

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

**SECOND APPEAL NO.892 OF 2017
WITH
CIVIL APPLICATION NO.1876 OF 2017**

Sanjay Parshuram Mhatre And Anr.	...Appellants/Applicants
<i>Versus</i>	
Sambhaji Shankar Mhatre And Ors.	...Respondents

Ms. Sangeeta Salvi i/b. Ms. Priyanka Thakur for Appellants/Applicants.
Mr. Ashok Tajane a/w Y. G. Thorat, Mr. Sambhaji Mhatre for
Respondent No.1.
Ms. Priyanka Bhadrashete i/by N. N. Bhadrashete for Respondent No.3.

**CORAM : VINAY JOSHI, J.
DATED : 11 SEPTEMBER 2023**

P.C. :

1. Heard.
2. This Appeal raises a challenge to the concurrent findings recorded by both the Courts below. Initially, the respondent/plaintiff has filed Regular Civil Suit No.156 of 2000 seeking declaratory relief of easement and perpetual injunction. The parties led evidence before the Trial Court. Having regard to the nature of evidence, the Trial Court held that the plaintiffs' land is situated at upper level and the land of defendants is to the lower level and on the basis of oral admissions, it has been held that the drain water flows from east to west from plaintiffs side which covers the defendant's properties.

3. It has been established on the basis of admissions that the defendants have blocked the natural flow of water by obstructing the easement and thus the Trial Court has granted a declaratory relief and consequential relief of injunction.

4. In first appeal being Civil Appeal No.64 of 2009, the First Appellate Court has re-appreciated the evidence and also gone into factual aspect i.e. situation of both the properties and natural slope for flowing of the water. Considering the admissions given by parties, it has been held that there is a slope from plaintiffs' side and water flows to the defendants property. The First Appellate Court, has also considered the provisions of Section 7 of the Easement Act pertaining to the right of owner to flow water from his land through the adjacent land.

5. The maintainability was also considered. The respondents/ plaintiffs have produced a certified copy of permission granted to erect a compound wall. Considering all these aspects, no substantial question of law arises in this Second Appeal. Hence, the Second Appeal stands dismissed. The Civil Application also stands disposed of.

(VINAY JOSHI, J.)