

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 740 OF 2016

Shri. Shankar Murlidhar Gunjal ...Appellant

Versus

Shri. Shivaji Shankar Jadhav & Anr ...Respondents

Mr. Rahul D. Metkari, for the Appellant.

CORAM: N. M. JAMDAR, J

DATED: 4 JANUARY, 2018

Oral Order :-

1. The Appellant – Plaintiff has challenged the concurrent judgments and orders passed by the learned Civil Judge, Dindori and the learned District Judge, Nashik dismissing the Suit and Appeal filed by the Appellant seeking an order of injunction against the Respondent – Defendant.

2. It is the case of the Appellant – original Plaintiff that the mother of the Appellant had received the property gat no.48 admeasuring 82 R. at Khatvad, Tal. Dindori, Dist. Nashik, as a gift from the predecessors of the Respondents. In the said gift deed there was no mention of any right of way in favour of the Respondents, yet the Respondents were forcibly entering in the property of the Appellant – Plaintiff on the ground that they have no other way and they have an easementary right.

According to the Appellant – Plaintiff, the Respondents have an alternate way through gat no.49 which is adjacent to gat nos.47, 46 and 53, through a common bandh. On these contentions, the Appellant filed a Suit seeking injunction. The learned Civil Judge and the learned District Judge appreciated the evidence on record and found that there was no such alternate way available to the Respondents and they have an easementary right and dismissed the suit and appeal by the impugned judgment and orders dated 14 June, 2012 and 4 March, 2016 respectively.

3. The learned Counsel for the Appellant submitted that the gift deed did not contain any recital regarding the easementary right of the Respondents and that the Respondents in the cross-examination has admitted that there is an alternate way. The learned Counsel for the Appellant produced a paper-book filed in the District Court to emphasis on the admission in the cross-examination.

4. The existence of an access is primarily a question of fact. The Appellant – Plaintiff has not examined any witness or landholder of gat nos.45, 46, 47 and 53 and what is sought to be relied upon is an entry in the revenue record in favour of the Respondents in respect of these land numbers. The Appellant has also not sought an appointment of Court Commissioner or

local inspection. As far as the argument based on the cross-examination is concerned there is no such specific admission that the Respondents are using an alternate way.

5. The arguments of the Appellant are calling upon this Court to re-assess the evidence and to hold that there exists an alternate way, and that the Respondents do not have any easementary right. Both Courts have considered the evidence on record. I have gone through the cross-examination of the Respondents. There is no clear admission by the Respondents as sought to be contended. There is no such clear admission for overturning the concurrent findings of fact. It cannot be said that both the Courts have failed to notice the effect of an admitted position, or have committed any error of law. It is not possible to reappreciate the evidence on record, in the manner suggested by the learned Counsel for the Appellant. No question of law, much less substantial question of law arises. What are sought to be agitated are questions of fact.

6. The Second Appeal is dismissed.

[N. M. JAMDAR, J.]