



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

SECOND APPEAL NO. 135 OF 2006

APPELLANT :

(Shri Ramchandra S/o Dewaji (Dead) & LRs
Aged about 70 years,
Occupation Cultivator,
R/o Deloda Khurd, Th. Armori,
District Gadchiroli) Dead Thr. LRs
Bhaskar Ramchandra Raut & ors.

Shri Ramchandra S/o Dewaji Raut (Dead)
Through Lrs

Amendment carried
out as per Hon'ble
Court's order dated
4.12.2023

- (i) Shri Bhaskar S/o Ramchandra Raut,
Aged about 50 years,
Occupation Cultivator,
R/o Deloda Khurd, Th. Armori,
District Gadchiroli.
- (ii) Sau Mala Ramesh Zarkar,
Aged about 53 years,
Occupation Cultivator,
R/o Ambeshivni,
Th. & District Gadchiroli.
- (iii) Sau Shila Lumaji Gohane,
Aged about 55 years,
Occupation Cultivator,
R/o Gadchiroli,
Th. & District Gadchiroli.
- (iv) Sau. Urmila Lumaji Gohne,
Aged about 57 years,
Occupation Cultivator,
R/o Moushikhamb,
Th. & District Gadchiroli.
- (v) Sau. Premila Balaji Bhoyar,
Aged about 60 years,
Occupation Cultivator,
R/o Wakdi,
Th. & District Gadchiroli.
- (vi) Sau. Nirmala Parshuram Mhashakhatri,
Aged about 62 years,
Occupation Cultivator,
R/o Jepra,
Th. & District Gadchiroli.

- (vii) Smt. Parvata Ramchandra Raut,
Aged about 78 years,
Occupation Cultivator,
R/o Deloda Khurd,
Th. Armori,
District Gadchiroli.

VERSUS

RESPONDENT : Rajendra S/o Dhondaba Raut,
Aged about 45 years,
Occupation Cultivator,
R/o Deloda Khurd, Th. Armori,
District Gadchiroli.

Shri V. N. Morande, Advocate for appellant.
Shri Madhur Deo, Advocate for respondent-sole.

CORAM: SANJAY A. DESHMUKH, J.

JUDGMENT RESERVED ON : 12/06/2024
JUDGMENT PRONOUNCED ON : 28/06/2024

1. Heard finally with the consent of learned counsel appearing for the parties.
2. This second appeal is preferred against the Judgment and Decree passed by the Additional District Judge, Gadchiroli in Regular Civil Appeal No.12/1999 dated 17/12/2005. The said appeal was filed against the Judgment and Decree passed by the Civil Judge, Junior Division, Armori, Dist. Gadchiroli in Regular Civil Suit No.30 of 1994 dated 16th April, 1999. It was suit for perpetual injunction. The parties are referred to their original status in the suit.

3. The factual matrix :-

The agricultural land bearing Survey No.118/3 situated at village Deloda - Khurd, Tah. Armori, Dist, Gadchiroli owned by the plaintiff is the subject matter of the suit. The plaintiff claims that the defendants brothers are the owners and possessors of their agricultural lands bearing Survey Nos.120 and 127 which are adjacent to the suit property. They are claiming that they have right of way through the suit property. Therefore, the plaintiff filed suit for perpetual injunction that defendants shall not use the suit property as a way to ingress and egress to their agricultural lands.

4. The defendants defence is that their agricultural lands bearing Survey Nos.120 and 127 are allotted to them in the partition which took place between them and their brother Laxman. Laxman got Survey No.119 in that partition which is adjacent to the suit property. The defendants and Laxman were using the suit property as and when required to go to their agricultural land as a way. It is only way available to them. The plaintiff has never objected Laxman who is using suit property to ingress and egress to his agricultural land Survey No.119. Their father Devaji Raut was using that right of way through suit property. He was never objected by plaintiff. The defendants have

not caused any damage to the suit property. The suit is filed with a political motive. It is lastly prayed to dismiss the suit with costs.

