

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's orders or Registrar's	Court's or Judge's orders.
--	--	---	----------------------------

SECOND APPEAL NO. 97 OF 2015
WITH CA/3029/2015 IN SA/97/2015

NARAYAN SHANKAR ANGULE THRO. P.O.A. PRADEEP
NARAYAN ANGULE
VERSUS
GRAM PANCHAYAT OFFICE JALKOT THRO. GRAM SERVAK
ADHIKARI AND OTHERS

...
Advocate for Appellant : Mr. Salunke V. D .
Advocate for Respondent No.1: Mr. P. K. Deshmukh.

CORAM: T. V. NALAWADE, J.
DATED: 7th SEPTEMBER, 2015.

ORDER:

1. The appeal is filed to challenge the judgment and order of Regular Civil Suit No. 291 of 2008 which was pending in the Court of Civil Judge, Senior Division, Osmanabad and also against the judgment and order of Regular Civil Appeal No.134 of 2010 which was pending in the Court of Principal District Judge, Osmanabad. The suit filed for relief of injunction by the present appellant is dismissed. Both the sides are heard.

2. The learned counsel for the Appellant submitted that substantial questions of law needs to be formulated on the basis of grounds mentioned by him in the appeal memo and particularly on following grounds:

(i) Whether the Courts below have recorded finding on fact by ignoring the material on record and thereby they have committed error in holding that the plaintiff has failed to prove his lawful possession?

(ii) Whether the Courts below have committed error in holding on the basis of the recording, including the application moved by plaintiff for making construction when the plaintiff has title only in respect of property 33'x33'?

(iii) Whether the Courts below have committed error in holding that the property is not properly described with the boundaries and due to that no relief can be given?

(iv) Whether the Courts below have committed error in

not holding that the proceeding of removal of encroachment under the provisions of Village Panchayat Act is vitiated due to absence of notice under the Act?

3. This Court has carefully gone through the relevant material which includes the evidence given by the plaintiff, the record of assessment prepared by Village Panchayat, the record of City Survey Office and the record of application filed by plaintiff for making construction on the disputed portion and also the evidence of Surveyor along with the map prepared by Surveyor in original measurement and also in superior measurement.

4. It appears that the plaintiff did not examine himself and he examined his power of attorney to give evidence. The evidence of power of attorney shows that he had no personal knowledge regarding the circumstances in which the plaintiff got title to the suit property. It appears that subsequently application was moved by plaintiff for permission to examine him and opportunity was also given but even after giving sufficient time the

plaintiff did not examine himself and so the matter came to be decided on the basis of evidence of power of attorney and evidence of Surveyor examined by the plaintiff.

5. The plaintiff wants to prove his title only on the basis of record of city survey. The record shows that city survey of that village was done in the year 1970 and the area of the property of the plaintiff, which is given C.T.S. No. 567, was shown as 132 Sq.mtrs. As against this record, there is assessment record prepared by Village Panchayat and as per that record the plaintiff is shown as the owner of property having size 33'x33'. The boundaries of the property, which was possessed by the plaintiff, are given in the assessment record. There is a record like application moved by the plaintiff for making construction over his property and he described his property in the application. The application shows that he gave the size of the property as 33'x33'.

6. Learned counsel for the plaintiff, appellant submitted that when in the year 1970 plaintiff was

shown in possession of more area it needs to be presumed that he was the owner of that portion. This submission is not acceptable as in the year 1970 there was no construction and the construction was made after getting permission in the year 2005. In any case, on the basis of such record title cannot be inferred.

7. In the record of permission, on the norther side National High Way No.9 and portion of Gaothan was shown. Thus, on norther side there was some space belonging to Gaothan, Village Panchayat, even as per the record created for permission of construction on the basis of application made by the plaintiff. In addition to that, there is the city survey map at Exhibit-74 showing on northern side of CTS No.567 open space is there. Thus, there is the open space on the northern side. Similarly, the map shows that on western side also there is open space. Beyond this open space of western side there is a school of Zilla Parishad and that property belongs to Zilla Parishad.

8. The evidence of measurement taken on the basis of

the joint application of plaintiff and village Panchayat shows that it was noticed that plaintiff had made encroachment over the area of 28 Sq.mtrs. from western side and over the area of 67.75 sq.mtrs. towards northern side. There is no record of title with the plaintiff to show that he is the owner of this portion, situated on northern side and western side. In view of his own record, the record of construction permission, it is not open to the plaintiff to show that he owns more area. Further it is admitted by the plaintiff that he had applied to the authority for regularization of encroachment made by him. In the application he had specifically mentioned about the encroachment, described above. He had admitted the encroachment and he had prayed for regularization of that encroachment.

9. The learned counsel for the plaintiff, appellant submitted that the possession over this portion started right from 1970 and so protection needs to be given to the plaintiff. It appears that after noticing aforesaid encroachment and as the measurement was taken on the basis of the dispute created by the plaintiff and in

the presence of plaintiff, the local body gave notice and asked him to remove the encroachment. In the notice it is mentioned that if the encroachment was not removed by the plaintiff, steps will be taken by local body for removal of the encroachment. Record is also produced to show that the permission from the authority was obtained by the village Panchayat for taking such action. Plaintiff had claimed only the relief of injunction and the aforesaid circumstances and the record show that there is nothing to show that it was a lawful possession. It can be said that he made some construction after taking the permission but he made encroachment. The suit came to be filed in the year 2007, after completion of the construction and the plaintiff wants to get regularized the aforesaid things. The Courts below have given finding that the plaintiff had made encroachment and the encroachment is as per the measurement made by the Surveyor. It is a finding on fact. This Court holds that no substantial question of law as such is involved in the appeal. In respect of the aforesaid grounds also it can be said that there is no force in those grounds and it is not possible to formulate any substantial question of

law on those grounds.

10. In the result, appeal stands dismissed.

11. At the request made by the learned counsel for the Appellant, after hearing the other side, the interim relief is made to continue for two more weeks from today.

12. In view of final disposal of the second appeal itself, the pending civil application for stay does not survive and the same stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.07/09/2015
ans/97-15