

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 141 OF 2011
IN
CIVIL APPEAL NO. 49 OF 2005
IN
REGULAR CIVIL SUIT NO. 146 OF 1998

Mishrilal Ramchandra Gulecha
V/s.
Ukha Bapu Jadhav

.....Appellant

.....Respondent

* * * *

Mr. P.S. Dani, Senior Counsel i/by. Ashoka Law Firm,
Advocate for the appellant.
Mr. Anilkumar Patil, Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 23RD JANUARY, 2015.

P.C. :-

1). The appellant is original defendant no.1, who has filed this Second Appeal to challenge the order dated 24th July, 2010 passed by the lower Appellate Court declaring the respondent as the owner of the suit property and permanently restraining the appellant and original defendant no.2 from cutting the branches of the trees standing on the suit property and/or obstructing possession by the respondent. Original defendant no.2 is not impleaded to the present

appeal. The trial Court, by its judgment and order dated 21st October, 2005 had partly decreed the suit of the respondent by granting only the relief of injunction in his favour. The respondent alone felt aggrieved by the judgment and decree of the trial Court and had preferred Regular Civil Appeal No. 59 of 2005. Neither the appellant, nor original defendant no.2 had challenged the judgment and decree of the trial Court. For the sake of convenience, the parties will hereinafter be referred to by their original nomenclature.

2). The plaintiff is the owner of the land at Gat no.615 situate at Village-Lohoner, District- Nashik. The land of defendant no.1 bearing Gat No. 536 is situate on the eastern side of the plaintiff's land and that of defendant no.2 bearing Gat No. 532/5 is situate to the south-eastern side of the plaintiff's land. During implementation of the Consolidation Scheme in the year 1973, the plaintiff's land was found to be admeasuring 1 hectare 96.1 Are, of which a portion admeasuring 10 Are, on the eastern side is barren land. There are 16 neem and 2 babul trees standing thereon. The barren land admeasuring 10 Are with the trees is the suit property.

3). The plaintiff alleged in his plaint that, on 12th May, 1998 defendant no.1 started cutting the branches of the neem tree on the suit property. When the plaintiff raised an objection, defendant no.1 left the place. But later, while the plaintiff was away from the suit

property on account of hospitalisation, defendant no.1 carried away all the branches causing loss to the plaintiff and defendant no.2 started claiming a right to the suit property. Therefore, the plaintiff sent advocate's notice dated 6th July, 1998 to warn the defendants to desist from their activities and to claim compensation of Rs.5,000/- for the loss caused to him due to cutting of the trees. On the notice being ignored, he filed suit against the defendants seeking (i) declaration of title to the suit property, (ii) for an injunction to restrain the defendants from cutting the trees and disturbing his possession and (iii) direction to defendant no.1 to pay compensation of Rs.5,000/-.

4). The defendants filed a common written statement disputing the area of Gat no.615 and the description of trees standing thereon. They contended that, at the time of purchase by the plaintiff of Gat no.615 in the year 1960, the land admeasured only 3 acres. The plaintiff had, in connivance with the revenue authorities, got the area of the land increased and has been attempting to encroach upon the suit property. The defendants also claimed that the suit property is owned by them and they have been enjoying the benefits of the trees standing on the land. According to the defendants, there is a nalla running south-north between their properties and the property of the plaintiff and that their land is at the height of 22 to 25 ft from the level

of nalla. On the east side of the nalla, there is an access road which is regularly used by the defendants.

5). The plaintiff examined himself in support of his case and two witnesses i.e. an Officer from Taluka Inspector of Land Records and one Suresh Shankar Shevale, a neighbour. The defendants examined defendant no.1 and one, Pranay Desmukh, another neighbour.

6). On appreciation of the evidence led by the parties, the trial Court held that, neither the plaintiff, nor the defendants, had succeeded in establishing their right to the suit property. It, however, granted perpetual injunction to restrain the defendants from cutting branches of the neem tree belonging to the plaintiff, while denying the appellant's prayer for compensation in the sum of Rs.5,000/-. The reason given by the trial Court for holding that the plaintiff is not the owner of the suit property was that, the document of measurements taken during the Consolidation Scheme relied upon by him is not a document of title. Besides, the defendants had raised objection to the map of the Government Inspector of Land Records. The Appeal Court, by the order impugned herein found that the plaintiff is the owner of the suit property and the trees standing thereon. It further held that, the defendants had illegally cut the branches of the neem tree of the plaintiff causing damages of Rs.5,000/- to him. With these

findings, the Appeal Court set aside the judgment and decree of the trial Court and decreed the suit.

7). The appellate Court noted that the defendants in their written statement had not taken up any specific defence of title to the suit property. They had merely baldly claimed that, it is not the plaintiff, but they who are entitled to the suit property. Since, the defendants had not claimed any specific title to the suit property, the lower appellate Court appreciated the evidence of Taluka Inspector of Land Records (TILR) map at Exhibit-53, the 7/12 extract, the mutation entries, consolidation extract, another TILR map and Index-II Register etc. to hold that the plaintiff is the owner of the suit property. It also considered the provisions of Section 31A, Section 32 and Section 24 of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The Consolidation Officer had revised and corrected the entry made in the revenue records as regards the area of the suit property. The appellate Court also considered the evidence of P.W. 2, the witness from the office of the TILR. The witness stated on the basis of the record that, at the time of taking measurements, the statements of the plaintiff, as well as, defendant no.1 were recorded. From this, the lower appellate Court drew the inference that the defendants were very much present at the time of measurements of Gat no.615.

8). Mr. Dani, the learned Senior Counsel appearing for the appellant, submits that the Appeal Court was not correct in holding that the defendants had not claimed any title to the suit property. He refers to the single bald statement in the last para of the written statement, where the defendants while denying that the plaintiff has a title to the suit property, vaguely claim that they are the owners of the suit property. He next submits that the parties had entered the trial with clear understanding of the dispute between them as the dispute of title to the suit property and had led evidence accordingly. Once the parties go into trial with a particular understanding of the dispute, according to him, any defect in the pleadings will have to pale into insignificance.

9). The facts of the case do not permit acceptance of the submission advanced by Mr. Dani. Firstly, there is no specific claim of title made by the defendants in the plaint. The rules of pleading require that, a party to the proceeding sets out its case in clear and specific terms by stating sufficient details of the relevant facts. Evasive pleadings, whether of assertion or of denial is of no consequence. Secondly, original defendant no.2 who had raised the claim, has not stepped into the witness box to lead evidence in support of his claim of title to the suit property. Defendant no.1 whose evidence is led, does not produce any evidence of title to the suit property.

10). The next argument of Mr. Dani is that the Scheme of Consolidation cannot confer title upon a person. According to him, since the document of title of the plaintiff i.e. the sale-deed in his favour is in respect of only 3 acres, he cannot claim ownership in respect of land beyond that. The plaintiff is undisputedly the owner of Gat No.615. If the measurements taken during the process of implementation of Consolidation Scheme discloses larger area of Gat no.615, the cause for grievance can be only to the vendor of the plaintiff and to no other person and definitely not the defendants. Hence, any excess land must be treated as the land owned by the plaintiff. Therefore, there is no infirmity in the inference of the lower appellate Court, as regards the finding on the title to the suit property.

11). There is one more circumstance in favour of the plaintiff as regards the title to the suit property. As has been pointed out by Mr. Patil, the learned Advocate appearing for the plaintiff, both the defendants have accepted the decision of the trial Court issuing order of injunction against them. They had not preferred any appeal to the District Court against that order. The appeal under consideration of the lower appellate Court was preferred by the plaintiff for denial of relief of title to him. Once the defendants are permanently restrained by an order of the Court from cutting the trees on the suit property

with a finding that they have no right thereto, it is not open for the defendants to claim title to the suit property. In the circumstances, there is no merit in the challenge to the judgment and order of the lower appellate Court. There is also no substantial question of law arising for consideration of the Court. The Second Appeal is dismissed.

(SMT. R.P. SONDURBALDOTA, J)