

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

SECOND APPEAL NO.120 OF 2019

Shri Devidas Kisan Tayade

..VS..

Zoting Baba Sansthan and anr

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

Court's or Judge's Order

.....
Shri R.R.Rathod, Counsel for the Appellant.
Shri V.B.Bhise, Counsel for the Respondents.

CORAM : V.M.DESHPANDE, J.

DATED : AUGUST 1, 2019.

1. Heard learned counsel Shri R.R.Rathod for the appellant/plaintiff and learned counsel Shri V.B.Bhise for the respondents/defendants.
2. Regular Civil Suit No.116/1997 was filed by the appellant/plaintiff and claimed following reliefs:

"1) The suit may kindly be decreed by passing a declaration that the site shown by letters B-2R-1R BB1 ZXBB-2 is a Government site and the defendants have no right, title or interest thereon.

2) Decree permanent injunction against the defendants restraining them from obstructing the plaintiff in using the said site as a way to go on north on Government road and for other sundry or connected uses.

3) Pass a declaration that Gift-Deed dated 3.2.1997 in respect of site shown by letters BCR-1B-2 is false and bogus and in respect of Government site whereunder the defendant No.1 gets no title.

4) Decree mandatory injunction removing construction on the site shown by letters BCR-1B-2 and construction on the southern wall made by defendant no.1 on the plaintiff's wall shown by letters YY.

5) Grant to the plaintiff all costs of the suit.

6) Grant any other relief which the Hon'ble Court deems fit in the facts and circumstances of the case."

3. The suit was contested by the respondents/defendants by filing written statement.

4. Before Trial Court, the appellant/plaintiff filed a Certificate (Exhibit 68) given by Sarpanch of village Chawara dated 19.2.1997 to show that roads exist on eastern side of plot Nos.1 to 4 and western side of plot Nos.5, 6, 7, and 8 are Government land. During the Trial, for the reasons best known to the appellant/plaintiff, he did not adduce evidence of author of the said document. Merely because the document is exhibited, it does not mean that contents are proved. In absence of examination of Sarpanch, authorship and contents of those documents, in my view, were not duly proved by the appellant/plaintiff and learned Judge of the Trial Court correctly bestowed her consideration and found that merely because of such document it cannot be said that the portion belongs to the appellant/plaintiff. No document whatsoever in nature is produced on record to show that roads belong to the appellant/plaintiff.

5. Existence of roads is one thing and its ownership is another.

6. The appellant/plaintiff is claiming existence of ownership and existence of the roads. The appellant/plaintiff was under obligation to prove his case in that behalf which he failed to prove. Learned Judge of Trial Court dismissed the suit.

7. Felt aggrieved thereby, the appellant/plaintiff preferred an appeal bearing Regular Civil Appeal No.18/2007. Learned Judge of the Lower Appellate Court, after appreciating of pleadings and documents brought on record by both the parties, recorded last finding of fact that the appellant/plaintiff failed to prove that he is owner of disputed land. In view of the said, learned Judge dismissed the appeal.

8. From submissions advanced by the parties before this Court, I am of the opinion that the present appeal does not involve any substantial question of law. By filing the present second appeal, the appellant/plaintiff wants, this Court while exercising powers under Section 100 of Code of Civil Procedure, to re-appreciate evidence, which is impermissible. Consequently, the second appeal fails and is dismissed. No costs.

JUDGE

!! BRW !!

...../-