

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

**917 SECOND APPEAL NO. 389 OF 2022
WITH
CIVIL APPLICATION NO. 3815 OF 2021
IN WP/1428/2019
WITH
CIVIL APPLICATION NO. 6054 OF 2024
IN SA/389/2022
WITH
WRIT PETITION NO. 1428 OF 2019**

**MACHINDRA GULABRAO DHAWALE THROUGH HIS GPO
RAOSAHEB**

VERSUS

DHANANJAY BANSI DHAWALE AND ANOTHER

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Advocate for Appellant : Mr. A.S. Jadhav

AGP for Respondents: Mr. V.S. Badakh

Advocate for Respondent Nos. 1 and 2 : Mr. N.C. Garud

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : August 23, 2024

ORDER:-

1. Heard rival submissions.
2. Though the Second Appeal is fixed for admission along with the pending Writ Petition No. 1428 of 2019, but the learned counsel for the appellant on instructions, submits that necessary permission to withdraw the Second Appeal be granted to the appellant with liberty to initiate fresh proceeding under Section 143 of Maharashtra Land Revenue Code 1966 to claim fresh road to approach his land.

3. The record shows that the present Second Appeal is filed against the concurrent findings of both the learned Courts below that there is no easmentary road available to the appellant/plaintiff to approach his land Gut No. 438 situated at village Halgaon Taluka Jamkhed, District Ahmednagar. Further, it is to be noted that the aforesaid Writ Petition is filed by respondents for challenging the judgments of learned Tahsildar Jamkhed and Sub Divisional Officer Karjat wherein it is held that the appellant is having easmentary road to approach his land.

4. Now, when the appellant is seeking permission to withdraw the Second Appeal for filing fresh proceeding under Section 143 of the Maharashtra Land Revenue Code 1966, the Writ Petition needs to be allowed since it is contrary to the observation of the civil Court that no easmentary road is available to the appellant.

5. Therefore, in the light of submissions made by learned counsel for the rival parties, the permission to withdraw Second Appeal as sought by the appellant is granted with liberty to appellant for filing fresh proceeding under Sections 143 of the Maharashtra Land Revenue Code 1966 for claiming road to approach his land before concerned Tahsildar,

Jamkhed. As such, the Second Appeal filed by the appellant is withdrawn and disposed of.

6. In view of the liberty granted to the appellant as aforesaid, the Writ Petition No. 1428 of 2019 stands allowed in terms of prayer clause (B) only and disposed of.

7. The earlier orders passed by Tahsildar Jamkhed as well as Sub Division Officer, Karjat which are now set-aside, shall not come in the way of learned Tahsildar, Jamkhed while entertaining the proceeding of appellant under Section 143 of the Maharashtra Land Revenue Code, 1966.

8. Liberty is also granted for the current owner of Gut No. 438 to initiate the proceeding under Section 143 of the Maharashtra Land Revenue Code, 1966.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni