

Order below Exh. 1.

R.C.A. No. 17/2011. 1/3  
Wasudeo Vs. Gajanan + 1.

Order below Exh. 1 in R.C.A. No. 17/2011,  
Wasudeo Vs. Gajanan + 1.  
(Passed on this 17<sup>th</sup> the day of November 2017)

- Dictated in Open Court -

1. The appeal was heard for a long time of both sides and thereafter certain applications came to be preferred. In the judgment of the ld. Trial Court, it is held that there is right of way available to the plaintiff. It further has held that there is no alternate road available as alleged.
  
2. On perusal of the Commissioner map, which is admitted as regards position of the properties (but not to scale), it is seen that there are two roads namely, Bordi-Makrampur and Kasod-Ladegaon or Bordi-Ladegaon road, which would be of some effect on the suit. Without at present going into the aspect as to whether right of easement by way of necessity is established or by way of prescription is established, considering the rival contentions raised in this appeal of subsequent development of construction of road, the respondents also filed documents contending that work of Shivpur-Ladegaon has not been commenced, further Ladegaon-Shivpur road is damaged because of rains and Bordi-Makrampur road is still under construction. Considering this aspect, the ground of existence of these roads is required to be considered and its availability to the plaintiff's land, which is

adjoining the alleged Kasod-Ladegaon road. In view of this aspect coming forth of such road, it would be necessary that the matter is to be remanded to the ld. Trial Court in view of this subsequent development for recording of evidence and giving findings accordingly, on the following issue -

(1) Whether defendant establishes that subsequent to the filing of the suit, the Gram Panchayat/statutory body has constructed Bordi-Makrampur road and it is in existence and so also, Shivpur-Ladegaon road has been constructed or is available and it is in existence and that there is road available or is constructed by the Gram Panchayat/statutory body from points A, A-1, B-1, B, N, K, K-1, J and K-2 as shown in the Commissioner's map, which is filed at Exh. 17 in the ld. Trial Court ?

3. Both parties shall have right to lead evidence on this aspect only, which shall be about subsequent even to the filing of the suit.
4. The defendant to lead evidence first and plaintiffs shall have right of rebuttal.
5. The ld. Trial Court to give findings on the said issue within six months from receipt of record and transmit

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the record and findings to this Court.

6. The aggrieved party by the findings shall have right to raise grounds, if so desired as per law.
7. Inform the ld. Trial Court accordingly.
8. R & P be returned to the ld. Trial Court.
9. Parties to appear before the ld. Trial Court on 04.12.2017.

Dtd/- 17.11.2017. (Anil Subramaniam)  
District Judge -1, Akot, Dist. Akola.

#### C E R T I F I C A T E

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Stenographer : A.J. Dharamkar.  
Court Name : District Judge – 1 and Addl.  
Sessions Judge, Akot, Dist. Akola.  
Date of order : 17.11.2017.  
Signed by Presiding  
Officer on : 17.11.2017.  
Uploaded on : 23.11.2017.