

MHRT010008792015



Received on : 07.12.2015
Registered on : 28.12.2015
Decided on : 08.05.2026
Duration : 10 Y. 05 M. 01 D

IN THE COURT OF DISTRICT JUDGE-1 RATNAGIRI.
(Presided over by A. M. Ambalkar)

REGULAR CIVIL APPEAL NO. 92/2015
Exh.No. 110

1. Prakash Vasant Kokaje,

Age:- 59 yrs., Occu.:- Retired,
R/o. Warchi Ali, Ratnagiri,
Tal. & Dist. Ratnagiri.

2. Devaji Raja Patel,

Since deceased his L.Rs

2(1). Dhirajlal Devji Patel,

Age:- 63 yrs., Occu.:- Business,
R/o. House No.926(B), behind
Ashok Hardware, Ganesh Colony,
Nachane, Ratnagiri.

2(2). Ravilal Devji Patel,

Age:- 61 yrs., Occu.:- Business,
R/o. House No.2323, Warchi Ali,
Ratnagiri.

2(3). Vishnu Devji Patel,

Age:- 58 yrs., Occu.:- Business,
R/o. House No.2774, Mama Marathe
Chawl, Shere Naka, Zadgaon, Ratnagiri.

Appellants.

2(4). Ramesh Devji Patel,

Age:- 55 yrs., Occu.:- Business,

2(5). Suresh Devji Patel,

Age:- 52 yrs., Occu.:- Business,

Both of 2(4)&2(5)

R/o. House No.2323, Warchi Ali,
Ratnagiri.

3. Purushottam Hirji Patel,

Age:- 75 yrs., Occu.:- Business,

4. Shankar Hirji Patel,

Age:- 50 yrs., Occu.:- Business,

5. Devkiben Hirji Patel,

Age:- 75 yrs., Occu.:- Housewife,

Since deceased her name deleted.

6. Narmadaben Hirji Patel,

Age:- 60 yrs., Occu.:- Housewife,

Appellant no.2 to 6

R/o. Municipal House No.2323B,
Warchi Ali, Ratnagiri.

7. Vijay Vasant Kokaje,

Since deceased his L.Rs

7(1). Rugved Vijay Kokaje,

Age:- 26 yrs., Occu.:- Service,

R/o. House No.2323(C),

Warchi Ali, Ratnagiri.

7(2). Ashwini Vijay Kokaje @

Ashvini Siddharth Hawal,

Age:- 37 yrs., Occu.:- Teacher,

R/o. Yogini Apartment, behind

Kohinoor Hotel, Burondi Naka,

Dapoli, Tal. Dapoli, Dist. Ratnagiri.

Appellants.

**7(3). Radhika Vijay Kokaje @
Aditi Abhijit Katdare,**
Age:- 32 yrs., Occu.:- Service,
R/o. Abhang Apartment,
Near Ghag Math, Nachane road,
Ratnagiri.

Appellants.

VERSUS

1. Prabhakar Gopal Kanade,
Since deceased his L.Rs

1(A). Vijaya Prabhakar Kanade,
Age:- 70 yrs., Occu.:- Housewife,

1(B). Kunal Prabhakar Kanade,
Age:- 35 yrs., Occu.:- Service,
Respondent no.1A and 1B,
R/o. House No.2323D, Gajanan Prasad,
Warchi Ali, Ratnagiri.

2. Anthony Saiman Almeda,
Age :- Major, Occu.: Business,
R/o. Subhash Road, Ratnagiri.

3. Sandeep Vasant Sawant,
Age :- Major, Occu.: Business,
R/o. Subhash Road, Ratnagiri.

4. Ranjana Rajendra Sawant,
Age :- Major, Occu.: Housewife,
R/o. Subhash Road, Ratnagiri.

5. Sudim Shantaram Todankar,
Age :- Major, Occu.: Business & Agri.,
R/o. Subhash Road, Ratnagiri.

6. Shantaben Hirji Patel,
Age:- 53 yrs., Occu.:- Housewife,

Respondents

R/o. Municipal House No.2323B, opposite
Joshi Paland road, Subhash road,
Warchi Ali, Tal. & Dist. Ratnagiri.

