

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

SECOND APPEAL NO.14 OF 2016

SMT. KAMALABAI DAMODHAR DHAKHODE
VS
RAMDAS GANPAT WANKHADE & OTHERS

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

Court's or Judge's orders

Shri N. L. Jaiswal Adv. H/F U. M. Aurangabadkar, Advocate for the
appellant.
Shri A. A. Naik, Advocate for the respondent Nos.1 to 3.

CORAM : A.S. CHANDURKAR, J.
DATED : JUNE 14, 2017.

The original plaintiff who had filed suit for mandatory injunction against the respondents for removal of a thorny fencing that was obstructing her way to approach her property which suit was dismissed by the trial Court and its judgment was confirmed by the appellate Court has filed the present appeal.

It is the case of the appellant that she is the owner of 0.09 Gunthas of land from Gut No.200 in which she is running a bangle shop. According to her, the defendants who are owners of Gut No.207 were obstructing her right of way and hence, she filed the suit. According to the respondents, they are the owners of Gut No.207 adjoining the State Highway and that they had erected the fencing in their own property.

After the parties led evidence, the trial Court

found that the Gut No.207 was divided into two parts as a road was passing through it. On the northern side of the said road, there was a portion of Gut No.207 after which the plaintiff's Gut No.200 was situated. By relying upon the map at Exhibit-57, it was held that the plaintiff had failed to prove that the only approach way was obstructed by the respondents. The appellate Court confirmed the dismissal of the suit.

Shri N. L. Jaiswal, learned Counsel for the appellants submitted that in absence of any joint measurement, the suit for removal of encroachment could not have been dismissed. He submitted that on the basis of a decree obtained in other proceedings to which the appellant was not a party, the respondents were obstructing her right of way. He submitted that considering the evidence on record, the appellant was entitled for relief of mandatory injunction.

Shri A. A. Naik, learned Counsel for the respondents supported the impugned judgment. According to him, the trial Court on the basis of the map at Exhibit-57 clearly found that the respondents were owners of the remaining portion of Gut No.207 that was on the northern side of the Highway. He submitted that the witnesses examined by the appellant did not support her case and, therefore, there was no reason to interfere with the findings of fact on record.

After hearing the learned Counsel for the parties at length, I do not find that the appeal gives rise to any substantial question of law. The trial Court after considering the entire evidence on record accepted the map Exhibit-57 which was prepared on the basis of the original records. It was found that on the southern side of Gut No.200, Gut No.207 was situated and a road was passing through the

same. On the basis of a decree passed in Regular Civil Suit No.139/2003, the defendants had become owners of that portion of Gut No.207 which was on the northern side of said Highway. The appellate Court on reappreciating the evidence found that no case of easement of necessity had been made out. It further found that thorny fencing erected by the respondents was on their portion of Gut No.207. In that view of the matter, I find that the findings recorded are on the basis of evidence on record. Hence, no interference is called for.

The second appeal is accordingly dismissed with no order as to costs.

JUDGE

/MULEY/