

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

**SECOND APPEAL NO. 742 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 1750 OF 2015**

Jagannath Bhimrao Jadhav	...Appellant / Orig.Plaintiff
vs.	
Mohan Shivaji Jadhav & Ors.	...Respondents / Orig.Defendants

Mr.S.M.Railkar for Appellant.
Mr.R.V. Bansode for Respondent No.1.

CORAM : S.C. GUPTE, J.

6 JANUARY 2017

P.C. :

Heard learned Counsel for the parties.

2 This second appeal challenges a judgment and decree passed by the District Court at Sangli in Regular Civil Appeal No.338/2012.

3 The dispute between the parties concerns possession of the Appellant (original Plaintiff) of land designated by Gat No.388 and the purported obstruction caused by the Respondents (original Defendants) in respect of such possession. The trial court found against the Appellant, both on the issue of possession and the alleged obstruction by the Respondents. The first Appellate Court, on the other hand, found the issue of possession in favour of the Appellant but concurred with the finding of the trial court as far as the issue relating to the obstruction by the Respondents was concerned. Though the discussion of the trial court on the issue is rather

perfunctory, the first Appellate Court has gone into the evidence in extenso and come to a finding that the Appellant has not proved any obstruction by the Respondents to his peaceful possession of field Gat No.388 or any portion thereof without having any rights. The first Appellate Court has considered the real dispute between the parties which concerns the obstruction offered by the Respondents to the Appellant's peaceful possession of field Gat No.388 by claiming a right of cart way. Whereas it was the case of the Appellant that there was no cart way from his field available to the Respondents, it was the Respondents' case that they were enjoying this cart way for a very long time as a "vahivat" right.

4 It is an undisputed position that the Respondents were holding field Gat No.387 which is situated on the southern side of field Gat No.388 possessed by the Appellant. The Appellant admitted in his cross-examination before the trial court that field Gat No.387 held by the Respondents together with Gat No.388 held by the Appellant and two other Gat Nos.386 and 401 were all subdivisions of original field Survey No.301. There is also an admission on the part of the PW 3 in this behalf. The conclusion of the Appellate Court that Gat Nos.388 of the Appellant and 387 of the Respondents were sub-divided portions of the earlier common field Survey No.301 *per se* cannot be said to be vitiated by any error of law. The next question considered by the Appellate Court was of the access of the Respondents to their plot at field Gat No.387. On the basis of the evidence of PW 2 as also the Court Commissioner's report, which was exhibited before the court, the Appellate Court came to a conclusion that there was a cart way going through the Appellant's plot at field Gat No.388. This cart way, situated in north south direction starting from Posewadi to Khanapur tar road, existed till the end of the first part of field Gat No.388 and was used

by the Respondents to access their adjacent plot, namely, field Gat No.387. The Appellant's contention that there were other cart ways which were available to the Respondents to approach field Gat No.387 was also considered by the Appellate Court. Based on the evidence led before the court, the court came to the conclusion that there was no cart way available to the Respondents to access field Gat No.387 apart from the cart way through field Gat No.388 of the Appellant. On the basis of this evidence, the first Appellate Court came to the conclusion that the only cart way to approach their field Gat No.387 was the one going through field Gat No.388 of the Appellant and that there was no evidence of Respondents having any alternate public or easementary cart way to approach their field. These conclusions are all supported by evidence and do not give rise to any error of law on the part of the Appellate Court.

5 It is, however, submitted by learned Counsel for the Appellant that the First Appellate Court has clearly disregarded the material on the basis of which the interlocutory order was passed in the suit. This material consists of an order passed by the Mamlatdars' court on the application of the Respondents. The Respondents had applied to the Mamlatdars' court for permission to construct road on the cart way enjoyed by them. The Mamlatdars' court, had by its order dated 12 April 2006, rejected that application. Learned Counsel submits that this order has been passed by the Mamlatdars' court in exercise of specific powers conferred on it under Section 5 of the Mamlatdars' Courts Act, 1906. Under Section 5 of the Mamlatdars' Courts Act, every Mamlatdar, who presides over the court, called the Mamlatdars' Court, has the power to remove or cause to be removed any impediment or obstruction in respect of any land or give immediate possession of any land or premises to the applicant. What

emerges from the order of the Mamlatdars' Court in this case is that the Respondents' application for claiming removal of obstruction on this road by the Appellant was rejected by that court. The rejection of this application was neither binding on the District Court hearing appeal in this matter nor can it be considered to be evidence which ought to have been considered by the District Court. There is no merit in the Appellant's contention that disregarding of this material by the first Appellate Court amounts to any substantial error of law in appreciation of evidence.

6 In the premises, there is no merit in the appeal. The appeal is dismissed. In view of the dismissal of the appeal, the civil application does not survive and the same is also dismissed.

7 Learned Counsel for the Appellant prays for continuation of interim relief in terms of the order passed by this court in the second appeal on 30 October 2015. The interim protection granted by the first Appellate Court on 30 September 2009 was continued by this court till the next date, i.e. till 4 January 2016. After this date, the injunction has not been continued and is not in operation. In the premises, there is no question of granting any protective relief. The application for protective relief is rejected.

(S.C. Gupte, J.)