

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 50 OF 2015

Anurath S/o Yadavrao Mane,
Age-49 Years, Occ - Agriculture,
R/o, Warfal-wadi, Taluka Partur,
District Jalna.

... Appellant
(Original Plaintiff)

Versus

1. Atmaram S/o Shriram Bergude
Age-39 Years, Occ - Agriculture,
R/o. Warfal-wadi, Taluka Partur,
District Jalna.

2. Baliram S/o Shriram Bergude,
Age-43 Years, Occ - Agriculture,
R/o. Warfal-wadi, Taluka Partur,
District Jalna.

... Respondents
(Original Defendants)

.....
Advocate for the Appellant : Mr. K. B. Jadhav h/f Mr. S. B. Bhapkar
Advocate for Respondents 1 and 2: Mrs. Geeta L. Deshpande
.....

CORAM : V. K. JADHAV, J.
DATED : 17th MARCH, 2016

ORAL JUDGMENT:-

1. Admit. By consent of parties, heard finally at admission stage.
2. The appellant-original plaintiff instituted a suit bearing R.C.S. No. 57 of 2009 before the Joint C.J.J.D. Partur, for recovery of possession of encroached area from respondents-original defendants. Learned Joint C.J.J.D., Partur, after hearing the parties, dismissed the suit by judgment and decree dated 16.8.2011. Being

aggrieved by the said judgment and decree dated 16.8.2011, passed by learned Joint C.J.J.D. Partur, the appellant-original plaintiff had preferred Regular Civil Appeal before District Court, Jalna. The learned Adhoc District Judge-1, after hearing the parties, by judgment and order dated 21.11.2014, remanded the matter to the trial court by giving certain directions. Hence, this appeal.

3. Learned counsel for the appellant submits that the lower appellate court had directed the parties to remain present before the trial court on 21.12.2014, however, till that time, record and proceedings were not received, and therefore, the appellant-original plaintiff could not appear before the trial court. However, as per the directions given by the lower appellate court while remanding the matter, the appellant-original plaintiff filed an application on 5.1.2015 in the office of Deputy Inspector of Land Records, Partur for measurement. Learned counsel submits that there is delay in filing said application before the measuring authorities, however, in terms of clause 3 of remand order dated 21.11.2014, passed by the lower appellate court, in case the plaintiff fails to apply for measurement within one month from the date of order, the judgment of learned trial court shall be deemed to be confirmed. Learned counsel submits that in view of this, the judgment and decree passed by learned trial court, dismissing the suit filed by appellant-original plaintiff, stands

confirmed and appellant-original plaintiff has become helpless to proceed with the suit.

4. Learned counsel for the respondents-original defendants submits that as per the directions given by the lower appellate court, the appellant-plaintiff has not appeared on the given date before the trial court. Furthermore, the appellant-plaintiff has not submitted an application before the Taluka Inspector of Land Records within one month from the date of order passed by the lower appellate court, as directed. Learned counsel submits that there is negligence on the part of the appellant-plaintiff and in view of clause 3 of the remand order passed by the lower appellate court, judgment of the trial court dismissing the suit of the plaintiff shall be deemed to be confirmed. Learned counsel submits that there is no merit in the appeal and the same is liable to be dismissed.

5. Clause 3 of remand order is reproduced below :-

“3. In case plaintiff do not apply for the measurement within one month from the date of this order, the judgment of learned trial court shall be deemed to be confirmed.”

6. It is true that when there is suit for recovery of alleged encroached area and when there is dispute about boundaries, it would be appropriate to measure the suit land owned and possessed

by the defendants. Even the lower appellate court has observed in the impugned judgment and order that the trial court ought to have directed the plaintiff to get the land measured jointly with the land of defendants.

7. On the basis of rival pleadings of the parties, it is incumbent upon the court to frame issues and in view of the provisions of Order XIV Rule 2 of the Code of Civil Procedure, the court shall, subject to the provisions of sub-rule (2), pronounce the judgment on all issues. Sub-rule (2) of Rule 2 of Order XIV is not relevant here, however, the court is required to pronounce judgment on all issues framed on the basis of rival pleadings of the parties to the suit.

8. In the case in hand, the lower appellate court has directed the plaintiff to apply for joint measurement of his land as well as the land owned and possessed by the defendant, within one month from the date of order, and in case of failure, judgment of the trial court shall be deemed to have been confirmed. In my considered opinion, this condition is against the provisions of Order XIV Rule 2 of the Code of Civil Procedure. As discussed above, court has to consider pleadings of the parties, evidence adduced by them in support of their pleadings and then pronounce judgment on all the issues arose for determination. The lower appellate court, while remanding the

matter, quashed and set aside the judgment passed in R.C.S. No. 57 of 2009 with certain directions. It appears that, as per clause 3 of operative part of the order, if the plaintiff do not apply for the measurement within one month from the date of said order, then the judgment of learned trial court, which has been quashed and set aside by the lower appellate court, is deemed to have been confirmed. According to me, this is quite strange approach and in any manner, this cannot be upheld. So far as the other directions in the remand order are concerned, those directions may be relevant for carrying out joint measurement of disputed land as well as the land owned and possessed by the defendant. However, clause 3 of operative part of the remand order is required to be quashed and set aside. In view of said clause No.3 of the operative part of the remand order, judgment of the trial court i.e. dismissal of suit, is deemed to have been confirmed. At this stage, learned counsel for both the parties submit that the trial court may be directed to expedite disposal of the suit.

9. In view of above discussion, present appeal is required to be partly allowed to that extent by quashing said clause No.3 of the operative part of the remand order alongwith certain other directions. Hence, the following order:-

ORDER

- I. The Appeal from Order is hereby partly allowed.
- II. The judgment and order dated 21.11.2014 passed by learned Adhoc District Judge-1, Jalna in Regular Civil Appeal No. 173 of 2011, to the extent of clause 3 of operative part of the remand order, is hereby quashed and set aside. The rest of the judgment and order passed by the lower appellate court stands confirmed.
- III. The trial court is hereby directed to restore Regular Civil Suit No. 57 of 2009 to its original position and dispose it of in accordance with law as expeditiously as possible and preferably within a period of one year from today, keeping in mind the directions given by the lower appellate court while remanding the matter, except clause 3 of the operative part of the remand order.
- IV. Appeal from order is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

rlj/