

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.306 OF 2012
WITH
CIVIL APPLICATION NO.570 OF 2012
IN
SECOND APPEAL NO.306 OF 2012**

SHRI SIRAZ KOHIYAR SATARAWALA)...APPELLANT

V/s.

**MAHABALESHWAR GIRISTHAN)
NAGARPALIKA)...RESPONDENT**

Mr.S.M.Dandekar, Advocate for the Appellant.

Mr.Ganesh Gole, Advocate for the Respondent.

Coram: Smt.R.P.SondurBaldota, J.

Date : 5th January, 2015.

P.C. :

1 The appellant is the original plaintiff. He had filed suit for injunction simplicitor to restrain the respondent Nagarpalika from putting tar on the suit road admeasuring 12 feet x 1100 feet

or from making any changes in respect of the road without his prior permission. By the judgment and order dated 2nd May, 2009, the trial court dismissed the suit. The appellant unsuccessfully challenged the judgment and decree in the District court. Thereafter, he has approached this court by way of second appeal.

2 The appellant claims to be running a hotel by name “Hotel Ripon” at Mahabaleshwar. According to him, the original owner of the hotel was one C.D.Satarawala. Initially, there was no access to the hotel. Therefore, the predecessor of the appellant, in the year 1901, demanded land from the government, and the land of the suit road was given to him on ownership basis, by accepting consideration of Rs.500/-. Since then, the predecessor of the appellant, and thereafter the appellant, have been allegedly using the road exclusively as the private road. The respondent Nagarpalika denied the claim of the appellant to the exclusive possession of the suit road and title thereto. According to it, the road has been a public road with the street lights installed on it and the water pipes as well as telephone lines running under it.

3 In order to establish his title to the suit road, the appellant had relied upon and produced two documents i.e. letter dated 7th October, 1901, from the Office of the Superintendent, Mahabaleshwar, to C.D.Satarawala, and the receipt dated 23rd September, 1903, for payment of Rs.500/-. Perusal of the two documents shows that nothing therein connects either to the suit road, or the claim of the appellant to the title to the suit road. The first document refers to the application dated 20th May, 2001, made to Divisional Forest Officer, Satara, asking for a piece of ground for making a road to his new building by Mr.Satarawala. According to the application, the land required was of 18 gunthas and Mr.Satarawala was willing to pay for the portion at the rate of Rs.200/- per acre for taking the same on regular lease. The Superintendent, however, for the reasons stated in the letter, insisted that Mr.Satarawala takes land admeasuring 31 gunthas, instead of 18 gunthas, and otherwise was unwilling to recommend lease of the land for him. The response of Mr.Satarawala to this letter is not disclosed either in the pleadings or in the evidence. The second document is receipt for payment of the amount of

Rs.500/- towards “certain land sold to him at Mahabaleshwar.” This document cannot also not help the appellant to establish his title to the land of the suit road. The two documents produced by the appellant do not even connect each other. One is in respect of sale of certain land and the other is for creation of lease in respect of land for access to some construction carried out by Mr.Satarawala. On appreciation of the evidence, the courts below have held that the appellant has failed to establish his title to the suit property. Admittedly, the appellant has not been able to produce any document of title in respect of the suit road. Therefore, the findings of the courts below stand established by the evidence on record. There is also no substantive question of law involved in the appeal. Hence, the second appeal is dismissed.

In view of the dismissal of the second appeal, Civil Application No.570 of 2012 does not survive, and is accordingly disposed off.

(Smt.R.P.SondurBaldota, J.)