

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.89 OF 2016

KIRTIKUMAR ARVINDKUMAR VERMA
VS
ARYA SAMAJ SABHA AKOT

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Mahesh Rai, Advocate for the appellants.
Shri V.I G. Bhamburkar, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 4, 2017.

The appellants are the original plaintiffs who are the owners of Plot No.54. They filed suit for declaration that they had a right of passing through adjoining Plot no.53 and that the defendant – Trust which owned said plot should not restrain them from doing so. For seeking said right, the plaintiffs relied upon documents such as a map, document of settlement at Exhibits – 40 to 43. The trial Court on consideration of these documents found that these documents did not create any right in favour of the plaintiffs. The appellate Court has affirmed these findings.

Shri Mahesh Rai, learned Counsel for the plaintiffs submitted that all these documents pertain to the

year 1940 and as these documents are more than 30 years old, there is a presumption of execution of these documents. He submitted that both the Courts did not consider these documents in the proper perspective. The plaintiffs were entitled to use the suit way as of right and hence were entitled for injunction.

Shri V. G. Bhamburkar, learned Counsel for the defendant supported the impugned judgments. According to him, both the Courts had found that there was no right to the plaintiffs to claim the suit way.

Perused the impugned judgments. The plaintiffs relied upon Map Exhibit-40 which was prepared on 19-4-1935. They also relied upon Exhibit-42 which was a verdict signed by one Hiralal Chhedilal. The trial Court in para 10 of its judgment held that the defendant had denied the status of said Hiralal Chhedilal as President of the Trust and the plaintiffs had not proved that he was empowered to give said verdict. It further found that even the acknowledgment at Exhibit-43 did not create any right in favour of the plaintiffs. The right of the plaintiffs was therefore not established.

Though the aforesaid documents are more than 30 years old there is no presumption as to correctness of the contents therein. The contents have to be independently

proved. Both the Courts have found that the right of way as claimed has not been duly proved by the plaintiffs. The evidence on record has been properly appreciated and this exercise cannot be said to be perverse. No substantial question of law arises. Hence, the appeal is dismissed. No costs.

JUDGE

/MULEY/