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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 108 OF 2018
WITH
CIVIL APPLICATION NO. 112 OF 2017
WITH
CIVIL APPLICATION NO. 113 OF 2017
IN
SECOND APPEAL NO. 108 OF 2018**

Niranjan Algonda Patil and Ors ... Appellants/Applicants

vs.

Kallappa Shantappa Kognole and ... Respondents
Ors

Mr. Sudhir V. Sadavarte for Appellants/Applicants.

Mr. Prashant Kulkarni for Respondent.

CORAM : GAURI GODSE, J.

DATED : 21st JANUARY 2025

ORDER:

1. Heard learned counsels for the parties. This second appeal is preferred by the original plaintiffs to challenge the first appellate court's decree dismissing the plaintiffs' suit for injunction. The trial court had decreed the suit granting injunction restraining the defendants from obstructing plaintiffs from using the right of way from the City Survey No. 2193 without following due process of law.

This decree was set aside by the first appellate court in the appeal preferred by defendant nos. 1 and 2.

2. Learned counsel for the appellants submits that the first appellate court's judgment is based on factual incorrect aspects of the dispute. He submits that though there are no pleadings on easement, the pleadings on facts in totality show that plaintiffs have claimed easementary right in respect of suit property, i.e. right of way is described in the plaint. He further submits that the first appellate court has misinterpreted the map at Exhibit 84 and the property extract at Exhibit 98. He submits that the defendants have also admitted that there is a right of way of 4 feet width. He, further submits that the trial court's decree protects the plaintiffs' right of way and restrains the defendants from obstructing the plaintiffs' right of way, without following due process of law. He, thus, submits that in view of the evidence on record indicating the existence of a right of way, the trial court had rightly decreed the suit for injunction. He submits that the first appellate court's judgment and decree are based on incorrect facts and misinterpretation of the evidence on record. He, thus, submits that the aforesaid grounds raise substantial questions of law which are necessary to be decided in this second appeal.

3. Learned counsel for respondent nos. 1 and 2 supports the impugned decree. He submits that the defendants produced a map which is a part of the final decree application, arising out of a partition suit which indicates the description of City Survey No. 2193. He submits that the map produced alongwith the final decree application and the map at Exhibit 84 is correctly interpreted by the first appellate court. He submits that the factual aspects regarding the existence of the access road have been clearly dealt with by the first appellate court in paragraph no. 12 of the judgment. He, thus, submits that in the absence of any right pleaded and proved by the plaintiffs, the decree passed by the trial court granting the injunction would not be sustainable.

4. To consider the rival submissions made on behalf of the parties, I have perused both the judgments and copies of the plaint. The suit is filed simplicitor for injunction with respect to the suit property on the ground that there is a common passage in City Survey No. 2193. The boundaries of the common passage are pleaded in the plaint. However, the plaint is bereft of any pleadings on the nature of the plaintiffs' rights claimed in the common passage as described in the plaint. Except for pleading that for the last 35 years common passage is used by the plaintiffs, there are no

pleadings with regard to the plaintiffs' rights in respect of the suit property. It is not disputed that the part of City Survey No. 2193 is owned by different individuals. The plaintiffs have not placed on record any documentary evidence to support the description of the common passage in respect of which the plaintiffs claim a right of way. The first appellate court has relied upon the documents produced by the defendants alongwith the compromise pursis and map at Exhibit 91 in the partition suit *inter se* between the defendants' family. The map produced at Exhibit 84 by the defendants is proved by examining the officer of the City Survey office. The plaintiffs have failed to produce any map or any other documentary evidence to support their pleadings on the common passage as pleaded in the plaint.

5. Though the arguments were raised on the plaintiffs' easementary rights, there are no pleadings to support the arguments on any easementary right. The first appellate court thus, examined the documents produced by the defendants and disbelieved the plaintiffs' case of right of way through a common passage as described in the plaint. The first appellate court being the last fact finding court has thoroughly examined the oral and documentary evidence on record and reversed the trial court's

findings by holding that the plaintiffs failed to plead and prove the easementary rights.

6. The description of the property with reference to the common passage of City Survey No. 2193 is discussed by the first appellate court in paragraphs 12 and 13 of the judgment and the first appellate court held that the documents on record do not support the plaintiffs' theory on the 8 feet wide common passage. The admissions given by PW 1 in the cross examination regarding measurement are also dealt with by the first appellate court to disbelieve the plaintiffs' theory of existence of 8 feet wide passage, as claimed in the suit. The first appellate court thus, reversed the trial court's decree by holding that the plaintiffs have not pleaded and proved any specific nature of right to claim injunction.

7. I do not find any illegality or perversity in the reasons recorded by the first appellate court which is based on correct appreciation of the evidence on record.

8. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed. In view of the dismissal of the second appeal, pending civil application is disposed of as infructuous.

9. Learned counsel for the appellants seeks extension of ad

interim relief granted by this court. Learned counsel for the respondents opposes extension of the ad-interim relief on the ground that interim relief was granted that it was granted without hearing the respondents and without framing any question of law.

10. The second appeal is dismissed as there is no substantial question of law in the second appeal. Hence, I do not see any reason to extend the ad interim relief.

(GAURI GODSE, J.)