

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Second Appeal No. 428 of 2015

Yadav s/o Asaram Sonawane
And Others.

.. Appellants.

Versus

Basantibai w/o Gangaram Narvayye
And Others.

.. Respondents.

Shri. Narendra V. Mande, Advocate, for appellants.

Shri. Shaikh Mujtaba Gulam Mustafa, Advocate, for
respondents.

CORAM: T.V. NALAWADE, J.

DATE : 28th SEPTEMBER 2015

ORDER:

1) The appeal is filed to challenge the judgment and decree in Regular Civil Suit No.1/2007 which was pending in the Court of the Civil Judge Junior Division Aurangabad and also the judgment and order of Regular Civil Appeal No.52/2010 which was pending before District Judge-1 Aurangabad. The suit filed by the present respondents for relief of perpetual injunction is decided in their favour. Both the sides heard.

2) The suit was filed in respect of house property which is given number 12941 in city survey record of Aurangabad and which is given municipal No.4-16-77 in the record of assessment prepared by the local body. It is the case of the plaintiffs that the defendants have no concern whatsoever with the suit property. They have given description of the construction which is present on this property. It is contended that as the defendants are trying to make encroachment over the open space of the property they are required to file suit for relief of injunction.

3) Defendant Nos.1 to 3 filed joint written statement and they denied everything. They contended that proper and correct description of the suit property is not given and on the basis of the description given in plaint, the property cannot be identified and the suit in the present form is not tenable. They have particularly denied the description of the property which describes northern boundary of the suit property and it is contended that towards north there is no *nali* and Rohidas Bhavan but first, this is the property of defendants and then

there is nali and Rohidas Bhavan. It is contended that to grab the property of the defendants or to cause damage to the property of the defendants such incorrect description of the suit property is given by the plaintiffs.

4) It is the case of the defendants that they purchased the property under registered sale deed executed by Gangaram, predecessor-in-title of the plaintiffs and on that property they have made construction of four rooms. It is their case that the number of their property is 4-16-75. It is contended that there is no cause of action for the plaintiffs and they prayed for dismissal of the suit. Along with the written statement they had annexed hand sketch map to show location of their property.

5) In the trial Court issues were framed and both the sides gave evidence. It is not disputed that the defendants purchased some property from the predecessor-in-title of the plaintiffs. Copies of sale deeds are on the record and these documents are read in evidence by the trial Court and the first appellate Court.

With the sale deed dated 8-10-1974 hand sketch map of the property sold to the defendants was given. Under this first sale deed the space of size of 20×20 ft (6.09x.6.09 meters) was sold and it was shown that it was part of municipal house No.4-16-75. On the north side, road was shown and on the south side, property No.4-16-78 was shown. In the sale deed it was specifically mentioned that on the southern side, there was the property of the vendor but the number was given as 4-16-75, the remaining portion of this number. Second sale deed was executed on 25-6-1975 and in this sale deed also some portion of House No.4-16-75 (10 x 20 ft. = 3.4 x 6.09 meters) was sold. On the south side of this new portion property of the vendor was shown and on north side the property of the purchaser (property purchased under sale deed of 1974) was shown. Thus two pieces of the same property viz the property bearing House No.4-16-75 were purchased by the defendants from the predecessor-in-title of the plaintiffs. Learned counsel for the appellants submitted that original sale deeds were produced in the trial Court and probably along with original sale deed of 1975 the map was also produced. There is mention of such map in

the sale deed of 1975 but this map was not shown to this Court in the present proceeding by the learned counsel for the appellants. In any case, on the basis of the description of the property sold to the defendants, it can be said that the property which was towards north side of House No.4-16-78 (number given in assessment record of local body) was sold to the defendants. In the second sale deed there is no mention that any portion of House No.4-16-75 was left on the southern side of the property sold to the defendants in the year 1975.

6) The learned counsel for the appellants submitted that in view of provision of Order 7 Rule 3 of the Civil Procedure Code, the description of both the boundaries and the number of the property need to be given for correct identification of the suit property. He submitted that in the present matter description was incorrect and this point is not considered by the Courts below.

7) This Court has carefully gone through the description of the suit property given in the present suit

and it shows House No.4-16-77 and on northern side of this property *nali* and construction of Rohidas Bhavan are shown. The description of the property purchased by the defendants is already quoted. In both the sale deeds, on eastern side one lane was mentioned and beyond that the property of one Tulsiram Kanahya Gurmude was shown. On the Southern side of the property of Gurmude property of predecessor-in-title of the plaintiff is shown. Thus as per the record, the plaintiffs were owners of House No.4-16-75 and also property No.4-16-77 and 4-16-78 (numbers given in local body assessment record). The submissions made show that present defendants, appellants, had also filed a suit after the decision of the trial Court from the present matter for relief of injunction and in that matter they had specifically contended that they are owners of House No.4-16-75 which was equivalent to City Survey No.12907. It appears that map prepared by the city survey office was not produced. The said suit came to be dismissed but the contentions of the present defendants in the said suit need to be kept in mind.

8) The defendants had purchased property bearing No.4-16-75, number given in local body in assessment record and they had no concern with the present suit property viz House No.4-16-77 which is given number 12941 in city survey record. In the description of the property to the east of this property house No.4-16-75 is shown. Thus it can be said that there is some mistake committed in the description given of the property in the boundaries in the plaint..

9) The reasoning given by the trial Court and the first appellate Court shows that the first appellate Court has considered the description and has observed that when it is not disputed that the defendants are the owners of the property No.4-16-75, there was no reason for them to create dispute. The plaintiffs will be bound by the description given in the two sale deeds executed in favour of the defendants. Thus the present decree of injunction is not made in respect of any portion of House no.4-16-75 and there should not be any reason for the defendants to have fear about the decree. Further the evidence on the record shows that on the entire space purchased by the

defendants under the aforesaid two sale deeds they have made construction and so they have no right to claim any right in respect of the open space situated on the southern side of their property. In view of the contents of the sale deeds and the evidence on the record, the Courts below have given relief of injunction. The findings are on questions of facts and the findings are concurrent findings. This Court holds that no substantial question of law as such is involved in the matter.

10) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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