



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.34 OF 2025

Prakash S/o. Raghunath Mahalgave through Lrs and another **Vs.** Baburao S/o.
Ganesh Marbate and anr.

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Mr. R. V. Khaparde, Advocate for appellants.
Mr. V. R. Thote, Advocate for respondents.

CORAM : ROHIT W. JOSHI, J.
DATE : 13.01.2026.

. The present appeal arises out of judgment and decree dated 12.08.2022 passed by the learned Ad-hoc District Judge-I, Bhandara in Regular Civil Appeal No.02 of 2021, thereby partly reversing judgment and decree dated 03.12.2020 passed by 2nd Jt. Civil Judge, Junior Division, Bhandara, in Regular Civil Suit No.42 of 2009.

2. Learned Advocate for the appellant has filed certified copy of the report at Exhibit-102 and the measurement map at Exhibit-103, alongwith photocopy of deposition of Public Witness No.4. (the Cadastral Surveyor). The said documents are taken on record.

3. The present appellants, who are original plaintiffs, had filed a suit, being Regular Civil Suit No.42 of 2009, *inter alia*, claiming that the defendants had made construction over a public road intervening the house of the plaintiff and the defendants. It will be pertinent to mention that an easementary right of passage through the said road

is decreed in favour of the plaintiff in earlier round of litigation between the parties.

4. The learned Trial Court had appointed a Court Commissioner, who was examined by the plaintiff as PW.4. The Court Commissioner has carried out measurement of the subject lands and furnished report (Exhibit-102) alongwith map (Exhibit 103). Perusal of the Court Commissioner's Report (Exhibit-102) and map (Exhibit 103) will demonstrate that the defendants have not made any construction over the lane which forms subject matter of the suit. Rather the Court Commissioner's Report indicates that the plaintiff has made construction over the said land to the extent of 7 Square Meters. The learned Trial Court has decreed the suit placing reliance on the said report. The learned Trial Court has granted decree for mandatory injunction directing the defendants to remove the construction shown in the measurement map (Exhibit-103).

5. The learned First Appellate Court, while allowing the appeal preferred by the defendants has found that the decree for mandatory injunction passed by the learned Trial Court cannot be sustained in view of the measurement report at Exhibit-102 and the map at Exhibit-103. The learned First Appellate Court has referred to the measurement report in paragraph 21 of the judgment to hold that the plaintiff had made construction over the road to the extent of 9 Feet.

6. In view of the aforesaid, the learned First Appellate Court has partly allowed the appeal by maintaining the decree for perpetual injunction restraining the defendants from making any construction over the intervening lane and by setting aside decree for mandatory injunction for demolition of construction of residential house of the defendants, as was directed by the learned Trial Court.

7. Perusal of the judgment passed by the learned First Appellate Court will demonstrate that the findings recorded by the learned First Appellate Court are in consonance with the map and report of the Court Commissioner. The learned Trial Court has clearly misinterpreted the contents of the measurement report, which clearly records that the defendants had not made any construction on the road and rather it is the plaintiff who had committed encroachment on the said road.

8. In view of the aforesaid, I see no reason to interfere with the well reasoned judgment delivered by the learned First Appellate Court. Second Appeal, is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

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