

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.88 OF 2017

Sheikh Mansur s/o Sheikh Ameer

... Appellant

-vs-

**Abdul Razzak s/o Sheikh Jumma
and anr.**

... Respondents.

Shri C. J. Dhumane, Advocate for appellant.

Ms Rashmi Deshpande, Advocate for respondent No.1.

Shri A. R. Patil, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : February 13, 2018

P.C.

This appeal has been filed by the original defendant No.1 who is aggrieved by the decree passed in favour of respondent No.1 herein by which a declaration has been granted that the plaintiff has a right to use and enjoy the disputed lane for repairs and for undertaking whitewash of his wall. The appellant has been restrained from carrying out any construction in the said lane.

2. According to original plaintiff he had purchased a house property on 27/04/1976 from one Moh. Sharif and his brothers. Adjacent to his house was the disputed lane measuring 19.06 ft. x 6.6 ft. According to the

plaintiff this lane was for common use of the plaintiff and defendant No.1 who was having his house adjacent to that lane. As the defendant No.1 intended to make a construction thereon, the suit came to be filed.

In the written statement the defendant No.1 took the stand that he had purchased the suit property from his brothers and that the lane was included in that property. According to defendant No.2 no permission had been granted to defendant No.1 to make any construction thereon.

3. After the parties led evidence the trial Court found that the lane in question was liable to be used by the plaintiff for carrying out repairs on the northern side of his wall. It referred to the sale deed produced by both the sides and accordingly decreed the suit. The appellate Court has confirmed that finding and dismissed the appeal.

4. The learned counsel for the appellant submitted that in view of the map at Exhibit-91 and sale deed at Exhibit-92 the lane in question belonged to defendant No.1 and therefore the plaintiff had no right to enter the said lane for undertaking repairs. According to him the fact that the lane belonged to defendant No.1 was specifically mentioned in the sale deed executed by his brothers and said mention was not there in the document of the plaintiff. Hence both the Courts erred in decreeing the suit.

5. The learned counsel for respondent Nos.1 and 2 supported the impugned judgment. It was submitted that the lane was for common use and that the plaintiff had a right to enter the same for undertaking repair work.

6. I have heard the learned counsel for the parties at length and I have perused the records of the case. The documents at Exhibits-67, 91, 92 and 96 indicate that abutting the house of the plaintiff and defendant No.1 there is a small lane. According to defendant No.1 this lane was part of the subject matter of the sale deed which was executed by his brothers while selling the suit property to him. The location of that lane is such that it abuts the house of both plaintiff No.1 and the defendant. It has been found that the sale deed by virtue of which the defendant No.1 purchased the suit property was executed by his brothers. Prior thereto the property was owned by the father of defendant No.1. There is no document to indicate that this lane was specifically sold to the father of defendant No.1 or the manner in which the father of defendant No.1 got title. The trial Court while considering all these documents of title has found that the word "Galli" has been used in all the documents to indicate its common use by all parties. In fact, in the plaintiff's sale deed at Exhibit-80, the lane is shown for common use by the plaintiff and the defendant's vendors. It has then found that the plaintiff was not claiming ownership over that lane and therefore it was permissible for being used for the work of repairs by either party. The location as shown

by Exhibit-96 makes this conclusion probable. It is also found that Exhibit-92 is the sale deed executed by the brothers of defendant No.1 in favour of said defendant No.1. Thus in absence of any specific document showing the manner in which this lane was purchased by the father of defendant No.1, mere mention in this map at Exhibit-67 would not be sufficient to hold in favour of defendant No.1.

6. I find that both the Courts have taken into consideration the documents of title of both the parties and by taking a possible view of the matter have held in favour of the plaintiff. The appreciation of evidence does not appear to be perverse. The second appeal therefore does not give rise to any substantial question of law. Same is therefore dismissed. No order as to costs.

JUDGE