

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 94 OF 2015

SHRI.ANANT @ ANAND PARAB. ... Appellant
Versus
SHRI SAMEER @ GHANSHYAM RANGANATH
CACODKAR. ... Respondent

Shri R. G. Ramani, Advocate for the Appellant.
Shri Sudin Usgaonkar, Senior Advocate with Ms. V. Palyekar,
Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 22nd April, 2016

ORAL ORDER:

Heard Shri R.G. Ramani, the learned Counsel appearing for the appellant and Shri Sudin Usgaonkar, the learned Senior Counsel appearing for the respondent.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the respondent for permanent injunction came to be dismissed.

3. Shri R.G. Ramani, the learned Counsel appearing for the appellant has seriously criticized the manner in which the Lower Appellate Court has dealt with the contentions of the appellant in the appeal to the effect that the main contention of the appellant that the subject property was part and parcel of the property claimed by the

appellant under Land Registration No.2026 and matríz no.421 has not at all been considered. The learned Counsel further pointed out that even the contention of the appellant that the property claimed by the respondent bearing Land Registration No.2027 and matríz no.425 does not include the suit property surveyed under no.370/1 has not been considered by the Lower Appellant Court. The learned Counsel further points out that it is well settled that it is for the respondent/plaintiff to prove his case and as the respondent has failed to discharge this burden by cogent evidence on record that the property as claimed by the respondent corresponds to the subject property surveyed under no.370/1. The learned Counsel further pointed out that the Courts below were not justified to grant the injunction. The learned Counsel further submitted that it is the specific case of the appellant that two portions of the suit property have been conveyed/sold to two different persons much before the filing of the suit and, as such, this itself would disclose that the respondent was not in possession of the suit property. The learned Counsel further pointed out that the suit was also bad for non-joinder of necessary parties namely the said purchasers as according to him they were necessary parties to the suit as the relief granted by the Courts below would affect the rights of such persons in the suit property. The learned Counsel has thereafter taken me through the judgments of the learned Trial Judge to point out that the learned Judge has not at all appreciated this crucial issue to come to the conclusion that the respondent has established his case. The learned

Counsel has taken me through the judgment of the Lower Appellate Court to point out that the Lower Appellate Court has not at all applied the mind to the issues raised by the appellant whilst dismissing the appeal. The learned Counsel further pointed out that as the finding on possession is perverse, there are substantial questions of law which arise in the present appeal for consideration.

4. On the other hand, Shri Sudin Usgaonkar, the learned Senior Counsel appearing for the respondent has supported the impugned judgments. The learned Senior Counsel has pointed out that both the Courts below upon appreciating the evidence on record has concurrently come to the conclusion that the respondent has established his title and possession over the suit property. The learned Senior Counsel further pointed out that the respondent had clearly pleaded the boundaries as shown in the Land Registration Office as well as the survey records which have not been disputed by the appellant in his written statement. The learned Senior Counsel has further pointed out on the basis of the admission of DW1 himself it clearly shows that the alleged claim of the appellant that they had sold portions of the suit property is not correct. The learned Counsel further pointed out that the substantial question of law proposed by the appellant would entail reappreciation of evidence which exercise is not permissible in the Second Appeal under Section 100 of the Civil Procedure Code. The learned Senior Counsel, as such, submits that the appeal be rejected.

5. I have considered the submissions of the learned Counsel and with their assistance I have also gone through the records. Shri R.G. Ramani, the learned Counsel for the appellant may be justified to contend that all the contentions raised by the appellant are not specifically dealt with by the Lower Appellate Court, nevertheless, on perusal of the finding of the learned Trial Judge as well as the Lower Appellate Court, both the Courts below upon appreciating evidence on record have come to the conclusion that the respondent has established his title as well as the possession of the suit property. These findings have been arrived at on the basis of the Land Registration Document as well as the survey record. Apart from that, it is not disputed that the property surveyed under no.370/1 stands in the survey record in the name of the respondent herein. The presumption drawn under Section 105 of the Land Revenue Code has not been rebutted nor there is any cogent material on record to examine such aspect. Apart from that the contention of Shri R.G. Ramani, the learned Counsel for the appellant that the appellant had sold two portions of the suit property to different persons have been rejected by both the Courts below. The lower Appellate Court has categorically come to the conclusion that the Sale Deeds did not disclose that what has been sold was the subject matter of the suit property. This coupled with the admission of DW1 in the cross examination that the subject matter of the Sale Deed was beyond the property bearing survey no.370/1 would show that on the basis of

cogent material on record the Courts below have rendered such findings of fact. There is no perversity in the finding of the Court below as such. The concurrent findings arrived at by the Courts below cannot be reappreciated by this Court in the Second Appeal under Section 100 of the Civil Procedure Code. Both the Courts below have rightly come to the conclusion that the appellant has failed to establish his claim over the disputed property. In fact, it is not disputed that the adjoining property is in possession and ownership of the appellant herein. The respondent has clearly established that their property corresponds to the property surveyed under no.370/1 which is the suit property.

6. In such circumstances, I find that there are no substantial questions of law which arise in the second appeal. There is no merit in the above appeal which stands accordingly rejected.

F. M. REIS, J.

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