

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.558 OF 2015

Gulab Ahmd Bahadur Patel & Ors. Appellants

Vs.

Mr. Balu Shankar Hile & Ors. Respondents

Mr. R.N. Gite, Advocate for the Appellants.

Coram : N.M. Jamdar, J.

Date : 11 April, 2017

P.C.:

The Appellant has challenged the concurrent judgment and orders passed by the learned Civil Judge, Junior Division, Niphad and the learned District Judge, Niphad, dismissing the suit and appeal filed by the Appellant.

2 The Appellant filed a suit for permanent injunction claiming easementary rights in respect of the suit property. The learned Civil Judge framed an issue as regards existence of a road,

admeasuring 8 ft. x 10 ft., running North-South direction. The learned Civil Judge after assessment of the evidence held that the Appellant failed to prove that the road exists and the Defendants have obstructed the road of the Appellant to use the road. This finding has been confirmed in appeal by the learned District Judge.

3 Heard the learned counsel for the Appellant. In the trial, both the parties led their evidence and also the Court Commissioner was appointed, who was prepared a map. Both the Courts, after considering the oral and documentary evidence including the map of the Court Commissioner rendered a categorical finding regarding non-existence of the road. The arguments sought to be advanced for the learned counsel for the Appellant all relate to assessment of evidence. Such re-appreciation of evidence in respect of the purely factual aspect of existence of a roads is not possible under Section 100 of Code of Civil Procedure. No perversity is pointed out. No substantial question of law exists. The Second Appeal is accordingly dismissed.

(N.M. Jamdar, J)