

Sequeira

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

***SECOND APPEAL NO. 478 OF 2015
Along with
CIVIL APPLICATION NO. 1016 OF 2015
(For stay)***

Vetala Tanyaba Algude & anr. .. Appellants
Vs
Amrutrao Vitthalrao Jagtap & ors. .. Respondents

Mr.Tushar Sonawane i/b Mr.Prashant Hagare, for Appellants /
Applicants.

Mr.Vijay Patil, for Respondent No.1.

***Coram : N.M.Jamdar, J.
Date : 27 April 2017.***

Oral Order :

By this Second Appeal, the Appellants – original Plaintiffs have challenged the judgment and order passed by the learned District Judge, Satara dated 2 January 2014, allowing the Appeal filed by the Respondent No.1 and setting aside the judgment and decree passed by the Civil Judge Junior Division, Phaltan, on 12 March 2012.

2. The suit was filed by the Appellants for injunction and declaration. Issues were framed by the learned Civil Judge as regards the ownership of the Appellants-Plaintiffs, whether the Appellants

have a right of way as sought for in paragraph 13a) of the plaint and whether they were entitled for a relief of injunction. The learned Civil Judge, by judgment and order dated 12 March 2012, set aside the Sale deed dated 6 September 1971 and did not decide the issue of grant of injunction as it was not necessary. An appeal was filed by the Respondents in which the learned District Judge held that the Appellants were not entitled to right of way and that Appellants failed to prove that Respondents have not fulfilled the conditions of the Sale deed, and the Sale deed was not null and void.

3. The learned counsel for the Appellants restricted the Appeal to the question of right of way. The learned counsel submitted that in the earlier round of litigation, wherein the Appellants had sought right of way based on the Sale deed, the Respondents had consistently taken a stand that the right of way need not be given to the Appellants as there is an alternate way available from Gat No.572 onwards to Gat No.576. He submitted that having taken such stand in the earlier round of litigation, in the present proceedings the Respondent No.1 could not have taken a stand that even from Gat No.572 to Gat No.576 there is no road.

4. The learned counsel for the Respondent No.1 pointed out that the theory of the Respondents that there exists a road from Gat No.572 to Gat No.576, is consistent and even as of today the Respondent No.1, who is the owner of Gat No.572 has no objection for the Appellants using the way through Gat No.572. The learned

counsel for the Respondent No.1 submitted that as far as Gat No.573 to 576 these owners have not been joined in the Suit, as according to the Appellants themselves, these owners have never obstructed the Appellants.

5. Since a statement has been made by the learned counsel for the Respondent No.1 who is owner of Gat No.572 for permitting the Appellants to use the way through Gat No.572, the grievance of the Appellants stands satisfied. The statement is accepted. As far as Gat No.573 to 576 is concerned, it was the contention of the Appellants themselves that owners of Gat No.573 and 576 are not obstructing the Appellants. If that is the position then there is no impediment in the way of the Appellants using the way from Gat No.572 to 576. That being the position the statement made by Respondents in the evidence, which is sought to be relied upon by the learned counsel for the Appellants, will be of no consequence. Accepting the statement of the learned counsel for Respondent No.1 as above, Second Appeal is disposed of. Civil Application accordingly stands disposed of.

(N.M.Jamdar, J.)