



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

SECOND APPEAL NO. 552/2007

1. Parasram s/o Tukaram Kawale,
aged 55 years, Occ. Agriculturist.

2. Samadhan s/o Parasram Kawale,
aged 28 years, Occ. Agriculturist.

Both r/o Wadap, Tq. Malegaon,
Dist. Washim.

.....APPELLANTS

...V E R S U S...

1. Ramprasad s/o Jethamal Bhutada,
Dead thr. LRs.

1.1 Vijay s/o Mannalal Bhutada,
aged 45 years,

1.2 Yogesh s/o Mannalal Bhutada,
aged 35 years,

1.3 Raju s/o Mannalal Bhutada,
aged 30 years,

1.4 Sanju s/o Mannalal Bhutada,
aged 28 years,

All r/o "Dwarkadhis", Krishi Seva Kendra,
New Old Motor Stand, Near Maroti
Mandir, Malegaon, Dist. Washim.

2. Madhukar Khanduji Chandashiv,
aged 45 years, Occ. Agriculturist.

Both r/o Wadap, Tq. Malegaon,
Dist. Washim.

...RESPONDENTS

Mr. R. R. Srivastava, Advocate for petitioner.
None for respondents.

CORAM:- ANIL L. PANSARE, J.
DATED :- 26.03.2024

JUDGMENT

1. The appeal has been admitted on the following
substantial questions of law.

(I) Whether the Courts were justified in holding that the defendants had a right of way on western Dhura of plaintiff's field when it was not the case of the respondents/defendants and it was pleaded by the defendants in the written statement that they were using it only 2 to 3 years, prior to the institution of the suit?

(II) Whether the finding recorded by the appellate Court on the issue of right of the defendant to use the suit way is vitiated for non consideration of the material document, Exh.67, i.e. report of Naib Tahsildar, Malegaon, dated 30.05.1995?

2. Respondent No.1-original defendant No.1 (hereinafter referred to as "Defendant No.1") had, in the year 1993-94, filed an application before Tahsildar for preventing the appellants-plaintiffs (hereinafter referred to as "Plaintiffs") from obstructing the right of way from the Western side of Plaintiffs' field, which is the disputed way. The Tahsildar, vide order dated 03.06.1995, granted relief to the Defendant No.1.

3. Defendant No.2 (not party to the present appeal), has a field property adjacent to plaintiff No.1's field. The Plaintiffs alleged that defendant Nos.1 and 2 have, in collusion, made an application before Tahsildar mentioning therein that towards Western side of Plaintiffs' field, there exists a boundary (dhura), which is used as a way (vahivat) to approach their field. The Plaintiffs preferred appeal against the Tahsildar's order, which came to be dismissed. The Plaintiffs did not challenge the

Appellate Authority's finding and thus it has attained finality.

4. In the month of March, 1998, the Plaintiffs filed a suit bearing Regular Civil Suit No. 11/1998, for declaration that there exists no way towards the Western side of their field bearing Survey Nos.40/2 and 41/1. The Plaintiffs also sought relief of injunction against the Defendants from using the suit way.

5. Both the Courts below have held that the findings rendered by the revenue authorities have attained finality. The Courts below have also noted that the evidence led by the Plaintiffs does not obliterate the finding of revenue authorities and accordingly dismissed the suit.

6. The learned counsel for the Plaintiffs has invited my attention to Exh.-67, report of Tahsildar, Malegaon dated 30.05.1995, which indicates that the approach road was already in existence to approach their fields. Despite, for convenience, they filed proceedings before the revenue authorities to approach through the Western side of Plaintiffs' field. It is, accordingly, argued that the suit way is an arrangement made by the Defendants for their convenience. The authorities ought not to have permitted the Defendants to use the Western side of the plaintiffs' field to approach their field.

7. I do not find any merit in the aforesaid submission inasmuch as the finding rendered by the revenue authorities has attained finality. The Plaintiffs chose not to challenge the finding. Merely on the basis of Tahsildar's report, unchallenged finding of the revenue authority could not be overturned by the Courts below. In that sense, the Courts below have rightly appreciated the evidence and have rightly relied upon the order of revenue authorities to hold that the Defendants had a right of way to approach their field through the suit way.

8. In view of above, the Plaintiffs are not entitled for any relief on the basis of the pleadings in the written statement that the Defendants were using the suit way 2 to 3 years prior to the lodging of the suit or that the report of Tahsildar Exh.-67 was supporting the plea of the Plaintiffs. The substantial questions of law are, thus, not involved in the appeal. There is no merit in the appeal. The appeal is dismissed.

(Anil L. Pansare, J.)

kahale