

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.444 OF 2012
WITH
SECOND APPEAL NO.445 OF 2012
WITH
CIVIL APPLICATION NO.895 OF 2012
IN
SECOND APPEAL NO.444 OF 2012

Sau. Lata Mohan Kadam Appellant
Vs.
Smt. Nanda Hanmant Kadam & Anr. Respondents

Shri P.M. Arjunwadkar for the Appellant.
Shri V.S. Talkute for the Respondents.

CORAM: RAVI K. DESHPANDE, J.

DATED: JULY 13, 2015

P.C:

1. Learned counsel for the appellant submits that the following three substantial questions of law arise in the present Second Appeals:-

“1. Whether the lower Appellate Court was correct in holding that the Tahsildar had no jurisdiction in creating right of way in favour of the appellant through land bearing Gat No.247,

belonging to the respondents?

2. Whether the lower Appellate Court was right in observing that the order passed by the Tahsildar, granting right of way through Gat No.247, was void in the absence of there being any specific challenge to the said order?

3. The plaintiff has admitted in cross-examination that if right is granted to the appellant out of Gat No.247, which is the portion of a barren land, no prejudice or damage shall be caused to the respondents. The admission is considered by the trial Court whereas the Appellate Court has reversed the finding.”

2. Regular Civil Suit No.140 of 2007 was filed by the respondents in these Second Appeals claiming an order of injunction permanently restraining the appellant/defendant from using the road which was granted by the Tahsildar by an order dated 26-3-2007. The appellant filed a separate Regular Civil Suit No.252 of 2007 for grant of permanent injunction restraining the respondents from creating obstruction in user of the way through Gat No.247 in terms of the order dated 26-3-2007, passed by the Tahsildar. Both the suits were separately decided by the Trial Court. Regular Civil Suit No.140

of 2007, filed by the respondents, was dismissed whereas Regular Civil Suit No.252 of 2007, filed by the appellant, was decreed. In appeals preferred by the parties challenging the decisions in both the said suits, the lower Appellate Court has set aside the decree passed in Regular Civil Suit No.252 of 2007 whereas Regular Civil Suit No.140 of 2007, filed by the respondents, has been decreed. Hence, these Second Appeals.

3. So far as the first substantial question of law is concerned, learned counsel Shri Arjunwadkar, appearing for the appellant, invited my attention to the decision of this Court in **Krushna s/o Damaji Choudhari and another v. Additional Commissioner, Nagpur Division and others**, reported in 2012 (1) Mh.L.J. 795. In para 9 of the said Judgment it is held that there is a definite distinction between the powers conferred under Mamlatdars' Courts Act upon the Tahsildar and the powers conferred upon the Tahsildar under Section 143 of the Maharashtra Land Revenue Code. Section 143 of the Code deals with the right of way over the boundaries. The proposition laid down in the said decision cannot be disputed. In the present case, undisputedly, the right of way granted by the Tahsildar under Section 143 is from Gat No.247 and not from the boundary of Gat No.247. As the lower Appellate Court was right in holding that the Tahsildar had no jurisdiction under Section 143 to grant any such way, it was not necessary for the respondents to have challenged specifically the order passed by

the Tahsildar, which is void for lack of inherent jurisdiction.

4. I have gone through the copy of the plaint. It refers to the order being *void ab initio* and it is on the basis of this plea a prayer is made to restrain the appellant/defendant from using the road. The so called admission given by the respondents for user of the way by the appellant/defendant would not be of any consequence, particularly when the respondents have been fighting out the litigation from the beginning till these second appeals. No substantial questions of law arise. Both the Second Appeals are dismissed.

5. In view of dismissal of Second Appeal No.444 of 2012, Civil Application No.895 of 2012 preferred therein does not survive and it accordingly stands disposed of.

(RAVI K. DESHPANDE, J.)