

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 278 OF 2013
WITH
CIVIL APPLICATION NO. 5428 OF 2013

- 1) Nagnath s/o Mahantaya Swami,
Age: 52 years, Occu. : Service,
R/o. Chapoli, Taluka Chakur,
District Latur
- 2) Vishwanath s/o Mahantaya Swami,
Age: 47 years, Occu. : Agri.,
R/o as above (Died)
- 3) Dhondappa s/o Mahantaya Swami,
Age: 42 years, Occu. : Agri.,
R/o as above

...APPELLANTS
(Orig. Plaintiffs)

VERSUS

1. Sanjay s/o Shantveer Kasnale,
(Died), through L.Rs.
- 1/1 Smt. Ratnama w/o Shantveer Kasnale,
Age: 70 years, Occu. : Household,
R/o Chapoli, Taluka Chakur,
District Latur
- 1/2 Parvatibai w/o Sanjay Kasnale,
Age: 40 years, Occu. : Household,
R/o as above
- 1/3 Shubhangi d/o Sanjay Kasnale,
Age: 11 years, Minor
- 1/4 Shantanu s/o Sanjay Kasnale,
Age: 7 years, Minor

Nos. 1/3 & 1/4 minors, u/g of
their mother Parvatibai w/o
Sanjay Kasnale, (No. 1/2)
Age: 40 years, Occ. Household,
R/o as above

2. Baswaraj s/o Shantveer Kasnale,
Age: 37 years, Occu. : Agri. & Service,
R/o Chapoli, Taluka Chakur,
District Latur
3. Arvind s/o Shantveer Kasnale,
Age: 33 years, Occu. Agri.
R/o as above

...RESPONDENTS
(Orig. Defendants)

Mr V.N. Damle, Advocate holding for Mr R.B. Bhosale, Advocate for appellants;
Mr G.P. Mapari, Advocate for respondents no.1/1 to 1/4, 2 & 3

CORAM : N.W. SAMBRE, J.

DATE : 29th June, 2015

ORAL ORDER :

The present appeal is by the original plaintiffs, who suffered a decree of dismissal in a suit for declaration and perpetual injunction. The prayer for perpetual injunction was based on the title.

2. The learned Trial Court, while dismissing the suit, has taken into account the damages to the property in question, including that of the plaint map and the map filed on record with the written statement.

3. The appeal at the behest of the present appellants - plaintiffs suffered the same fate. As such, present Second Appeal.

4. Mr Damle, learned Counsel appearing on behalf of the appellants, while strenuously questioning the legality and validity of the findings

recorded by both the Courts below, would urge that the first appellate court has committed error apparent on the face of record in giving findings, which were not gone into and appreciated by the Trial Court. According to him, the said findings cannot be termed as concurrent findings.

5. Apart from above, the learned Counsel, while taking me through the findings recorded by the lower appellate court, would urge that there is no sufficient material available on record to give findings against the appellants/plaintiffs *qua* the dimensions of the property. He would urge that in absence of any such material on record would operate as *res judicata* against him in another suit. According to him, the Courts below, as such have committed error and thus he made a prayer for remand of the matter to the lower appellate court for a decision afresh.

6. While countering the above referred submissions, learned Counsel appearing on behalf of respondents no.1/1 to 1/4, 2 & 3, would urge that the findings recorded by the Trial Court and affirmed by the first appellate court are based on the evidence and in tune with the scope of section 91 read with Order XLI of the Code of Civil Procedure. With a view to substantiate his contention, learned Counsel has taken me through the observations made by both the Courts below, and since the findings recorded are concurrent in nature, he prayed for dismissal of the appeal.

7. In order to appreciate the submissions made by Mr Damle, it is required to be looked into as to what was the material available before the Court below while dismissing the suit. It appears that though the appellants/plaintiffs have placed on record in the documentary form, the certified copies of the title deeds, the title to the disputed property was not established, although an opportunity to that effect was given. The Court has appreciated the evidence of the respective parties, particularly the map from the city survey, which is at Exh.61. Apart from above, the dimensions of the property, the compromise deed and the contents thereof are also looked into and appreciated by the Trial Court.

8. In my opinion, in view of the scope of section 96 read with Order XLI of the Code of Civil Procedure, the lower appellate court was equally right in re-appreciating the entire evidence in the background of the pleadings and to record its findings.

9. In view of above, no case for interference is made out. Second Appeal does not involve any substantial question of law. The appeal thus fails and stands dismissed with no order as to costs.

10. In view of dismissal of Second Appeal, Civil Application No.5428 of 2013 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj