

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 216 OF 2025
WITH
CIVIL APPLICATION NO. 1009 OF 2018
IN
SECOND APPEAL NO. 216 OF 2025

Shri. Ravindra Tukaram Ambre ...Appellant

Versus

Mr. Jagannath Krishna Narvekar ...Respondent

Dr. Uday Warunjikar i/b Mr. Sumit Kate, learned Advocate for the Appellant.

Mrs. Anjali N. Helekar i/b Ms. Anu C. Kaladharan, learned Advocate for the Respondent.

CORAM : ASHWIN D. BHOBE, J.
[VACATION COURT]

DATE : 6th JUNE 2025.

P.C. :

1. Heard Dr. Uday Warunjikar, learned Advocate for the Appellant and Mrs. Anjali Helekar, learned Advocate for the Respondent.

2. Appellant, by the present Appeal filed under Section 100 of Code of Civil Procedure, 1908 ("C.P.C." for short), questions the judgment and order dated 18th July 2017, passed by the Ad-hoc District Judge, Ratnagiri in Civil Appeal No. 43 of 2015 (District Court), dismissing the said appeal, as not maintainable.

Factual Matrix :

3. Regular Civil Suit No. 69 of 2010 filed by the Appellant (Plaintiff) against the Respondent (Defendant), before the Court of Civil Judge, Junior Division at Ratnagiri was decreed by judgment and decree dated 17th March 2012.

4. Civil Appeal No. 62 of 2012 filed by the Respondent against the judgment and decree dated 17th March 2012 passed in Regular Civil Suit No. 69 of 2010, was dismissed by the District Court, vide judgment and decree dated 13th June 2013.

5. Second Appeal No. 539 of 2013 filed by the Respondent against the concurrent decrees, was dismissed by this Court on 6th February 2014.

6. Appellant instituted Execution Application No. 8 of 2014 before the Court of the Civil Judge, Junior Division, Ratnagiri (Executing Court), seeking execution of judgment and decree dated 17th March 2012 passed in Regular Civil Suit No. 69 of 2010.

7. By order dated 9th June 2015, the Executing Court allowed an Application at Exhibit-44 filed by the Petitioner in Execution Application No. 8 of 2014 by passing the following order :-

“1. Application partly allowed.

2. J.D. to give road of 10 fts. Width to D.H. as per hand map marked in red color specified as ‘A’ ‘C’ to have access upon suit property.

3. J.D. to give 11 fts. Width road to D.H. at the turns appearing on this road for free passage of Truck.

4. J.D. to comply with the order till or before 10-7-2025 and to bear all of its expenses.

5. D.H. is at liberty to seek justifiable steps for effective execution of this order.

6. Both parties to comply with this order.

7. No order as to cost.”

8. Appellant questioned the order dated 9th June 2015 passed in Execution Application No. 8 of 2014 before the District Court, by filing an Civil Appeal No. 43 of 2015, under Section 96 read with Order XLI, Rule 1 of C.P.C.

9. Vide judgment and order dated 18th July 2017, District Court, dismissed Civil Appeal No. 43 of 2015, as not maintainable. Appellant is before this Court against the said order.

Submissions :

10. Dr. Uday Warunjikar, learned Advocate for the Appellant submits that Civil Appeal No. 43 of 2015 was tenable under Order XLI, Rule 1 of C.P.C., against the order dated 9th June 2015 passed in Execution Application No. 8 of 2014, as according to him the said order was a formal expression and adjudication of the rights of the parties, thus a decree as defined under the C.P.C. He further submits that assuming that Appeal was not tenable, then the District Court should not have proceeded with the merits. He has proposed the following substantial questions of law :-

- a. Whether the District Court was justified in holding that the Appeal was not maintainable whether the order

passed below Exhibit 44 in Darkhast directing the present approach road amounts to an order, which is appealable either as an Appeal from order or the First Appeal within the provisions of the Civil Procedure Code, 1908?

- b. Whether the Lower Appellate Court was justified in referring to the merits of the case of the present Appellant once the Lower Appellate Court came to the conclusion that the Appeal was not maintainable in the eyes of law?

11. Mrs. Anjali Helekar, learned Advocate for the Respondent submits that the Appellant has failed to make out any case to maintain the present second appeal. She submits that Civil Appeal No. 45 of 2019 was disposed of on merits, at the insistence and request of the Appellant. She therefore submits that having invited a decision on merits, it is not open to the Appellant to now contend that the District Court ought not to have decided the matter on merits. She therefore submits that the substantial questions, as proposed, do not arise in the present Appeal.

Analysis :

12. Order dated 9th June 2015 is an order passed in Execution Proceedings bearing No. 8 of 2014, directing execution of the decree dated 17th March 2012 passed in Regular Civil Suit No. 69 of 2010.

13. Sections 104 and 105 of C.P.C. provide for orders, against

which Appeal shall lie. Order XLIII of C.P.C. contains the provisions of Appeal from Order, whereas Order XLI of C.P.C. provide for Appeal from Original Decrees. Order XXI, Rule 103 of C.P.C. makes a reference to the orders passed in Execution Proceedings, which are treated as decrees.

14. Subject matter of Civil Appeal No. 45 of 2019 was the order dated 9th June 2015 passed in Execution Proceedings bearing No. 8 of 2014. Said order does not fall in any of the provisions referred to in paragraph 13 herein above. Appeal is a creation of Statute. There is no inherent right of appeal. No appeal can be maintained unless the Statute confers a right on the party aggrieved and power on the Court to entertain such an appeal.

15. Dr. Uday Warunjikar was unable to point out any provision in the Code of Civil Procedure 1908, under which the Civil Appeal No. 45 of 2019 could be maintained against the order in question. Order dated 9th June 2015 merely executes the decree. Appellant would not be entitled to question the said order on the spacious plea of such order, amounts to determination of the rights of the parties. Rights of the parties stood determined by the decree passed in Regular Civil Suit No. 69 of 2010.

16. The order dated 9th June 2015 passed in Execution Application No. 8 of 2014, is not an appealable order. Civil Appeal No. 43 of 2015 filed by the Appellant against the said order, was not maintainable. I do not find any perversity or illegality in the judgment and order dated 18th July 2017, passed by the District Court in Civil Appeal No. 43 of 2015.

17. With reference to the contention of Dr. Uday Warunjikar, learned Advocate that the District Court ought not to have decided the merits of the matter, having found the same not maintainable, I find that once the Appeal itself is not maintainable, the said contentions of Dr. Uday Warunjikar, would pale into insignificance. At any rate, as submitted by Mrs. Anjali Helekar, it was the Appellant, who invited the disposal on merits.

18. For the reasons recorded hereinabove, no substantial question of law falls for consideration in the present appeal.

19. Second Appeal No. 216 of 2015 is dismissed. There shall be no order as to costs.

20. Civil Application No. 1009 of 2018 is disposed of in view of the order passed in Second Appeal No. 216 of 2015.

[ASHWIN D. BHOBE, J.]

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