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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 631 OF 2019
WITH
INTERIM APPLICATION NO. 9634 OF 2024**

Anil Dashrath Patil ... Appellant/ Applicant

VS.

Mukund Subhashrao Beshk Rao and Ors ... Respondents

Mr. Samir Kumbhakoni for the Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATED : 26th JUNE 2024

ORDER:

1. This Second Appeal is filed by the original plaintiff to challenge the concurrent judgments and decrees dismissing the suit.

2. Learned counsel for the appellant submitted that the suit is dismissed only on relying upon the decree passed in favour of respondent no.1 in his suit seeking an injunction against respondent nos. 2 and 3. He submits that the appellant was never a party to the suit filed by respondent no.1. He, therefore, submitted that the documents and evidence relied upon by the appellant should have

been examined independently. Learned counsel further submitted that the documents produced by the appellant are not properly appreciated by both the Courts.

3. He submits that the documents produced by the appellant would indicate that there was a Cart way in existence as pleaded by the appellant. Learned counsel for the appellant further submitted that the document of extract of Grampanchayat record was sought to be produced by the appellant before the First Appellate Court by way of additional evidence. However, the same was not permitted and his application was rejected. He, therefore, relies upon the additional documents produced by the appellant by way of interim application in this appeal seeking leave to produce additional evidence. He relied upon the documents attached to the application and submitted that the documents maintained by the Grampanchayat would show that the Cart-way was already in existence as pleaded by the appellant. He, therefore, submits that the Second Appeal would require consideration on the point of independent examination of the documents relied upon by the appellant to show that there was a Cart-way in existence. He submits that if the Interim Application for producing additional documents is allowed, the said documents would support the case

of the appellant. He, therefore, submits that the Second Appeal would require consideration as the reasons recorded in the impugned judgments, are not in accordance with the documents produced by the appellant in the Trial Court.

4. I have considered the submissions made by the appellant. Perused the papers. Both the courts have recorded concurrent findings of facts that the appellant failed to prove that for more than 20 years from the date of filing of the suit there was a Cart-way in existence adjacent to the land belonging to respondent no.1. The findings of fact regarding the alleged obstructions by respondent no.1 is also recorded against the appellant. A perusal of the reasons recorded by both the Courts show that all the documents produced by the appellant were considered. It is not in dispute that respondent no.1's suit seeking perpetual injunction restraining respondent nos. 2 and 3 from creating Cart-way through respondent no.1's land is decreed after considering the documents on record. Therefore, the appellant's case that there was a Cart-way in existence is disbelieved.

5. I have also gone through the documents annexed to the application for additional documents. None of the documents

support the arguments raised on behalf of the appellant. Even otherwise, there is no satisfactory reason given in the application for not producing the documents in the Trial Court. No case is made out for permitting production of additional documents, satisfying the parameters under Order XLI Rule 27 of the Civil Procedure Code, 1908 ('CPC').

6. The arguments raised on behalf of the appellant amounts to re-appreciating the facts and evidence on record, which is not permissible under Section 100 of CPC. The Second Appeal does not raise any substantial question of law.

7. Hence, the Second Appeal is dismissed. The application for the production of documents is also devoid of any merit, and, thus, is dismissed.

(GAURI GODSE, J.)