5. The learned Trial Court dismissed the suit and held that the plaintiff failed to prove that there is alternative right of way to the lands of defendants through Survey Nos.1, 3 and 8.

6. The learned First Appellate Court set aside the Judgment and decree of Trial Court. It held that there is existence of alternative way as contended by plaintiff and the defendants have no right of way through the suit property. The appeal was allowed. The suit was dismissed.

7. The substantial questions of law for the decision of this appeal are as under :-

(i) “Was it proved by the plaintiff that there is existence of alternative right of way to the defendants from the boundary of Survey Nos.1, 3 and 8 ?

(ii) Is the decision of First Appellate Court legal, correct and requires any interference ?”

8. Learned Advocate for the defendants pointed out the certified copy of map Exh.-24 filed by the plaintiff along with the

suit which was issued by the Talathi of the village in which right of way is shown by dotted line. Laxman is using the suit property as way to reach his land Survey No.119 which is adjacent to the suit property. It is not objected by the plaintiff. This fact is admitted by the plaintiff in his cross-examination. The plaintiff's documentary evidence i.e. map Exh.-24 corroborates the defendant's stand that there is way through suit property. The right of way i.e. Wazib-ul-urz is recognized for the entire village Deloda Khurd. The defendants right of way which is also proved by the Wazib-ul-urz Exh.-50 the customary right. The reasons of the first Appellate Court particularly para in between 11 and 12 are not legal and correct. It is lastly prayed to allow this appeal.

9. Learned Advocate for the plaintiff submitted that learned First Appellate Court has rightly held that defendant No.1 has no right of way from the suit property. The plaintiff has proved his case of alternative right of way available to the defendants. The defendants failed to prove that they were using suit property as their way. He prayed to dismiss the appeal.

10. LAW AS TO RIGHT OF WAY OF AGRICULTURIST IS AS UNDER :

(i) As per Sections 13 and 14 of the Indian Easement Act, 1882, for short, "I. E. Act", under the captions of "Easement of

Necessity and quasi easement" rights of way are provided. As per Section 15 of I.E.Act, easementary right of way by prescription is provided. As per Section 18 of the I. E. Act, the customary easementary right of way is provided. As per Section 30 of the I.E. Act, if the partition took place between owners of one and same property, the right to way is provided to each of them. As per Section 33 of I.E.Act, suit for causing disturbance to right of way with claim for substantial damages can be filed. As per Section 35 of I.E.Act, a suit for perpetual injunction can be filed to protect right of way.

(ii) As per Sections 38 and 39 of the Specific Relief Act, 1963, the suits for perpetual injunction and for mandatory injunction for removal of encroachment, etc. over the way can be filed to protect right of way. As per Tort, suit for causing damage to the right of way can be filed.

(iii) As per Section 143 of the Maharashtra Land Revenue Code, 1966 (For short, MLRC), the Tahsildar can decide and grant right of way to the agriculturalists from common boundary of adjacent agricultural lands. As per Section 165 of MLRC, customary right of way for agriculturalists of village are protected. A "Wazib-Ul-Urz" is document in which right of way, etc. of

villagers are recorded to the village record maintained by Collector. It is conclusive evidence and no rebuttal evidence of it is allowed. In the Government's maps, the rights of way are shown by dotted lines. It is strong proof of existence of old right of way which requires no further proof as it is public document and it has presumptive value as per Sections 83 and 87 of the Indian Evidence Act, 1872.

(iv) As per Section 5 of the Mamlatdar Courts Act, 1906, the Mamlatdar can remove the obstruction caused to the right of way, etc. of the agriculturists.

(v) As per Section 145 of the Code of Criminal Procedure, 1973 (new Section 164 of the Bhartiya Nagrik Surksha Sahita, 2023) in case of dispute which causes breach of peace as to the right of way etc., the Executive Magistrate may take preventive action.

(vi) As per Section 133 of the Code of Criminal Procedure, the District Magistrate (new Section 152 of the Bhartiya Nagrik Surksha Sahita, 2023) may remove nuisance caused to the way.