Respondents

**Appeal under Section 96 Order 41 of the Code of Civil
Procedure.**

Shri. G. N. Gavankar - Ld. Advocate for Appellants and
Respondent no.6
Shri. A. S. Kadam - Ld. Advocate for Respondent no.1A & 1B
Ex parte against Respondent No.2 to 5

J U D G M E N T

(Delivered on this 8th May, 2026)

1. Challenge in this appeal is given by defendant nos.1 to 4 to Judgment and decree in Regular Civil Suit No.190/2009 dated 31.10.2015 passed by learned 3rd Jt. Civil Judge (Junior Division), Ratnagiri, Tal. & Dist. Ratnagiri ('trial Court' for short) in respect of declaration of way by easement, proceeding from schedule B property to schedule A property, mandatory injunction for removal of obstructions over suit-way and for perpetual injunction for restraining the defendants from causing obstruction over suit property. The parties to the appeal are hereinafter referred as per their status in suit, for better understanding.

2. The brief facts of the plaintiff's case are as under:-

This is a suit for declaration that the plaintiff is having easementary right of way through the properties bearing S.No.239A1A1A H.No.4 and H.No.2 and land S.No.247C1A2

H.No.11A i.e., CTS No.2635/1A mentioned in schedule B in the plaint to approach to the plaintiff's property bearing S.No.239A1A1A H.No.6B and S.No.247C1A2 H.No.11B i.e., municipal house no.2323D mentioned in schedule A of plaint and for mandatory injunction directing the defendants to remove the obstacles of railing in the said way and restraining the defendants from making any sort of construction in the suit properties and from causing obstructions to the plaintiff in the use of suit way and for declaration that the sale-deed dated 28/12/2007 is not binding upon plaintiff. These properties are situated at village Zadgaon within the municipal Council area of Ratnagiri.

3. It is further contended that plaintiff is the owner of properties mentioned in schedule A and defendants are owner of properties mentioned in schedule B. Plaintiff claimed two different ways to reach his two properties which are adjacent to each other. The plaintiff has been easementary rights to go through the suit way to his house since long.

4. The suit properties were originally owned by Shri. Shankar Gopal Joshi, Parshuram Joshi and Narayan Govind Joshi. They got partitioned the properties amongst themselves. Suit schedule A properties were allotted in the share of Shankar Gopal Joshi and Suit schedule B properties were allotted in the share of Shri. Parshuram and Narayan Joshi.

5. In the year 1970 and 1983 the defendant no.1 and 2

purchased the suit schedule B properties from Joshi. In the year 1987, the defendant no. 1 to 3 obstructed the way of plaintiff's predecessor, therefore he filed suit bearing RCS No.67/1987 against the defendants no.1 to 3. Said suit came to be decreed and declaration of right of way was granted in favour of plaintiff's predecessor. The said suit was relating to one suit way proceeding from S.No.239A1A1A H.No.4 to reach to plaintiff's property bearing S.No.239A1A1A H.No.6B i.e., first suit way.

6. On 28/06/1990 plaintiff purchased the suit schedule A property from Shri. Shankar Joshi. Then he constructed house bearing municipal no.2323D over it. Plaintiff has no alternate way to reach his property except suit way proceeding through suit schedule B property.

7. On 28/12/2007 defendant no.1 and 2 sold 0-24-20 H R area out of S.No.247C1A2 H.No.11A to defendant no.5 to 8 without obtaining NA permission and without making plots. Thereafter the entry of plaintiff's suit way came to be deleted from record of rights of suit schedule B property. Defendant no.3 constructed chamber of drainage water in the plaintiff's first suit way. Defendant no.3 planted flowery trees over the plaintiff's first suit way. Defendant no.3 obstructed plaintiff's first suit way by making construction of compound wall over the suit way and thereby the width of first suit way has been reduced up to 3 to 4 ft.. In fact the plaintiff's right of way has been mentioned in the said sale-deed. The said suit way is approached to Subhash

road i.e., main road in the Ratnagiri City which is the only way available to plaintiff.

8. In the year 2005-06, the defendant no.1 to 4 while making plots caused changes in the DP road and these changes have been caused without notice to plaintiff. Hence the suit. Plaintiff annexed rough sketch map of suit schedule A and B properties and suit ways have been shown therein.

