



Corrected order
Corrections have been carried out in view of speaking to
minutes order dated 25.09.2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 646 OF 2013

Uddhav Ranoba Kale and others .. Appellants

Versus

Prabhakar Prataprao Pangavhane
and others .. Respondents

WITH
SECOND APPEAL NO. 645 OF 2013

Uddhav Ranoba Kale and others .. Appellants

Versus

Prabhakar Prataprao Pangavhane
and others .. Respondents

Shri Shailesh S. Chapalgaonkar, Advocate for the Appellants in both matters.

Ms. Madhaveshwari Mhase, Advocate for the Respondent No. 1 in both matters.

CORAM : SHAILESH P. BRAHME, J

CLOSED FOR ORDER ON : 09.09.2025
ORDER PRONOUNCED ON : 16.09.2025

FINAL ORDER :-

. Heard both sides finally.

2. These second appeals are arising out of R.C.S. No. 413 of 2000 instituted by appellants/plaintiffs for declaration and injunction. The suit was dismissed by the Trial Court and the decree was modified by the lower Appellate Court in R.C.A. No. 132 of 2006 by allowing the appeal partly. Against those findings of facts Second Appeal No. 646 of 2013 is preferred.

3. In the suit referred above, respondents – defendants submitted counter claim of injunction. It was rejected by the Trial Court. Being aggrieved R.C.A. No. 134 of 2006 was preferred, which was allowed partly. Hence Second Appeal No. 645 of 2013 is preferred. By common judgment dated 24.01.2013 appeals were decided by lower appellate court.

4. Appellants are owners of land gut No. 172 and they claim approach road through gut No. 364 belonging to respondents. It is pleaded that it was easement by prescription. The approach road was obstructed by the respondents, which was cause to approach Civil Court.

5. Respondents contested the suit on all counts. The claim of any easementary right is disputed. It is contended that while executing the commission work a road was created which did not exist. The appellants are said to have access from towards west.

6. Both parties led evidence before the Trial Court. The suit

as well as counter claim were dismissed, but equitable relief was granted on certain conditions. Both the parties assailed the judgment of the Trial Court. Lower Appellate Court confirmed the dismissal of the suit as well as the counter claim. The equitable relief was quashed and set aside and appellants are directed to restore the land to the defendants to its original position.

7. Learned counsel Mr. Chapalgaonkar appearing for the appellants submits that both courts below committed grave error of jurisdiction in appreciating the evidence. It is submitted that the oral evidence of the appellants is discarded, whereas that of respondents was accepted without valid reasons. It is submitted that convincing evidence was brought on record to show existence of easement by prescription, which is wrongly rejected. Interpretation of the Commissioners' reports is stated to be substantial question of law. It is submitted that commissioner's report at Exhibit 58 should have been accepted.

8. Per contra, learned counsel Ms. Mhase submits that no evidence is placed on record to indicate any approach road. Appellants failed to prove easement by prescription as contemplated by Sec. 15 of the Easement Act. It is submitted that a road was created at the time of executing the commission. It is further submitted that the reports have no probative value, because commissioners did not step into witness box.

9. I have considered rival submissions of the parties. With the assistance of both the learned counsels, I have gone through the record and proceedings. Initially commissioner was appointed and report was submitted at Exhibit 26. It was found to be of no assistance. Hence commissioner advocate Mr. Hase was appointed, who submitted report at Exhibit 48. He further submitted report at Exhibit 58.

10. Interestingly, the Presiding Officer visited the site and notes of local inspection were prepared and placed on record are at Exhibit 131, along with a sketch. The report and the sketch is referred to by both the Courts below. I have also gone through sketch at Exhibit 131 to comprehend the topography of the lands of the parties, alleged easement and alternate road. The portion EIMF indicates the disputed road, which is passing through gut No. 363. Pertinently, an alternate approach road is noticed towards northern side of gut No. 173 shown by BDHC. The alternate road shown as BDHC is referred by the Trial Court in para No. 16 of the judgment. I have verified the existence of it from Exhibit 131 prepared after local inspection by the Presiding Officer. There is no reason to discard the same. Both the learned counsels did not object the same. When alternate access is available, the claim of the appellants that disputed road is the only access cannot be countenanced.

11. Appellants are under obligation to make out a case of easement by prescription. No revenue record, village map, sale

transaction or reliable material is placed on record indicating existence of easement. There is no evidence on record that the easement as claimed by the appellant was in existence for more than twenty (20) years prior to filing of the suit. Both the Courts below have rightly dealt with the aspect of the matter in holding that the appellants failed to prove easement by prescription.

12. It transpires from record that the commissioner appointed by the Court himself created a road by filling up the pits. That cannot be said to be easement by prescription. I have already observed that appellants have alternate way shown by BDHC, then such a subsequently created way cannot be permitted to be used. Both the Courts below have recorded possible findings of facts, which need no interference.

13. Oral evidence led by the parties is properly appreciated by both the Courts below. They have assigned reasons for discarding the depositions of the appellants' witnesses. The appreciation of facts cannot be gone into in the second appeal. No perversity or apparent illegality is pointed out by the appellants.

14. I find that no substantial question of law is involved in the second appeals. Second appeals are dismissed.

[SHAILESH P. BRAHME J.]