

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.331 OF 2024
WITH
INTERIM APPLICATION NO.8861 OF 2024
IN
SECOND APPEAL NO.331 OF 2024**

Vasant Balkrishna Naik,
since deceased through legal heir
1(a) Pravin Vasant Naik and Ors.

...Appellants.

V/s.

Smt. Shobha Kashinath Naik and
Anr.

...Respondents

Mr. Rohit Joshi *for the Appellants.*

Mr. Aditya A. Joshi *for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

Dated: 16 April 2025.

P.C.:

1) Heard the learned counsel appearing for the Appellants. Second Appeal is **admitted** on following substantial question of law:-

(i) Whether the requirement under Section 13 of the Indian Easements Act, 1882 of proving easement of necessity is satisfied in the present case on the basis of

map at Exhibit-44 showing that the lands bearing Gut Nos.444 and 445 earlier formed part of contiguous piece of land bearing Survey No.101/2 and whether the Trial and the Appellate Courts are justified in turning blind eye to the evidence in the form of map at Exhibit-44 only on the ground of absence of a specific pleading in the plaint about two pieces of land forming part of one common land before the sub division?

2) Mr. Aditya Joshi, the learned counsel waives service of notice on behalf of the Respondents.

INTERIM APPLICATION NO.8861 OF 2024:-

3) Interim Application is filed seeking restraint order against the Respondents from obstructing the Applicants from using the suit road.

4) However, it appears that the Plaintiffs/Applicants were denied temporary injunction both by the Trial as well as by the first Appellate Court during pendency of the Suit and the appeal. In that view of the matter there is no question of granting any interim relief for use of the suit road during pendency of the present appeal.

5) Interim application is accordingly rejected.

[SANDEEP V. MARNE, J.]