

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

20 SECOND APPEAL NO. 336 OF 2012

RAHIMANBEE SANDALJI BAGWAN, DIED AND ANR
VERSUS
TRIMBAK NAGORAO SOLUNKE AND ANR

...
Advocate for Appellants : M.S. Kokate
Advocate for Respondents 1 & 2 : V.P. Kadam
...

CORAM : T.V. NALAWADE, J.
DATED : 2nd August, 2016.

ORDER :

1. The appeal is filed against judgment and decree of Regular Civil Suit No. 222/2006 (Old R.C.S. No. 261/2000) and the judgment and decree of Regular Civil Appeal No. 80/2006. The suit is decided by the Court of Civil Judge, Senior Division, Majalgaon and the appeal is decided by District Court, Majalgaon. The suit of the present appellants, plaintiffs for relief of declaration of ownership and for injunction is dismissed. Heard both the sides.

2. The suit was filed in respect of house property bearing No. 98 situated at village Hingni, Tahsil Vadawani. It is the case of plaintiffs that the size of the property is 90 ft. north-south and 72 ft. east-west. It is contended that Shaikh Sandalji Bagwan was the owner of the property and till his death, i.e. till

17.11.1999, said Sandalji was in possession of the property. It is contended that plaintiff No. 1 is the widow of Sandalji and plaintiff No. 2 is the daughter of Sandalji and so, they have become owners of the suit property.

3. The case of the plaintiffs is that after the death of Sandalji, they made application to Village Panchayat on 13.12.1999 to enter their names in the assessment record and accordingly, in assessment record, Namuna No. 8, the entry was taken on 16.7.2000. It is contended that the description of the property was not correctly mentioned and so, that entry is not binding on the plaintiffs.

4. It is the case of plaintiffs that when they are owners of 90 ft. x 72 ft., the property having size of 50 ft. east-west and 40 ft. north-south is not shown in the assessment record though the boundaries are correctly shown. It is contended that plaintiffs had applied to Local Body on 16.7.2000, requesting the Local Body to make correction, but the correction is not made.

5. It is the case of plaintiffs that in the disputed space, they have one room constructed in tin sheets and one hut and remaining portion is vacant space.

6. It is the case of plaintiffs that about six months prior to the date of suit, defendant Nos. 1 and 2 forcibly took possession of the disputed space and they started doing hotel business in the disputed space. They contended that they had requested defendant Nos. 1 and 2 to hand over the possession, but defendant Nos. 1 and 2 did not hand over the possession and so, the cause of action took place for the suit.

7. Initially one employee Local Body was made party to the suit and the suit against him was disposed of as abated as suit was filed against Gramsevak by name and no steps were taken to bring the Local Body on the record.

8. Gramsevak had filed written statement. The aforesaid contentions made by plaintiffs were denied. It was contended that the property was correctly described in assessment record and it was on the basis of measurement. It was contended that the suit was filed against employee of Government and it was not tenable and it ought to have been filed against the Local Body.

9. Defendant No. 1 filed written statement to contest

the matter. He contended that the description of the property of plaintiffs show that on the eastern side, there is a road and the space of godown of society, on western side there is open space of Village Panchayat and towards south also, there is open space of Village Panchayat. It is contended that to the north of the house of plaintiffs there is the house of defendant No. 2 and between the two houses, there is east west wall. It is contended that between the properties of plaintiffs and defendant No. 1 also there is east-west wall and the property in possession of defendant No. 1 is given house No. 340 in the assessment record. It is contended that beyond the walls of two sides of the construction of plaintiffs, plaintiffs have no space. He contended that plaintiffs were never owner of property having size of 72 ft. x 90 ft. and the description of the property recorded in the assessment record is as per the actual measurement.

10. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. The Trial Court dismissed the suit by holding that plaintiffs failed to prove the title over the suit property. That finding is confirmed by the First Appellate Court. In view of the nature of dispute, this Court had given opportunity to the appellants in the present proceeding to show to this Court any record of title.

11. The oral evidence and the record show that the names of plaintiffs were entered in the assessment record of house No. 98 and prior to that, there was the name of Sandalji. The evidence of plaintiff No. 1 is as per the pleading in the plaint and defendant Trimbak has given evidence in rebuttal.

12. In the cross examination, plaintiff has contended that Sandalji had purchased the property from one Rajaram Patil when plaintiff was minor. No such record is produced and said Rajaram Patil or his successor are not examined as witnesses. On the other hand, defendant has given evidence that Village Panchayat had given the space on which the house is constructed by the plaintiffs and only that space was given to plaintiffs by Village Panchayat. One witness Nagnath is examined by the defendants to show the possession of defendants over the disputed space. The record of assessment at Exhs. 87 and 88 is consistent with the evidence given by the defendants.

13. There is only oral evidence of plaintiffs to the effect that they are owners of 90 ft. x 72 ft. space. The size of their property is described in assessment record which was prepared in the year 1995-96. There is copy of tax receipt dated

31.10.1996 and it was issued in the name of Shaikh Sandalji. Exh. 5 shows that in the past the same property with the same size was shown to be owned by Shaikh Sandalji. This record creates probability that in the year 1995-96 no change was made in the record by Village Panchayat and only mutation was made in favour of plaintiffs after the death of Shaikh Sandalji. As there is no record of title with the plaintiffs to prove the case, there was no other alternative before the Courts below than to dismiss the suit. The findings recorded are on facts and no substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

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