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Court : Mumbai Nagpur

Decided On : May-09-2014

Judge : A.P. Bhangale

Appeal No. : Second Appeal No. 458 of 2013

Appellant : Hariram and Another

Respondent : Uddal and Another

Judgement :

Oral Judgment:

1. This second appeal is directed against judgment and order dated 23.7.2013, passed by learned Principal District Judge, Gondia, in Regular Civil Appeal No.160 of 2012, which was partly allowed. The judgment and decree passed by the trial Court was set aside and present appellants/defendants were restrained from obstructing the way of present respondents/plaintiffs in between their houses and school building, as per entry recorded in wajibul-arz Exh.88. The appellants/defendants were directed to remove the obstruction, if any, on the suit way. i.e. as per entry recorded in Exh.88. The first appeal arose from judgment and decree dated 30.7.2012, passed by learned Civil Judge Junior Division, Tirora, in Regular Civil Suit No.3 of 2006. The suit was dismissed.

2. The facts of the case in a nutshell are, thus:

The respondents/plaintiffs had instituted the suit on the ground that present respondents/plaintiffs are the owners of the agricultural land bearing Survey No.351, admeasuring about 0.20 HR and Survey No.352, admeasuring about 0.80 HR situated at village Bhombodi, Tahsil Tirora, while agricultural land bearing Survey No.376, admeasuring 0.75 HR is owned and possessed by present appellants / defendants. The land of present appellants/defendants is adjacent on West side of respondents/plaintiffs land. According to respondents/plaintiffs, one Bhombodi-Mundipar Road is adjacent on West side of appellants/defendants land. The respondents/plaintiffs were using approach way from their field to Bhombodi-Mundipar Road on West side of the land Survey No.376 owned and possessed by appellants/defendants. Thus, respondents/plaintiffs were using twelve feet wide approach way through appellants/defendants land to approach Bhombodi-Mundipar Road since time immemorial peacefully and without any interruption.

3. Thus, it is the case of respondents/plaintiffs that appellants/defendants have no any right to disturb or to obstruct use of the easement way for the respondents/plaintiffs to approach their land from Bhombodi-Mundipar Road adjacent on West side of appellants/defendants land. Since appellants/defendants started creating obstruction, respondents/plaintiffs had to complain with Tahsildar, Tirora. The Tahsildar, Tirora issued order dated 17.2.2004 about existence of the easement way for respondents/plaintiffs, through appellants/defendants land, to approach their field from Bhombodi-Mundipar Road. The respondents/plaintiffs, therefore, sought permanent mandatory injunction against appellants/defendants to remove obstruction so as to enable respondents/plaintiffs to use their way to approach their field from Bhombodi-Mundipar Road through appellants/defendants field. It is urged that as owner and possessor of the adjacent field respondents/plaintiffs were entitled to use the approach way as pleaded.

4. The trial Court upon evidence found that respondents/plaintiffs have failed to prove their easementary right of way through field of appellants/defendants i.e. Surve No.376 as also easement of necessity, obstruction by appellants/defendants. Thus, the prayers made by respondents/plaintiffs were rejected by the trial Court. Unsuccessful respondents/plaintiffs in the trial Court preferred appeal. The first appellate Court partly allowed the appeal. Hence, this

second appeal.

5. From the impugned judgment and record it appears that learned first appellate Judge went through the evidence, examined it and found that after due enquiry the Tahsildar had issued order dated 17.2.2004 about the existence of easement way. That being so, it is held by the first appellate Court that respondents/plaintiffs had proved their right of the approach way through the field of appellants/defendants as indicated in the plaint map and, therefore, the judgment and order passed by the trial Court to that extent was set aside by partly allowing the appeal to enable respondents/plaintiffs to use their approach way between their houses and school building as pleaded and noted as per entry recorded in wajib-ul-arz Exh.88. Consequently, appellants/ defendants were directed to remove the obstruction in the same way, if any.

6. At hearing of the second appeal, learned Counsel appearing for appellants/defendants prayed for restoration of the order passed by the trial Court while learned Counsel appearing for respondents/plaintiffs submitted that the first appellate Court went through the enquiry papers in the enquiry made by the Tahsildar, Tirora, District Gondia and entry made in the wajib-ul-arz record maintained lawfully as per Exh.88 in the trial Court.

7. My attention is invited by learned Counsel appearing for respondents/plaintiffs to the ruling in the case of **Nanda s/o Barku Sathawane and another ..vs.. Shankar s/o Sitaram** in Second Appeal No.89 of 1979 decided by the Bombay High Court (Nagpur Bench) on 18.4.1991. This Court had considered importance and value of the entry made in the village record known as wajib-ul-arz record in which the village customs and the customary rights are recorded. The customary rights of way are of two categories:

(A) Relating to all season regular cartways passing through various Khasras.

(B) Relating to the use of adjoining dhura forgoing and carrying cattle, crops etc. when crops are standing; and to break open the dhura for carrying crops through carts when crops are not standing and to repair the dhura after the work is completed.

Thus, the adjoining land holders are required to honour customary rights as village customs particularly when they are recorded pursuant to inquiry by the competent authority and noted in register known as wajib-ularz.

8. I have gone through the ruling in the case of Nanda s/o Barku Sathawane and another cited (supra). Learned Principal District Judge, Gondia, also considered the same ruling and the entry recorded in village record known as wajib-ul-arz Exh.88 in the case in hand. In Nandas case cited (supra) also, the entry made as wajib-ul-arz was considered and after considering the village record in the form of wajib-ul-arz, this Court had decided Second Appeal No.89 of 1979 to hold that entries in wajib-ul-arz are made œfinal and conclusive? after public enquiry contemplated under Section 165 of The Maharashtra Land Revenue Code 1966, and they do not require independent proof. Demand of separate proof of these entries would also defeat the very object of maintaining the œwajib-ul-arz?. The defendants, therefore, need to honour village record and ought not to obstruct the use of dhura/approach way as stated in the plaint in a manner specified in Exh.88.

9. In view of above, I do not find any fault with the view expressed in the impugned judgment and order dated 23.7.2013, passed by the learned Principal District Judge, Gondia, in Regular Civil Appeal No.160 of 2012. In the facts and circumstances of the case, therefore, no interference is warranted in the impugned judgment and order. Hence, the second appeal must be dismissed.

10. In the result, Second Appeal No.458 of 2013 is hereby dismissed. There shall be no order as to costs.