

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 174 OF 2017
WITH
CIVIL APPLICATION NO. 1718 OF 2016

Dhondappa s/o Shivgonda Koli ...Appellant

Versus

Mahadeo Sidram Bijargi (Birajdar) ...Respondent

Mr. Akshay Petkar, for the Appellant.

Mrs. Geeta Mulekar, for Respondents Nos.1 & 2.

CORAM: N. M. JAMDAR, J

DATED: 4 JANUARY, 2018

Oral Order:-

1. The Appellant – original Plaintiff has challenged the concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Solapur and the learned District Judge, Solapur, dismissing the Suit and the Appeal filed by the Appellant – Plaintiff for enforcement of an easementary right of way.

2. The Appellant – Plaintiff filed Regular Civil Suit No.78 of 2013 in the Court of Civil Judge, Junior Division, Solapur seeking relief of declaration and perpetual injunction. According to the Appellant, the Appellant had a right of way through the

land owned by the Respondent – Defendant bearing gat no.4. According to the Appellant, the access existed for more than hundred years and there was no other way for the Appellant to reach his land. The learned Civil Judge, after considering the evidence on record, dismissed the suit by judgment and order dated 7 May, 2016. The Regular Civil Appeal No.123 of 2016 filed by the Appellant was dismissed by the learned District Judge, Solapur by judgment and order dated 27 September, 2016.

3. The learned Counsel for the Appellant contended that both the Courts have not considered the effect of the panchnama drawn on 2 January, 2015 in the proceedings under the Mamlatdars' Courts Act, 1906 so also the recitals in the said deed and the oral evidence led by the Appellant. The learned Counsel for the Respondent contended that the panchnama is rightly held as doubtful, and that the Appellant has admitted the existence of an alternate way.

4. The panchnama dated 2 January, 2015 is said to be drawn by Tahasildar, South Solapur. The Appellant in his evidence has admitted that on 2 January, 2015, the Tahasildar had not come to the village. Both the Courts have rightly held that the panchnama is doubtful. Even assuming the panchnama was drawn by the Tahasildar it is in a proceedings under the

Mamalatdars' Courts Act, 1906. The proceedings under this Act are summary proceedings and the context in which an enquiry under this Act is entirely different than a regular civil suit. Since the Appellant had filed a civil suit for declaration and injunction, burden was upon the Appellant to demonstrate his right.

5. The sale deed in favour of the Appellant does not contain a recital regarding any specific right of way. Only a general averment is made. It is the contention of the learned Counsel for the Appellant that the sale deed was executed much prior to the obstruction by the Respondent and therefore there is no specific recital. This contention cannot be accepted. If the Appellant was purchasing a land locked property as contended, any prudent purchaser would ensure that an access is specified in the sale deed. The least the Appellant could have done was to examine the vendor. It is not the case that the vendor was unavailable as a witness or was hostile to the Appellant. The learned Counsel for the Respondent has drawn my attention to the admission of the appellant in the cross-examination that the Appellant has no dispute with the owners of gat nos.39, 40, 7 and 11 i.e. the adjoining owners, because there is no such way as claimed in the suit is in existence.

6. With this state of evidence, both the Courts rightly came to the conclusion that the Appellant has failed to prove his case. All pieces of evidence have been properly appreciated and legal inferences therefrom have been correctly drawn.

7. No substantial question of law arises. The Second Appeal is dismissed.

8. In view of dismissal of the Appeal, the Civil Application does not survive and is dismissed accordingly.

[N. M. JAMDAR, J.]