

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 642 OF 2016

Pandurang Ramchandra Mhaske & Ors. ... Appellants / Applicants

Versus

Varsha Vijaykumar Kshirsagar and Ors. ... Respondents

ALONG WITH
CIVIL APPLICATION NO. 1298 OF 2016
WITH

SECOND APPEAL NO. 656 OF 2016

Baban Vithal Mhaske & Ors. ... Appellants / Applicants

Versus

Varsha Vijaykumar Kshirsagar and Ors. ... Respondents

WITH
CIVIL APPLICATION NO. 1312 OF 2016

Mr. Nikhil Wadikar i/b. Mr. Nandu Pawar for the Appellants / Applicants in both SAs and CAS.

Mr. V.S. Talkute for the Respondents in both SAs and CAs.

CORAM : S.J. KATHAWALLA, J.
DATED : 6TH SEPTEMBER, 2017

P.C.:

1. On 02-11-2011 the Appellants filed Regular Civil Suit No. 427 of 2011 claiming declaration of ownership of a certain portion of the suit property on the basis of title and for the balance portion on the basis of adverse possession, and for perpetual injunction against the Respondents from disturbing the possession of the Appellants.

The Respondents filed Regular Civil Suit No. 430 of 2011 praying for an injunction against the Appellants from disturbing the possession of the Respondents and allowing them to construct as per the sanctioned plan.

2. The dispute in both suits pertains to land bearing CTS No. 231 situate at Godoli, Taluka Satara, District Satara which was originally owned by Eknath Jagtap. Vitthal Ramchandra Mhaske, i.e. the predecessor-in-title of the Appellants purchased land admeasuring 48x43 sq. ft. out of the said City Survey Number by Registered Sale Deed dated 30-01-1948. The Respondents by Registered Sale Deed dated 22-12-2009 purchased the rest of the area in CTS No. 231 from the heirs of Eknath Jagtap.

3. The Ld. Trial Court by common Judgment and Decree dated 12-03-2013, partly decreed Regular Civil Suit No. 427 of 2011 to the extent of granting perpetual injunction restraining the Respondents from carrying out construction on land bearing CTS No. 231 before Sub-Division or without obtaining the consent of the Plaintiffs in the said Suit and also from doing any act detrimental to the joint possession of the Appellants before such Sub-Division. However, the Ld. Trial Court rejected the claim of the Appellants regarding declaration of ownership by adverse possession. The Ld. Trial Court also dismissed the Regular Civil Suit No. 430 of 2011.

4. Being aggrieved by the aforesaid Judgment and Decree, the Appellants on 10-06-2013 preferred Regular Civil Appeal No. 146 of 2013 before the Ld. District Court, Satara. The Respondents on 29-07-2013 preferred Regular Civil Appeal No. 166 of 2014 before the Ld. District Court against the dismissal of their Suit.

5. The Ld. District Court, Satara, by common Judgment and Decree dated 06-05-2016 partly allowed Regular Civil Appeal No. 146 of 2013 and held that the Respondents are in settled possession of the area to the extent of 90 x 48 sq. ft. and accordingly restrained the Appellants from evicting the Appellants without following due process of law or causing interference to their possession by themselves or anyone claiming through them. However, the Ld. District Court confirmed the decree of the Ld. Trial Court to the extent of rejection of declaration of ownership of the Appellants by way of adverse possession. The rest of the decree with reference to Clause II of the operative part of the judgment of the Ld. Trial Court, was quashed and set aside. The Ld. District Court partly allowed Regular Civil Appeal No. 166 of 2014 thereby granting decree for perpetual injunction in favour of the Respondents and restraining the Appellants from disturbing possession of the Respondents or from carrying out any construction activities, in accordance with law, in the whole area of City Survey No. 231, excluding the area referred above i.e. 90 x 48 sq. ft. Accordingly, the decree passed in Regular Civil Suit No. 430 of 2011 was modified and the Suit was partly decreed.

6. Being aggrieved and dissatisfied by the common Judgment and Decree dated 06-05-2016 passed by the Ld. District Court, Satara in Regular Civil Appeal Nos. 146 of 2013 and 166 of 2014, the Appellants filed the aforesaid Second Appeals before this Court.