9. Defendant no.1 to 4 have filed their written statement and strongly resisted the suit. It is contended that there is bar of *res judicata* to the present suit as in RCS No.69/1987 the said issue has been decided. It is further contended that the plaintiff is having alternate way. The defendants further denied all the contentions raised by plaintiff by specifying contentions in the plaint and put forth very specific explanations. The defendants also filed rough sketch map and annexed with their written statement. It is further contended that the plotting made by defendants is sanctioned by Town Planning Authority therefore it is legal. Finally, it is prayed to dismiss the suit.

10. Defendant nos.5 to 8 appeared and filed settlement purshis and admitted the claim put forth by plaintiff. The said defendants acknowledged plaintiff's right of way of 3.5 meter to reach towards his property H.No.6B through their properties. Plaintiff relinquished all the reliefs against them.

11. The trial Court framed issues and parties led the evidence and after hearing both the parties, the trial Court partly decreed the suit and declared that plaintiff has easementary right of way having width 20th which goes to schedule B property i.e., S.No.239A1A1A H.No.4 and S.No.247C1A2 H.No.11A to reach his property S.No.239A1A1A H.No.6B and defendants have been restrained from causing obstruction to plaintiff's use of the same. It is further directed to defendant no.3 to demolish compound wall and remove all other constructions over plaintiff's footway proceeding to suit schedule B property. It is further ordered that if defendant no.3 failed to demolish the compound wall and to remove all other obstructions, the plaintiff is at liberty to take help of Court.

12. Being aggrieved by the Judgment and decree passed by the trial Court, the defendant no.1, 3 and legal heirs of defendant no.2 have preferred the appeal on the grounds mentioned below.

 The impugned judgment and decree is bad in law and incorrect. The issues formulated are improper. The findings given by trial Court are incorrect. The trial Court has not considered the evidence led by parties in proper perspective. Finally, it is prayed to allow the appeal and dismiss the suit.

13. I have gone through the pleadings, oral evidence led by the parties and documents produced by the parties and judgment passed by the trial Court. Heard learned Advocate Shri.

G. N. Gavankar for appellants and learned advocate Shri. A. S. Kadam for respondents.

14. Learned Advocate for the appellants/defendant no.1 to 4 relied upon the following Judgments :

1. Manisha Mahendra Gala & ors. Vs. Shalini Bhagwan Avatramani & Ors., (2024) 6 Supreme Court Cases 130

15. Following points arise for determination and I have recorded my findings thereon as follows :

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether plaintiff proves that he is having easementary right of way through the property of defendants as per map annexed with plaintiff ?	In the partly affirmative in respect of first suit way.
2. Whether plaintiff further proves that defendant no.3 has constructed railing and chambers and thereby obstructed the way of plaintiff ?	In the affirmative.
3. Whether plaintiff is entitled for mandatory injunction as prayed for ?	In the affirmative.
4. Whether plaintiff is entitled for perpetual injunction as prayed for ?	In the affirmative.
5. Whether an interference is required in the Judgment and decree passed by the learned trial Judge ?	In the negative.
6. What order and decree ?	As per final

order.

REASONS

As to point No. 1 to 6 :-

16. On perusal of judgment and record of the case, it appears that plaintiff examined himself and relied upon various documents consisting of 7x12 extracts of all the survey numbers which are subject matter of suit and mutation orders, order passed by Sub Divisional Officer, copy of sale-deed, decree in RCS No.67/1987.

17. Defendant no.3 examined himself and relied upon copy of judgment and decree in RCS. No.67/1987.

18. In the present matter admitted facts are that the suit properties were originally owned and possessed by Shankar Gopal Joshi, Parshuram Joshi and Narayan Joshi. Suit schedule A and B properties are adjacent to each other. Shri. Shankar Gopal Joshi, Parshuram Joshi and Narayan Joshi got partitioned of suit properties and suit schedule A properties were allotted to the share of Shankar Gopal Joshi and suit schedule B properties were allotted to the share of Parshuram and Narayan Joshi. Plaintiff purchased suit schedule A properties on 28/06/1990 from legal heirs of Shankar Gopal Joshi. In the year 1970 Narayan Joshi sold suit B properties to Narayan Dhanaji Patel. The said Narayan Dhanaji Patel sold suit schedule B properties to defendant no.1

and 2 in the year 1983. Defendant no.1 and 2 sold 0-24-20 H R area out of their Survey No.247C1A2 H.No.11A to defendant no.5 to 8. Plaintiff's predecessor-in-title instituted a suit bearing No.RCS No.67/1987 against the defendant nos.1 to 3 for declaration of easement by way of necessity proceeding through schedule B properties to reach to his S.No.239A1A1A H.No.6B (first suit way). The said suit came to be decreed. The road proceeding from S.No.239A1A1A H.No.4 approaches to S.No.247C1A2 H.No.11A. Road proceeding towards South side from S.No.247C1A2 H.No.11A approaches to plaintiff's S.No.239A1A1A H.No.6B (first way).

19. It is material to note that the plaintiff's properties i.e., H.No.6B and 11B are adjacent to each other. Defendant no.5 to 8 are the owners of suit schedule B properties to the extent of 0-20-24 H R area. They have settled the dispute with plaintiff and accordingly compromise purshis at Exh.55 has been filed and trial Court passed necessary order in that regard. The first suit way approaching to H.No.6B is admitted to both the parties and there is no dispute in that regard.

20. As far as second suit-way approaching to H.No.11B is concerned, as per the plaintiff's contention, the suit way is common till the properties of defendant no.3 and 4 and property no.6B of plaintiff. The further second way goes by the northern side of house of defendant no.3 and 4 and then it turns towards South and approaches to plaintiff's H.No.11B.

21. In this regards, learned trial Judge elaborately discussed the legal provision of section 13 of the Easement Act and observed that as per said section easement must be apparent, continuous and necessary for enjoyment. There should not be an alternate way available to the plaintiff to reach his dominant heritage. It is also observed that the properties H.No.11B and 6B owned by plaintiff being adjacent to each other, therefore it cannot be said that the plaintiff is not having alternate way. Therefore the requisite condition as contemplated by section 13 is not fulfilled and therefore plaintiff cannot claim second suit way by easementary right.

22. I have gone through the sketch map annexed with the plaint by plaintiff. It appears that the learned trial Judge observed correctly. The suit properties H.No.11B and 6B are adjacent to each other, therefore separate suit way i.e., second way to approach to H.No.11B cannot be said to be necessary for the plaintiff.

23. As far as creation of obstruction by constructing railing and chambers on the first suit way by defendant no.3 is concerned, the plaintiff by his affidavit solemnly affirmed these facts. Defendant no.3 examined himself. During cross-examination, he admitted that width of internal sanctioned road is 20 ft.. He also admitted that on 11/07/1997 Municipal Council Ratnagiri issued him notice for removing obstruction over the first suit way and he failed to comply the said notice. On 31/03/2004,

municipal council, Ratnagiri issued another notice to defendant no.1 for removing the obstruction over first suit way. However, it is not complied with. Defendant no.3 further admitted that he has constructed compound wall over first suit-way of plaintiff. He also admitted that presently the width of first suit-way is around 3 to 4 ft..

24. The aforesaid evidence clearly indicates that plaintiff succeeded to prove the material fact that defendant made illegal construction of compound wall over first suit way and created obstruction in the way which approaches to H.No.6B. As such, the obstruction by defendants has been proved by the plaintiff.

25. The existence of first suit-way is admitted. The obstruction by defendants created over the first suit way is proved. Therefore plaintiff can definitely be said to be entitled for the reliefs prayed in respect of only first suit-way.

26. On perusal of impugned judgment, it appears that the learned trial Judge has taken into consideration the pleadings of the parties and the evidence on record and has also taken into consideration the documents produced by the parties and rightly held that plaintiff is entitled for the relief of declaration in respect of only first suit-way and to the reliefs of mandatory injunction and perpetual injunction as prayed for. Therefore no interference is required in the impugned judgment. Consequently, I answer point no.1 to 4 in the affirmative and point no.5 in the negative

and proceed to pass following order.

ORDER

1. Appeal stands dismissed.
2. Both the parties to bear their own costs.
3. Decree be drawn accordingly.
4. Record and proceeding be sent to trial Court.

Date :- 08.05.2026

**(A. M. Ambalkar)
District Judge-1, Ratnagiri.**

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

Case Number		Reg. Civil Appeal No.92/2015
Name of Stenographer	:-	Mr. Rajesh G. Rahate
Name of Court	:-	District Court-1 Ratnagiri.
Date of Dictation on computer	:-	08.05.2026
Order signed by the P.O. on	:-	08.05.2026
Order uploaded on	:-	08.05.2026