



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

**SECOND APPEAL NO. 413 OF 2023
WITH
CIVIL APPLICATION NO. 9481 OF 2023**

**ASARAM YOGIJI GONDGE AND OTHERS
VERSUS
NARAYAN S/O SITARAM GHULE AND OTHERS**

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Advocate for Appellant : Mr. Ravindra J. Nirmal

CORAM : SHAILESH P. BRAHME, J.

DATE : 16.09.2025

PER COURT :

Heard learned counsel for the appellant.

2. The appellants original plaintiffs, who are non suited by both the Courts below for the relief of injunction, have approached this Court in the present appeal.

3. Appellants' case is that they are owners and in possession of land Gat No. 89. The defendants are occupants of lands in the same vicinity. There is a path way from village Pimpri (Bk.) passing from land Gat nos. 88, 89, 91 and 92 to approach village Nilkanth, which is the only path way. The respondents converted it into cart-way thereby causing damage to the land of the appellant.

4. The suit is contested by the respondents contending that already there existed a cart-way and it was being used since immemorial period. The appellants were obstructing the approach road. The proceedings were required to be taken up before Mamlatdar which ended in direction to the appellants to remove the obstruction.

6. Both parties adduced oral evidence. They produced revenue record, village map, panchnama on record. Both the courts below dismissed the suit. It is concurrently held that the approach road having width of 8.1/4 feet existed.

7. The learned counsel for the appellants submits that both Courts below committed error of jurisdiction. It is submitted that only path way existed, which is being misused by the respondents damaging the property of the appellants. It is submitted that the evidence on record indicates a path way of less than width of 8.1/4 feet. The evidence has not been appreciated in proper manner.

8. There are concurrent findings of facts recorded after appreciation of material on record. The existence of the way from Pimpri (Bk.) to Nilkanth is not disputed. The parties had previous round of litigation before Mamlatdar, which was decided against the appellants. Panchnama at Exh. 53 reveals width of the road as 8.1/4 feet. PW. 1 also admitted the width. The conjoint reading of village map (Exh. 52), panchnama (Exh. 53) indicate width of the road as 8.1/4 feet. It is held by the Courts below on the basis of such evidence that width is more than path way and passing of a cart is possible.

9. I am not being persuaded by the learned counsel for the appellants that there is any perversity or patent illegality. I find that no substantial question of law is involved in the appeal.

10. The Second Appeal is dismissed.

11. Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

mkd/-