

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Second Appeal (SA) No. 61 of 2019

Dayaram S/o Tukaram Yenurkar
Versus
Deepak S/o Wasudeo Denge and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.N.Thengre, Advocate for the appellant.
Shri V.N.Morande, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.
DATED : 13th JANUARY, 2023.

In the present second appeal, the challenge is raised to the judgment and decree dated 14th September, 2018 passed in regular civil appeal no. 54 of 2009 by learned District Judge-1, Chandrapur, thereby upholding the judgment and decree dated 13th February, 2009 passed by the learned Civil Judge, Junior Division, Bramhapuri in Regular Civil Suit No. 4 of 2002 refusing to grant decree of declaration as regards right of way in favour of petitioner.

2. Learned counsel for the appellant submits that both the Court belows have committed error by not considering the order passed by the Tehsildar dated 18th

January, 2002 granting way to the plaintiff and thereby committed error in dismissing the suit. It is further submitted that Tehsildar is having authority under Section 143 of Maharashtra Land Revenue Code to grant right of way and once such right of way is granted, it is sufficient to allow the suit.

3. He further points out that the register known as 'Wajib-ul-arz' is a document which has not been considered by both the Courts below and therefore he submits that both the Courts below have committed error in holding against the plaintiff/appellant.

4. Mr. Morande, learned counsel for the defendant/respondent draws attention to the findings recorded by both the Courts below as regards 'Wajib-ul-arz' and other revenue entries and submits that after examining the oral as well as documentary evidence available on record and on recording the reasons thereon both the Courts below denied rightly the decree of declaration as regards right of way.

5. I have perused the judgment and decree both the courts below and orders passed by the Tehsildar. I have also perused the appeal memo, which, the learned counsel for the appellant has made available from his own record.

6. In this case D.W.Nos. 2 and 3 in their evidence, have categorically stated that the plaintiff is using a way to approach his field through their fields. Further the learned trial Court has observed that in Exhibit 68 a revenue entry does not disclose any right given in respect of particular field.

7. As far as the order of Tehsildar is concerned, on perusal of the same, I do not find that the said orders were passed under Section 143 of Maharashtra Land Revenue Code. Moreover the said orders were not exhibited and further the appellant has failed to point out that how the findings recorded by both the courts below, as regards register 'Wajib-ul-arz' are perverse.

8. In the circumstances, as both the Courts below have given concurrent findings that the plaintiff has no right of way as claimed by him. Thus, in absence of any perversity in recording the said findings of fact, I do not find any substantial questions of law is involved in the present appeal. Accordingly, the second appeal is dismissed.

[ANIL S. KILOR, J.]

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