat No.360. Learned counsel for the Appellants submits that the Plaintiffs have failed to prove existence of the road and as such, the Appellate Court has erred in holding that the suit passage passes through Gat No.360.

7. The records indicate that the Plaintiffs had specifically averred that the 12 meter wide passage/access passes through Gat No.360. There is no specific denial of these pleadings. The Respondent Nos.6 and 7 who are the owners of Gut No.360 have admitted that the said passage passes through their property and that the same is being used by the Plaintiffs. The Appellants herein have also admitted in their cross-examination that the said passage running in southwest direction is shown in the village map. He has also admitted that the owners of the Survey No.360 have allowed the Plaintiffs to use the said access. He admits that he is not concerned with the said passage and that the Plaintiffs have not interfered in his property under Gat No.361 and further that he has no right to interfere with the access/passage provided to the Plaintiffs by the owners of Gat No.360. In view of these specific admissions, the Appellate Court has recorded a finding that the Appellants herein have no right to obstruct the Plaintiffs from

using the said access. The finding of fact recorded by the Appellate Court is based on the evidence on record. No substantial question of law is involved. Hence, the Appeal is dismissed.

8. Interim Application stands disposed of in view of dismissal of the Appeal.

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(SMT. ANUJA PRABHUDESSAI, J.)