

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Second Appeal No.293 of 2016

Hanumandas s/o Hiralal Bajaj. .. **Appellant.**

Versus

Bhagwat S/o. Narsing Jadhav. .. **Respondent.**

Shri. Swapnil D. Tawshikar, Advocate, for appellant.

CORAM: T.V. NALAWADE, J.

DATE : 22 JUNE 2016

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.573/2011 which was pending in the Court of the Civil Judge Junior Division Ausa, District Latur and also to challenge the judgment and decree of Regular Civil Appeal No.250/2013 which was pending in District Court Latur. The suit filed for relief of declaration and possession and also for perpetual injunction by the present appellant is dismissed by the Courts below. Heard learned counsel for the appellant.

2) The suit was filed in respect of 20 R portion of land from Gat No.265 situated at village Selu, Tahsil Ausa.

It is contention of the plaintiff that he was owner of 1H 78 R portion from land Gat No.265 and out of that portion he sold 1H 58R portion in favour of the defendant under registered sale deed dated 15-12-2001. He contended that after selling the land admeasuring 1H 58 R, there was land admeasuring 20 R with him in Gat No.265. It is contended that the portion sold to defendant was not correctly described as some boundaries were not correctly mentioned and the defendant is trying to use this circumstance to grab the suit portion of 20 R. He contended that he had issued notice to the defendant on 8-3-2011 and he had requested for correction of the sale deed but the defendant gave false reply and he dispossessed the plaintiff on 30-7-2011 and so cause of action took place for the suit.

3) The defendant contested the suit by filing written statement. He contended that prior to the date of the sale deed there was agreement of sale executed on 3-10-2000 and in it not only the area but the four boundaries of the portion which was to be sold were mentioned. The defendant contended that in the sale deed

by mistake portion of 1H 58 R was shown when entire portion owned by the plaintiff was sold by him. He contended that on the basis of the boundaries and the contents of agreement inference is easy that entire portion of 1H 78 R was sold by the plaintiff to the defendant.

4) On the basis of the aforesaid pleadings issues were framed. Both the sides gave evidence. The documents like agreement and sale deed were produced on the record. Execution of these two documents is not disputed by the plaintiff. The agreement is at Exhibit 47 and it is consistent with the case of the defendant. Further the boundaries mentioned in the sale deed are consistent with the contents of the agreement and they show that entire portion owned by the plaintiff was sold by him to the defendant. On the basis of this circumstance finding is given by the Courts below that due to mistake the portion was mention as 1H 58 R when the portion of 1H 78 R was sold by the plaintiff to the defendant.

5) The learned counsel for the plaintiff submitted that mutation was made in favour of the defendant in

respect of portion of 1H 58 R and the plaintiff is shown as owner of remaining 20 R portion and so the title has not passed to the defendant in respect of 20 R portion. Though technically it can be said that the title of 20 R was not transferred to the defendant, the fact remains that possession of the entire portion is with the defendant and there was agreement to sell the entire portion. On the basis of this circumstance inference is drawn by the Courts below that the plaintiff is not in possession, he cannot be held as title holder and the suit is dismissed. Counter claim made by the defendant for declaration in respect of the disputed portion is not allowed and it can be said that there was no such necessity also in view of the findings given in respect of other issues.

6) The findings given by the Courts below are findings of fact and they are concurrent. In view of these circumstances there is no possibility of interference in the decision given by the Courts below and no substantial question of law as such is involved. In the result, the appeal stands dismissed.

(T.V. NALAWADE, J.)

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