

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.391 of 1993

1. Shri Laxman Vithoba Gajare,
Aged 43 years.
2. Shri Trimbak Tukaram Gajare,
Aged 63 years.
3. Shri Dasharath Shivaji Gajare,
Aged 48 years.
4. Shri Gopala Shivaji Gajare.

All Agricultuist, Resident of
Gajarwadi, Taluka – Niphad,
District – Nashik.

... Appellants/
Ori. Plaintiffs

Versus

1. Shri Dhondi Shabha Gajare,
Aged 58 years.
2. Smt. Bhagirthibai Trimbak Gajare,
Aged 63 years.
3. Shri Gangadhar Shankar Gajare,
Aged 63 years.
4. Shri Karbhari Sakharam Gajare,
Dead.
- 4A. Shri Pandurang Karbhari Gajare,
Aged 20 years.
- 4B. Smt. Lahanubai Karbhai Gajare.

Both resident of Gajarwadi,
Taluka – Niphad,
District – Nashik.

5. Shri Raghunath Rambha Gajare,
Aged 53 years.
6. Shri Laxman Sakhaam Gajare,
Age 43 years.
7. Shri Shripat Bhika Gajare,
Age 63 years.
8. Deoram G. Gajare.

All R/o of Gajarwadi,
Tah. Niphad, Dist. Nashik.

... Respondents/
Ori. Defendants

Ms Pratibha Shelke i/b Shri R.A. Thorat, Advocates for Appellants.

Coram : R.K. Deshpande, J.

Dated : 30th July, 2015

Oral Judgment :

1. The right of easement by way of prescription was the subject-matter of Regular Civil Suit No.1 of 1983, which has been dismissed by the Trial Court on 31-10-1986. Regular Civil Appeal No.497 of 1986 has been dismissed by the lower Appellate Court on 21-7-1993. Hence, the original plaintiffs are before this Court against the concurrent findings of fact recorded by the Courts below.

2. On 17-8-1993, this second appeal was admitted on the substantial questions of law mentioned in ground Nos.(a) and (c) of the memo of appeal, which are reproduced below :

“(a) Whether the courts below and particularly the Lower Appellate Court was correct in applying Explanation 1 to Section 15 of the applying Explanation Act, 1982 (as amended) in the facts of the present case, especially when there is no dispute raised by the Respondents when the village map produced at Exhibit 83, shows the existence of the suit way?”

(c) Whether the Lower Appellate Court has committed an error of Law in rejecting pursis/affidavits filed by some of the Respondents and the third persons admitting the claim of the Appellants and whether the Lower Appellate Court was correct in equating these pursis/affidavits as agreements between the Appellants and some of the Respondents?”

3. With the assistance of the learned counsel appearing for the appellants, I have gone through the judgments and orders delivered by the Courts below. In order to prove easement by way of prescription, as contemplated by Section 15 of the Indian Easements Act, 1882, what is required to be proved is that the plaintiff has a right of way or

which he has been peaceably and openly enjoying, as an easement, and as of right, without interruption, for twenty years. Even if the fact that there exists a way is accepted, that by itself is not enough, unless it is established the fact by leading convincing evidence that the right of way is being enjoyed without interruption, and for a period of twenty years. There is no such evidence available on record. Thus, no substantial question of law arises in this second appeal.

4. The second appeal is dismissed. No order as to costs.

Judge

pdl