

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.475 of 2017

Nivrutti Pandurang Khairnar & Ors .. Appellants

Versus

Uttam Krishna Khairnar & Ors .. Respondents

...

Mr.Nikhil Patil with Rupesh M. Gite for the Appellants.

Mr.Abhijit M. Adugule i/b S.R. Ganbavle for respondent no.1.

CORAM: BHARATI DANGRE, J.

DATED : 16th MARCH, 2022

P.C:-

1 Heard learned counsel for the appellant and learned counsel for the respondent and perused the impugned judgment and decree passed by the trial Court, which is upheld in a Regular Civil Appeal filed before the Adhoc District Judge-2, Malegaon.

2 The Suit came to be filed by the plaintiffs for declaration and permanent injunction as well as costs being recovered against defendant nos.1 to 3.

 The Suit property was set out in paragraph no.1 of the plaint and it was pleaded that it is ancestral property of the plaintiffs duly mutated in their name and under cultivation. The

claim projected, is on the northern side of the boundary of the suit property, runs a *nala* which is followed by the plaintiffs and the defendants as a common way and user, but the defendant nos.1 to 3 have no right, title and interest or concern with the suit property or the right of way of user passing through Gut No.71/2 and he is illegally obstructing right of way proceeding towards northern side of the suit property.

3 The claim in the plaint was contested by the defendants by filing a written statement whereas defendant nos.4 and 5 admitted the claim.

 The Civil Judge, Jr. Division, determined two main issues for consideration :-

 Whether the plaintiff prove that they along with the defendant have a common right of way and user through and adjacent to the drainage/nala to the northern side of the Suit property i.e. Gut No.71/2; and the second issue being the plaintiff prove that the defendant nos.1 to 3 have an alternative right of way and user using other than the one which has been mentioned in issue no.1.

 Apart from this, the issue as to whether the defendants have obtained various orders from Courts misrepresenting the description and existence of way of user was also set out for determination. On the evidence being brought on

record by the plaintiff through his affidavit in evidence filed by PW No.1 and the affidavit of the defendants being filed through defendant no.2, the issues came to be determined in the wake of the chequered history of litigation between the parties.

4 The learned Judge on the basis of the evidence placed before him addressed issue nos.1, 2 and 3 in the affirmative and held the plaintiffs entitled for the relief of declaration, as claimed by them and the Suit came to be partly decreed by restraining the defendant nos.1 to 3 from interfering with the peaceful possession of the Suit property.

The aforesaid finding came to be upheld by the Appellate Court.

5 On hearing the counsel for the applicant who project the questions of law in the present case as to whether there is any perversity in the findings rendered by the two Courts below, the answer is in the negative and particularly since no substantial question of law is involved and the matter has been decided purely on the facts of the case by appreciating the evidence brought on record, the Second Appeal do not deserve admission, since it lack any substantial question of law.

In the wake of the above, Appeal deserve a dismissal and is dismissed.

(SMT. BHARATI DANGRE, J.)