

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(Civil Appellate Jurisdiction)

SECOND APPEAL NO. 580 of 2011

(Sou. Rukmini Dhondiba Gaikwad Appellant
Versus
Smt. Radhabai Govindrao Yelgundi Respondent)

Mr.Ravi P. Kadam, Advocate for appellant
Mr.S.V.Sadavarte, Advocate, for Respondent No.2

CORAM : R.K.Deshpande, J.
DATED : 29th JUNE, 2015.

P.C.

In Regular Civil Suit No. 2862 of 2000, a compromise decree was passed whereby the easementary right of the plaintiff over the suit property was accepted by the defendant. The decree was sought to be executed by filing Regular Darkhast No. 111 of 2001 in which the appellant before this Court filed an objection alleging that she is the owner of the property, she was not made party in the said suit and the compromise decree has been passed behind her back, without her consent and knowledge. The objection was rejected by the trial Court by an order dated 13.02.2006 and the Civil Appeal No. 261 of 2006 has been dismissed on 31.01.2011. Hence, this second appeal against the concurrent findings of fact.

In Paras 10 and 11 of the decision of the lower appellate Court, the matter is discussed as under;

10] The appellant has not attempted to get impleaded herself in the suit i.e. Reg.Civil Suit No. 2862/2000 nor her husband has pleaded that he is not the owner or has no concern with the suit property and his wife is the owner. It is not expected that when there is no dispute between husband and wife, the husband did not inform about the Reg.Civil Suit No. 2862/2000, so that the wife could raise her claim in that suit. However, it seems that after the compromise, the husband has realized that there is something wrong. So he has instigated by his wife by filing the application as a third party in Darkhast No. 111/2001. I am told at the bar that wife has also filed civil suit wherein, the relief of temporary injunction was refused. Thus, from the evidence on record, I say that the trial Court was right in holding that the appellant has no title to the suit property or has no concern.

11] The trial Court has further observed that the maps Ex. 43 and 44 and the sale deed if perused, the disputed portion A, B, C, D in the map can not be said to be the portion from the sale deed dt. 19.06.2000 in the name of the appellant. Therefore, the order of the trial Court is legal and proper and does not require any interference by this Court in appeal. So the following order,

Order

1] The appeal stands dismissed with cost.

2] Decree be drawn up accordingly".

There is no perversity in recording the aforesaid findings. No substantial question of law arises. The second appeal is dismissed.

(R.K.DESHPANDE, J.)