

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No.93 of 2015
(The Nagpur Improvement Trust, Nagpur,, through Chairman v. Reeta
Sharad Shukla and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri R.O. Chhabra, Advocate for Appellant.
Shri S.K. Parthy, Advocate for Respondent Nos.1 and 2.
Shri A.P. Chorghade, Advocate for Respondent No.3.

Coram : R.K. Deshpande, J.

Date : 13th July, 2016

The original defendant is before this Court against the concurrent findings of fact recorded by both the Courts below.

The Trial Court passed a decree granting declaration that the *nullah* was originally running through *Galli* No.7 of Mahalaxmi Nagar No.3, Manewada Road, Nagpur, as per the old city survey map and the revenue record, and it is far away from the suit property. The defendant is restrained from carrying out any construction of *nullah* across the suit property without following due process of law.

The lower Appellate Court dismissed the appeal, but also issued mandatory injunction on 19-8-2014, directing the defendant to fill up the entire dug-out portion of the suit property

of the plaintiff Nos.1 and 4.

The appellant-defendant was causing damage to the property of the plaintiffs by way of encroachment. The stand of the appellant-defendant was that the plaintiffs were unauthorized occupants of the suit property and that the work of digging was being carried out in the suit property for canalization of *nullah*, which was in existence since last many years. The appellant-defendant did not examine any witness. The lower Appellate Court has held that it was never the stand taken by the defendant that the work of canalization started on the *nullah*, which was in existence since last many years. The activities of digging and carrying out the construction over the property owned by the plaintiffs are held to be illegal and, therefore, the mandatory direction has been issued by the lower Appellate Court for restoration of possession by filling up the entire dug-out portion of the suit property. The findings of fact recorded by both the Courts below are based upon the evidence available on record.

Thus, no substantial question of law arises for consideration. The second appeal is dismissed.

Judge.

Lanjewar