



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

Writ Petition No. 5837 of 2023

[Prabhjeet Singh S/o Pralhad Singh Baccher ..vs.. Balu S/o Devidas
Kalbande and ors.]

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

Court's or Judge's orders

Mr. C. S. Kaptan, Senior Advocate assisted by Mr. P K. Mohta, Advocate for
the petitioner
Mr. M. G. Sarda, Advocate for the respondent nos. 1 to 3

CORAM : ANIL L. PANSARE J.

DATED : 20-03-2025

Heard for some time.

2. Mr. Kaptan, learned Senior Counsel for the petitioner – original plaintiff submits that the respondents – defendants are under the garb of decree in Regular Civil Suit No. 81/2009, by which they were granted access to their field by foot, are approaching their field through bullock-cart, tractor, JCB etc. Thus, the foot way has been converted into a road, which is contrary to the decree passed in earlier round of litigation. He further submits that the petitioner's predecessor was defendant in the said suit, who expired pending suit and the respondent chose to not prosecute the suit against legal representatives of the petitioner's predecessor and, therefore, the decree passed in the earlier suit is not binding on the petitioner. At the same time, the said decree will be binding upon the respondents and, therefore, they are bound to abide by the decree which provides access to their field by foot. This vital aspect, according to the learned Senior Counsel, has been not considered by the first appellate Court.

3. At this stage, learned counsel for respondent nos. 1 to 3 submits that the appeal is now listed for final hearing and this argument could be made before the appellate Court.

4. If that be so, it will be appropriate for the petitioner to put forth the aforesaid argument before the appellate Court which shall consider the same in accordance with law. Considering the status of appeal, no fruitful purpose will be served by passing order in the proceeding that arises out of interim order passed in appeal. Writ petition is accordingly disposed of.

5. The appeal, however, if not decided within three months from today, the petitioner shall be at liberty to approach this Court again.

(Anil L. Pansare, J.)

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