

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.451 OF 2014

Satish Nilkanth Patil & Ors. .. Appellants
Vs.
Amol Jaysing Patil & Ors. .. Respondents

Mr.S.G. Deshmukh i/by Mr.G.T.Kanchanpurkar for the Appellants.
Mr.Bhushan Walimbe for the Respondent no.1.

CORAM : R.D. DHANUKA, J.
DATE : 23rd November 2016

P.C.

1. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellants (original defendants) have impugned the order dated 27th June 2012 passed by the Additional District Court, Islampur dismissing the Regular Civil Appeal No.68 of 2005 filed by the appellants thereby impugning the judgment and decree dated 14th October 2005 passed by the learned Civil Judge, Junior Division, Shirala in a suit filed by the respondents (original plaintiffs) for permanent injunction.

2. The subject matter of the suit was ¼ share of C.S. No.1309, 1310, 1311, 1312 and 1313 (eastern direction) situated at Mangale Tal.Shirala District Sangli admeasuring east to west 55 meters and north to south 28 meters. North to South wall of the suit property was also the subject matter of the suit. The plaintiffs produced the sale deed in respect of the suit property purchased by the plaintiffs and established before the learned trial Judge that the plaintiff was the owner and in possession of 4 ane share of C.S. No.1309 towards eastern direction and had purchased

the said portion for consideration of Rs.70,000/- under the registered sale deed dated 27th November 1996 from Rangrao Mahipati Kalekar.

3. Learned trial Judge after considering the oral and documentary evidence has rendered a finding that written statement filed by the defendants showed that the portion of the suit property was kept for as a right of way of predecessor in title of the plaintiffs. The trial Court has rendered detail reasons while decreeing the suit for injunction filed by the plaintiffs.

4. Being aggrieved by the judgment and decree dated 14th October 2005, the defendants preferred an appeal (Regular Civil Appeal No.68 of 2005) in the Court of the learned Additional District Court, Islampur. The first appellate Court formulated four points for determination and after considering the oral and documentary evidence has also rendered a finding that the plaintiffs were in possession of the suit property and had right over the wall. It is held that the plaintiffs had also proved obstruction by the defendants to their such possession over the suit property and the wall and after rendering the detailed reasons and has confirmed the findings rendered by the learned trial Judge.

5. The learned counsel appearing for the defendants submits that the sale deed produced by the plaintiffs before the learned trial Judge between the plaintiffs and their vendor in respect of the suit property was not binding upon the defendants. He further submits that the finding of the first appellate Court that no case of easement is made out by the appellants is perverse.

6. In so far as the submission of the learned counsel for the appellants that the sale deed between the plaintiffs and their vendor in respect of the suit property was not binding upon the defendants is concerned, it is not disputed by the learned counsel for the respondents (original plaintiffs). However, the original plaintiffs, in my view, has independently proved their right in the suit property as well as the right in wall whereas the defendants though led oral evidence before the learned trial Judge could not establish any right in the suit property. There is thus no merit in the contention of the learned counsel for the appellants.

7. The findings rendered by the two Courts below are concurrent findings and being not perverse, cannot be interfered with under Section 100 of the Code of Civil Procedure, 1908. No substantial question of law arises in this second appeal. Second appeal is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.