

(1923) 03 BOM CK 0039
In the Bombay High Court

The Secretary of State

APPELLANT

Vs

Bhatt Laxmishanker Govindram and Another

RESPONDENT

Date of Decision : 14-03-1923

Acts Referred:

Citation : AIR 1925 Bom 27

Judgement

1. The plaintiffs are the owners of house No. 1772 situated in the street behind the Post Office in the town of Borsad. In front of their house there is an ota which had been there for a considerable time on which the plaintiff's used to stack firewood, and keep cots, quilts and benches. In 1916 a survey was made of the town and the Inquiry Officer on the 14th August, 1916, decided that the land on which the plaintiffs' ota stood was street land. The plaintiffs appealed to the Assistant Collector. The appeals were rejected and consequently the suit had to be filed asking for a declaration that the land in suit was of their possession and for a permanent injunction restraining the defendants, the Municipality of Borsad and the Secretary of State for India in Council, from dispossessing the plaintiff of the said land.

2. The plaintiffs' suit was decreed by the District Judge on the ground that they had proved that they were the owners of the land in dispute, although they had not proved that they became owners by adverse possession beyond the statutory period. The plaintiff had only a possessory title and, therefore, they could only be owners by adverse possession. But the plaintiffs being in possession, the defendants would have to prove a better title before they could interfere with their possession. The evidence itself did not show that the defendants had title "to the suit land. It was merely asserted that the land was a street land. But it was not suggested in any way in the evidence why it was street land except that the Inquiry Officer said it was. If it had been stated that all the land from the foundations of one row of houses on one side of the street up to the foundations of the other row of houses on the other side, was street land, we could understand that there might be some substance in the finding of the lower Court. But the defendants have not even endeavoured to prove that this was a public

street.

3. Admittedly, the houses of the plaintiffs and the houses of the neighbouring owners formed a cul de sac as there was no thorough fare. The open space between the houses could only be used by the owners of the houses, and those who visited them. It has not even been shown that the land formed a public road within the meaning of that expression in Section 37 of the Land Revenue Code. Until the contrary is proved, it may generally be presumed, that the open space in a pole belonged to the owners of the surrounding houses, and it would be for the owners of the other houses to protest against any obstruction caused by the owner of one of house against their common rights. Considering the unsatisfactory nature of the evidence in this case, it is difficult for us to hold that the decision of the District Judge was wrong, and accordingly we must dismiss the appeal with costs.

4. It is desirable that when appeals of this character come up before the High Court, that the Court should be provided with suitable plans to enable it to follow the case, as the plan which was presented to us, apart from its being in the vernacular, is most inadequate.