

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

910 SECOND APPEAL NO. 383 OF 2016
WITH CA/8276/2016 IN SA/383/2016

HABIB BIN ABDULLA
VERSUS
SULTAN ALI BIN SULTAN SALEH

...
Advocate for Appellant : Ansari A.N.
Advocate for Respondents 1 & 2 : V.P. Savant
...

CORAM : T.V. NALAWADE, J.
DATED : 4th August, 2016.

ORDER :

1. The appeal is filed against judgment and decree of Regular Civil Suit No. 573/2006, which was pending in the Court of 5th Joint Civil Judge, Junior Division, Nanded and against the judgment and decree of Regular Civil Appeal No. 131/2009, which was pending in the Court of District Judge-2, Nanded. The suit filed by present appellant for relief of injunction is dismissed. Both the sides are heard.

2. The suit was filed in respect of open space called as 'Sheri' which is situated on the eastern side of property bearing C.T.S. No. 17271 and it is from Nagar Galli, Nanded. The size of the open space is 44 ft. x 6 ft. It is the case of plaintiff that under the sale deed, he has purchased property No. 17271 and in the

sale deed the suit property is also sold to him and defendants have no concern with the suit property. It is contended that defendants are trying to close the passage to prevent the entry of plaintiff in the suit property and so, the cause of action has taken place for the suit.

3. Defendants filed written statement and contested the matter. They contended that the suit property, the passage, does not belong to plaintiff. They contended that it is a part and parcel of C.T.S. No. 17272, which belongs to defendants and they prayed for dismissal of the suit.

4. Issues were framed on the basis of aforesaid pleadings and both the sides gave evidence.

5. The plaintiff has relied mainly on the two sale deeds, one executed in his favour and one executed in favour of his vendor. They are at Exhs. 47 and 67 and they are of the year 1939 and 1949. This Court has carefully gone through the contents of the sale deeds. They show that on eastern side of the property sold, 'Sheri' and house of one Sultan are shown. Thus, it is not possible to draw inference that under the sale deed 'Sheri', open space was sold to plaintiff. On the other hand,

there is sale deed executed in favour of defendants and it shows that this open space called as 'Sheri' is purchased by the defendants. To ascertain as to whether this disputed portion is shown as part of C.T.S. No. 17271 or 17272, this Court allowed both the sides to produce the C.T.S. map of these properties. Copy of this map was produced before the Courts below and this map shows that the disputed open space is a part of C.T.S. No. 17272. This map further shows that there is wall of the house of plaintiff towards that side and no opening is shown to this open space from this wall. Further, on the northern side of the property of the plaintiff, there is a public road and there is opening to the house of plaintiff only towards the public road which is on northern side.

6. In view of the aforesaid circumstances, the findings are given against the plaintiff and findings are on questions of facts. It is not possible to interfere in these findings and no substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

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