REASONS

11. The plaintiff is relying upon certified copy of map drawn by Talathi at Exh.24. It is a public document in which the

suit property and properties belonging to the defendants and his brother Laxman along with its number are shown. The defendants have relied upon a certified copy of Wazib-Ul-Urz at Exh.50. It is a public document. It is conclusive evidence of old right of way available to the agriculturalists. It is irrebuttable evidence. It shows that the cultivators of agricultural land of the village have right to proceed from the boundary / Dhura of the others agricultural lands for sowing operations, etc. and to carry their bullock carts, cattle and other articles, etc.

12. The burden of proof lies upon the plaintiff to prove the alternative right of way as he has asserted that it is available through the boundaries of Survey Nos.1, 3 and 8. It is admitted fact that Survey Nos.1, 3 and 8 are not belonging to any individual and many villagers have dug their dung pits. The dotted line shown in the old copy of map Exh.24 is the proof of existence of right of way goes through the suit property. The plaintiff has admitted in his cross-examination that defendant No.2 Laxman the brother of defendants is the owner of land Survey No.119 and he is using suit property to ingress and egress to his agricultural land. It is adjacent to the agricultural lands of the defendants. The partition took place between defendants and their brother

Laxman. The defendant No.1 got Survey No.120, defendant No.2 got Survey No.127 and Laxman got Survey No.119 in that partition. The plaintiff's evidence is shaken in the cross-examination as he had admitted right of way of Laxman brother the defendant No.2 through suit property. If the brother of defendant Laxman can use suit property as right of way, it is not acceptable that defendants cannot have same right of way. The Trial Court was right in holding that the defendants have right of way from the suit property which is recognized in Wazib-Ul-Urz at Exh.50 under Section 165 of the MLRC and shown in a map Exh.24 which are public documents. The Exh. 50 Wazib-Ul-Urz is a public document. It has strong presumptive value of "CONCLUSIVE PROOF". It means no evidence to rebut or disprove it is admissible as per Section 165 of MLRC. Thus, defendants rights of way to go through the suit property are conclusively proved.

13. The plaintiff did not produce the photographs of fact situation of that vicinity to show that there is existence of another way available for the defendants. The Court Commission for local inspection was also not prayed to prove the existence and use of alternative right of way by the defendants. Therefore, as per Section 114(g) of the Indian Evidence Act, 1872, adverse inference

can be drawn against plaintiff that if such evidence would have brought then it may certainly go against him. Therefore, he did not adduce such evidence.

14. The defendants succeeded in proving existence of their right of way through the suit property, as per Exh.24 and 50. The learned Trial Court was right in holding that the defendants have no such alleged alternative right of way from Survey Nos.1, 3 and 8. Thus, the plaintiff failed to prove existence of alleged alternative way to the defendants. The Judgment and Decree of the Trial Court are legal. However, the impugned Judgment and decree of the Appellate Court are not legal and correct as discussed above. Therefore, the substantial question of law No.1 is answered in the negative and the substantial question of law No.2 is answered in the affirmative.

15. The appeal deserves to be allowed. The impugned Judgment and decree passed by the Additional District Judge, Gadchiroli deserves to be set aside. The Judgment and decree passed by the Trial Court deserves to be upheld. For the reasons stated above, the argument of learned advocate for plaintiff is not accepted.

16. The appellants - defendants must have incurred some expenses for this litigation. Therefore, they must be compensated by awarding Rs.10,000/- as costs of this appeal. Hence, the following order :-

ORDER

- i] Appeal is allowed.
- ii] The impugned Judgment and Decree passed by the Additional District Judge, Gadchiroli is set aside. The Judgment and Decree passed by the Trial Court is upheld.
- iii] The respondent is directed to pay costs of Rs.10,000/- to the appellants within three months from today in the Trial Court. If the said amount is not deposited within three months from today, the respondent is liable to pay 9 % interest per annum, till realization of entire amount.

17. Record and proceedings be transmitted to the Trial Court.

18. The appeal is disposed of accordingly.

[SANJAY A. DESHMUKH, J.]