

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 119 OF 2026

Pravin Baban Khedekar and anr. ...Appellants

Versus

Pramod Sadashiv Kale ...Respondent

WITH
INTERIM APPLICATION NO. 1744 OF 2026

Mr. Ganesh Misal, a/w Rohit Chavan, Sandesh D. and Vishal
Kale, for the Appellants.

Mr. Nachiket Khaladkar, a/w Dinesh Nagarkar, for the
Respondents.

CORAM: N. J. JAMADAR, J.

DATED: 4th MARCH, 2026

Oral Order:-

1. Heard the learned Counsel for the appellants.
2. This second appeal is directed against a judgment and decree passed by the learned District Judge dated 20th November, 2025, whereby the appeal preferred by the appellants - Defendants against a judgment and decree passed by the trial Court dated 13th March, 2024, thereby restraining the appellant from causing obstruction to the plaintiff – respondent from constructing compound wall from western side of the suit property by leaving 6 ft. broad pathway for the ingress and egress of the defendants, came to be dismissed.

3. There is a prelude to this litigation. The appellant No.1 had instituted a suit, being RCS No.967 of 2009, against the respondent herein seeking to purportedly restrain him from causing obstruction to the appellant from the use of the pathway and in exercise of the easementary right over the lane admeasuring 10 ft. X 46 ft. By a judgment and decree dated 10th December, 2012, the trial Court restrained the respondent – defendant therein from obstructing the Appellant No.1 and his family members from using the suit lane for egress and ingress to the suit property and from causing any nuisance or annoyance by placing any material on the suit lane.

4. The respondent herein preferred an appeal before the District Court. By a judgment and decree dated 3rd October, 2015, the learned Judge, Pune, modified the decree and restrained the defendant – respondent herein from obstructing the plaintiff's right of pathway from the land of the defendant – respondent. However, the claim of the plaintiff – appellant No.1 that he has easementary right over the lane admeasuring 10 ft. X 46 ft. was dismissed.

5. The learned Counsel for the appellants submitted that the judgment and decree in RCS No.967 of 2009, as modified by the Appellate Court by the judgment and decree in RCA No.221 of

2013 dated 3rd October, 2015 operated as *res judicata* and the courts below have committed an error in passing the impugned decree.

6. The trial Court was of the view that the bar of *res judicata* did not operate as the Appellate Court had restrained the defendant – respondent herein from causing obstruction to the ingress and egress of the appellant No.1 from the suit lane. Thus the trial Court restrained the defendants – appellants herein from obstructing the plaintiff from constructing the compound wall from the western side of the suit property.

7. In the sale deed of the year 1977, under which the right of way came to be reserved for the predecessor-in-title of the appellant, the width of the way was not specified. In these circumstances, the rights of the appellants stood crystallized to pathway only. If the appellant No.1 was aggrieved by the rejection of the claim of easementary right over an area admeasuring 10 ft. X 46 ft., by judgment and decree in RCA No.221 of 2013, it was incumbent upon the appellant No.1 to assail the said decree. As the said decree has attained finality and by the impugned judgment and decree, the Defendants – Appellants right of ingress and egress through 6 ft. wide

pathway is protected, no substantial question of law arises for consideration.

8. The second appeal, thus, stands dismissed.

9. In view of dismissal of the second appeal, IA/1744/2026 stands disposed.

[N. J. JAMADAR, J.]