

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL (ST.) NO. 10122 OF 2017

Tulshiram s/o Totaram Kumbhar,
Age: 76 years, Occu: Agri.,
R/o Fattepur, Tq. Jamner,
Dist. Jalgaon

..APPELLANT

VERSUS

Dnyaneshwar s/o Ravindra Shelke,
Age: 17 years, Occu: Education,
through Janabai w/o Kashinath Shelke,
Age: 42 years, Occu: Agri.,
R/o Fattepur, Tq. Jamner,
Dist. Jalgaon

..RESPONDENT

Mr M. G. Deokate, Advocate for appellant;
Mr M. M. Bhokarika, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 23rd June, 2017

ORAL ORDER

Heard.

The appellant-original defendant claims to be the owner of the land bearing Gat No.38.

2. There is a common bandh between lands bearing Gat Nos. 38 and 39, which further enters in Gat Nos. 37/1 and 37/2. Plaintiff claims to be the owner of Gat No. 37/1 and sought the easementary right, which suit was decreed by the learned Trial Court and confirmed by the learned Appellate Court, which is questioned in the present second appeal.

(2)

3. Amongst other, the grounds canvassed by the appellant are, that once the title of the appellant is disputed, the Court should have framed the issue to that effect. When an alternate way was suggested by the present appellant, Courts below have not considered the same in its proper perspective. He then would urge that the appellate court has granted injunction without any prayer to that effect by the respondent-plaintiff.

4. So far as the above submissions are concerned, it is required to be noted that the witnesses of both the sides have not disputed about existence of a common bandh in between Gat No. 38 and 39, which enters into Gat No. 37/1 and 37/2.

5. Both the Courts below thereafter proceeded to record the finding of fact thereby rejecting the claim of the appellant-defendant, who suggested the alternate way. On facts, the alternate way suggested by the present appellant appears to be not confined with as the way does not permit the respondent to enter the field along with his agricultural equipments as could be noticed from the observations made in paragraph No. 21 of the judgment of the Trial Court.

6. In the wake of the above referred background, it is to be noted that the ground of alternate way as is raised, does not call for any interference.

(3)

7. The appellate Court though framed the point of declaration, however, without recording any finding on the same granted injunction, has considered the said point. As such, it is not necessary to consider that there exists an injunction in favour of the respondent-plaintiff, particularly in the backdrop of the findings recorded.

8. In view thereof, the appeal, being devoid of merits, fails as such, stands rejected.

(N.W. SAMBRE, J.)

sjk