

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

SECOND APPEAL NO. 694 OF 2012

WITH

CIVIL APPLICATION NO. 1321 OF 2012

IN

SECOND APPEAL NO. 694 OF 2012

**The Sarpanch,
Grampanchayat, Nagaon**

...Appellant

Versus

Mr. Paygonda Dada Patil

...Respondent

Mr. Prashant Bhavake, for the Appellant.

Mr. Abhijeet Adagule, for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 6 April 2017

ORAL ORDER :

1. Heard the learned Counsel for the parties. The Appeal is filed by the Grampanchayat taking exception of the judgment and order passed by the learned District Judge,

Kolhapur dated 16 May 2012 allowing the Appeal and setting aside the judgment and decree passed by the Civil Judge restraining the Appellant from causing any obstruction in the peaceful possession of the Plaintiff over the suit property.

2. The Respondent filed Regular Civil Suit No. 168 of 2003 on 28 January 2003. The Suit was filed for simplicitor injunction. It was the case of the Respondent that the Appellant Grampanchayat, due to political rivalry, was obstructing the possession of the Respondent on suit property and was trying to open up a road. The learned Civil Judge by the judgment and order dated 25 January 2006, dismissed the Suit. The learned District Judge granted injunction in favour of the Respondent.

3. The learned Counsel for the Appellant contended that the Report of the Court Commissioner ought to have been taken into consideration and could not have been discarded only on the ground that the Court Commissioner is not examined. He submitted that there are various admissions of the Respondent in respect of the existence of the road and the amount for tarring the road has been spent from the funds of Government through the Zilla Parishad, Kolhapur. The learned Counsel for the Respondent submitted that the Appellant failed to produce any such evidence.

4. The Suit is filed for simplicitor injunction against the Grampanchayat. The Grampanchayat being public body, has to act as per law. The Appellant failed to produce any documents to show that the amount for tarring the road was paid from the public funds. Nothing stopped the Appellant from producing official record to demonstrate the existence of road. Having failed to produce the record, the learned District Judge was not in error in drawing an adverse inference. No perversity can be found in the conclusion of the learned District Judge that the Respondent was entitled to the decree of injunction.

5. The learned Counsel for the Appellant then submitted that the residents of the village could also suffer especially once who have been using this road. The learned Counsel for the Respondent pointed out that the persons stated to have been using the road had filed Civil Application No. 1660 of 2013 for intervention, which was disposed of giving them liberty to file an independent suit.

6. Since I have not interfered with the finding of the learned District Judge, because the Appellant Grampanchayat has failed to produce the record, the Suit, if any, is filed by the residents claiming that they have been using the road in question, that the Suit will be decided on its own merits. It is clarified that the order of injunction would mean that the

Grampanchayat cannot take any high handed action without taking recourse of law. In view of the complete failure of the Appellant Grampanchayat to produce the relevant record, if any, the residents of the village should not suffer, if they have any right to use the road. This liberty is already been given by the learned Single Judge of this Court by the order dated 26 November 2015. As for the present Appeal is concerned, no substantial law arises. The Appeal is dismissed.

7. Civil Application is also disposed of accordingly.

[N.M. JAMDAR, J.]