

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.246 OF 2014

Naktu s/o Nanaji Satpute and ors.

-vs-

Shrawan s/o Bhikaji Vairagade and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R. D. Dharmadhikari, Advocate for appellants.

Shri N. A. Vyawahare, Advocate for respondent No.1.

CORAM : A.S.CHANDURKAR, J.

DATE : APRIL 20, 2016

The appellants are the unsuccessful plaintiffs who are aggrieved by the dismissal of the suit for possession of encroached portion of land.

It is the case of the appellants that 2H of land from Survey No.56 was allotted to them in the year 2001. Out of said land 0.76R land was said to be encroached by defendant No.1 and 0.60 R land was alleged to be encroached by defendant No.2. On that basis, suit for declaration that the plaintiffs had possessory title over 0.65 R land of Survey No.56 was filed. The trial Court held that the plaintiffs had failed to prove their title to the suit property and that the encroachment as alleged was not proved. This finding has been upheld by the appellate Court.

Shri R. D. Dharmadhikari, the learned counsel for the appellants submitted that before the appellate Court various documents were produced on record which included the document dated 01/11/2001 by which 2H land was granted

to the appellants. According to him, this document bearing Exhibit-41 in Civil Suit No.61 of 2002 that had been filed earlier indicated the title of the appellants. He further submitted that the appellate Court was not justified in observing that no documents regarding title were filed on record. It was then submitted that as the suit was filed for removal of encroachment, it was necessary to appoint a Commissioner for determining the encroachment. As the same was not done, the dismissal of the suit as well as the appeal was contrary to law.

Shri N. A. Vyawahare, the learned counsel for the respondents supported the impugned judgment. According to him, the appellants had not described the suit property as required by provisions of Order VII Rule 3 of the Code of Civil Procedure. The boundaries of the suit property were not mentioned nor was any map filed on record. He submitted that the appellate Court considered the document that was filed in the earlier suit but same did not support the case of the appellants. He therefore submitted that there was no reason to interfere with the impugned judgment.

Perusal of the plaint in R.C.S. No.25 of 2009 indicates that the suit property has not been described in the manner required by Order VII Rule 3 of the Code. Neither have the boundaries been mentioned nor has any map been filed on record to indicate the encroachment. Considering the reliefs sought in the suit especially with regard to removal of encroachment, the burden was on the appellants to at least describe the suit property by mentioning its boundaries. The same not having been done, the finding recorded by the trial Court in paragraph 7 of its judgment and confirmed by the appellate Court cannot be said to be contrary to law.

In so far as the document dated 01/11/2001 is concerned, even if it has been stated therein that land admeasuring 2 H from Survey No.56 was allotted to the appellants, in absence of any description of the encroached portion and failure to prove the encroachment by the defendants, said document cannot further the case of the appellants. These aspects have been considered by the trial Court as well as the appellate Court. Hence the second appeal does not give rise to any substantial question of law. The same is dismissed with no order as to costs.

JUDGE