

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAS) No.760 of 2015
In
Second Appeal Stamp No.13732 of 2015
Along with
Second Appeal Stamp No.13732 of 2015
(Haridas s/o Sitaram Raut v. Shri Maroti s/o Vithoba Choudhari and
others)

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appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri O.W. Gupta, Advocate for Applicant/Appellant.
Shri S.K. Thengre, Advocate for Respondents.

Coram : R.K. Deshpande, J.
Dated : 10th August, 2016

Civil Application (CAS) No.760 of 2015 :

Heard the learned counsels appearing for the parties.

For the reasons stated in the application, I am satisfied that a sufficient cause is made out for condonation of delay.

Hence, the application is allowed. The delay caused is condoned.

The civil application is disposed of.

Second Appeal Stamp No.13732 of 2015 :

Heard the learned counsels for the parties on the merits of this appeal.

The Trial Court passed a decree in Regular Civil Suit Old No.125 of 2007 and New No.64 of 2008 on 26-11-2009 granting a declaration that the plaintiffs have right of way shown by red colour in the plaint map through Gat No.479 belonging to the defendant. The defendant is restrained from obstructing the way of the plaintiffs to their Gat No.477. The lower Appellate Court has dismissed Regular Civil Appeal No.02 of 2010 on 12-2-2015. Hence, this second appeal by the original defendant.

Shri Gupta, the learned counsel appearing for the appellant/defendant, has invited my attention to the settlement-deed dated 20-2-1996 at Exhibit 46 and has urged that the appellant/defendant has no objection for permitting the plaintiffs to use the way which was agreed to in the settlement-deed. According to him, as per the said settlement-deed, the way granted to the plaintiffs was from the boundary of Gat No.479 belonging to the appellant/defendant. As against this, the claim of the plaintiffs was that as per the settlement-deed, the way granted was through Gat No.479 belong to the appellant/defendant.

The Trial Court appointed the Court Commissioner, who inspected the spot and prepared the map and submitted it along with his report. The Trial Court recorded the finding that the report of the Court Commissioner clearly shows that the right of way demanded by the plaintiffs in the plaint is the same way as was granted in the settlement-deed at Exhibit 46, and the defendant obstructed the said way of the plaintiffs, as a result, the plaintiffs were constrained to file the suit. The lower Appellate Court has concurred with this finding, and it is established that the right of way demanded by the plaintiffs in their plaint is the same, which is reflected in the settlement-deed at Exhibit 46. The defendant did not cross-examine the Court Commissioner and the report along with the map annexed thereto have been relied upon by the Courts below.

Thus, no substantial question of law arises for consideration in this second appeal. The second appeal is dismissed.

Judge.

Lanjewar

CERTIFICATE

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