

Kawadu and Others Vs. Bhojram and Others

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Court : Mumbai

Decided On : Jun-17-2014

Judge : A.B. Chaudhari

Appeal No. : Second Appeal No. 71 of 2001

Appellant : Kawadu and Others

Respondent : Bhojram and Others

Advocate for Pet/Ap. : Mr. Khapre

Judgement :

Oral Judgment

1. Being aggrieved by judgment and decree dated 29.11.1995 passed in Reg. C. S. No. 274/1992 by Civil Judge Jr. Dn. Sakoli and confirmed by judgment dated 31.08.2000 in Reg. C. A. No.176/1995 by Addl. District Judge, Bhandara, the present second appeal was preferred in this Court by original defendants.

2. The only question raised by Mr. Khapre, learned counsel for the appellants, in support of the appeal is that the courts below have omitted to qualify the decree with reference to the Wajibularz notified entries contemplated by Section 165 of the Maharashtra Land Revenue Code. According to Mr. Khapre, the courts below ought to have made right of way granted subject to the terms and conditions

notified in Wajibularz by the concerned Collector of District as contemplated by Section 165 (1) (a) of the MLR Code. No other contention has been raised by Mr. Khapre, except the above.

3. None present for the respondents, though served. Perused the impugned judgment and order. The following substantial question of law is framed by me today, which is as under:

(i) Whether the judgment and decree passed by the trial Judge and confirmed by the lower appellate court deserves to be modified by inserting the words subject to the terms and conditions mentioned in Wajibularz entry, Exh.63 in the operative part nos.2 and 3 of the decree of the trial Judge? ...Yes.

(ii) What order? ...The appeal is partly allowed. 4. I have perused the Wajibularz entry Exh.63 with the assistance of Mr. Khapre, learned counsel for the appellants. The findings of facts recorded by courts below about right of the plaintiff to utilise the way for approaching the fields for cultivation are correct and proper and do not require any interference and fairly enough, Mr. Khapre, learned counsel for the appellants, has not assailed those findings. The only grievance made by Mr. Khapre, learned counsel for the appellants, is that meaning of the decree would be that the respondents/plaintiffs have permanent right of way which is not in consonance with Section 165 of the MLR Code. Section 165 of the MLR Code reads thus:

165. Wajibularz:

(1) As soon as may be after this Code comes into force, the Collector shall, according to any general or special order made by the State Government in that behalf, ascertain and record customs in each village in regard to

(a) the right to irrigation or right of way or other easements,

(b) the right to fishing, in any land or water belonging or controlled or managed by the State Government or a local authority, and such record shall be known as Wajibularz of the village.

(2) The record made in pursuance of subsection (1) shall be published by the Collector in such manner as he may deem fit and it shall, subject to the decision of a civil court in the suit instituted under subsection

(3), be final and conclusive. (3) Any person aggrieved by any entry made in such record may, within one year from the date of the publication of such record under subsection (2), institute a suit in a civil court to have entry cancelled or modified.

(4) The Collector may, on the application of any person interested therein or on his own motion, modify any entry or insert any new entry in the Wajibularz, on any of following grounds:(

a) that, all persons interested in such entry wish to have it modified; or

(b) that, by a decree in a civil suit, it has been declared to be erroneous; or

(c) that, being founded on a decree or order of a civil court or on the order of a Revenue Officer, it is not in accordance with such decree or order; or

(d) that, being so founded, such decree or order has subsequently been varied on appeal, revision or review; or

(e) that, the civil court has by a decree determined any custom existing in the village.

5. Insofar as the right of way or right of easements are concerned, they are notified by Collector of the District. Exh.63, Wajibularz entry does not create any permanent way but provides for certain terms and conditions for utilization of the way. Since the judgment has been passed on the basis of Wajibularz entry, I do not find that there is any unreasonable request on behalf of Mr. Khapre, learned counsel for the appellants.

6. In the result I pass the following order.

ORDER

(i) Second Appeal No. 71/2001 is partly allowed.

(ii) The impugned judgment and decree dated 31.08.2000 in Reg. C. S. No. 274/1992 passed by Civil Judge Jr. Dn., Sakoli is modified. The words, subject to the terms and conditions mentioned in Wajibularz entry, Exh.63 shall be inserted in operative para nos. 2 and 3 in the decree passed by the trial Judge.

(iii) Subject to the above, rest of the decree is maintained.

(iv) No order as to costs.

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