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

SECOND APPEAL NO. 30 OF 2009

(Sitabai Bhonduji Raghute Vs. Keshao Pandurang Rathute & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri P.A. Markandeywar, Counsel for the appellant.
Shri U.A. Gosavi, Counsel for respondent no.1.
Shri N.M. Jibhakate, Counsel for respondent no.2.

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CORAM : ANIL L. PANSARE, J.
MARCH 11, 2024.

Heard.

2] The dispute is about right of way to reach Survey No. 339 owned by the appellant. The learned Counsel for the appellant submits that since last about twelve years, the appellant is using the way between Survey No. 341 owned by respondent no.1 and Survey Nos. 336, 337 and 339 openly and without any hindrance or objection to reach her field Survey No. 339. The learned Counsel submits that this way is about 15' in breadth. He further submits that the owners of Survey Nos. 337 and 335 are also using this way to reach their fields.

3] On 19/4/2010, the following order came to be passed :

“Heard the learned counsel for the appellant and the respondents.

The appeal has already been admitted. The appellant has made two prayers in the application No. 80 of 2009. The learned counsel for the respondents submit that they

have no objection if prayer clause no.(ii) is granted. In the circumstances, injunction in terms of prayer clause (ii) against the respondents.”

4] Prayer Clause (ii) of Civil Application No. 80/2009 reads as under :

“ii) In the alternative the applicant may kindly be permitted to use the way over common dhura between S.No.336 and 341 and then S.No.337 and 341 to take her cart bullocks etc. and non-applicants may kindly be restrained from obstructing her in such use.”

5] As could be seen, this arrangement continued for last twelve years. The parties are *ad idem* that the appellant is using this way to approach her field. They are further *ad idem* that purpose will be served if Second Appeal is disposed of by making absolute this order. The way has been identified as ABCD in the map tendered across the bar. The map is taken on record and marked 'X' for identification.

6] In view of above, the Second Appeal is disposed of in terms of prayer Clause (ii) of Civil Application No. 80/2009. The map 'X' shall form part of the decree.

7] Decree be drawn accordingly.

(ANIL L. PANSARE, J.)

Sumit