7. In its judgment, while narrowing down the controversy, the Ld. District Court

recorded findings that the Property-‘A’ is owned and possessed by the Appellants, Property-‘B’ is in possession of the Appellants though the title belongs to the Respondents, and Property-‘C’ is owned and possessed by the Respondents.

8. By order dated 28-02-2017 with the consent of the parties, this Court (Coram: S. C. Gupte, J) appointed the Taluka Inspector of Land Records (TILR) to demarcate separate portions of land designated as Property-A, Property-B and Property-C, respectively in Paragraph Nos. 6, 7 and 8 of the common judgment and decree dated 06-05-2016 passed by the Ld. District Court, Satara.

9. As per the directions of this Court, the City Survey Officer, Satara after giving notice to all concerned, carried out measurement on 03-04-2017 and demarcated the portion referred to as Property-A, Property-B and Property-C and submitted the map along with the said report to this Court.

10. I have heard the learned Advocates for the respective parties at length on the claim pertaining to the adverse possession and the contention that the Ld. First Appellate Court ought not to have passed the decree for injunction against the Appellants without there being subdivision of CTS No. 231.

11. With regard to the issue of adverse possession, I am satisfied that both the Courts below have recorded concurrent findings and dismissed the claim of the Appellants regarding adverse possession to the extent of Property-‘B’. There is no perversity in the said findings and therefore no substantial question of law arises insofar as those findings are concerned.

12. Secondly, insofar as the issue as regards granting of decree for perpetual injunction without subdivision of the property is concerned, this Court by order dated 28-02-2017 had appointed the TILR, Satara to demarcate the separate portion of the land designated as Property-‘A’, Property-‘B’ and Property-‘C’. The TILR, Satara has submitted his report to this Court and the same is taken on record and marked ‘X’ for identification. Both the parties have accepted the said report.

13. In light of the aforesaid developments, I am of the view that the following order would substantially address grievances on both sides, and meet the ends of justice, particularly having regard to the peculiar facts and circumstances of the present case and in view of the narrow controversy involved in the present Second Appeal. Hence, with the consent of the Advocates and parties, the following workable order is being passed:

ORDER

- i. The Common Judgment and Decree dated 06-05-2016 Regular Civil Appeal Nos. 146 of 2013 and 166 of 2014 is hereby confirmed. The map submitted by the Surveyor dated 03-04-2017 pursuant to order dated 28-02-2017 passed by this Court will form part of the decree for the purpose of ascertaining the title and actual possession of the respective parties with reference to property described as Property-‘A’, Property-‘B’ and Property-‘C’ in the said Judgment and Decree.
- ii. The TILR, Satara is directed to subdivide CTS No. 231 situate at Godoli, Tal.

and Dist. Satara as per the map dated 03-04-2017 within a period of 1 month from the date of uploading of this order.

- iii. The City Survey Officer is directed to give effect of the said subdivision in the City Survey Records.
- iv. The Respondents are restrained from dispossessing the Appellants in Property-‘B’ without following due process of law.
- v. The Respondents are entitled to carry out construction in the whole area of Property-‘C’ by utilizing the FSI available to the area referred to the extent of Property-‘B’ subject to condition that the Respondents shall file an undertaking within a period of one week from the date of uploading of this order to the effect that they shall keep flat/s approximately admeasuring not less than 1,200 carpet area in the building constructed by the Respondents at C.T.S. No. 231, Godoli, Taluka & District Satara, unsold and unencumbered for the period set out in clause vii hereinafter.
- vi. The Respondents are at liberty to file a Suit within eight weeks from the date of this order to evict the Appellants from the property referred to as Property-‘B’ in the common judgment and decree dated 06-05-2016 passed by the learned District Court, Satara in Regular Civil Appeal Nos. 146 of 2013 and 166 of 2014 and in the map submitted by the Surveyor dated 03-04-2017 (Proposed Suit).
- vii. The aforesaid Flats shall be kept unsold and unencumbered as indicated in Clause v above, until a final decree is passed in the proposed Suit, subject to Appeal/s, if any, only if the proposed Suit is filed within eight weeks from the date of this order.

In the event the proposed Suit is dismissed by final decree, after attaining finality, the Respondents shall execute a Sale Deed in respect of the aforesaid Flats in favour of Appellants.

- viii. In the event the Respondents get a final decree in the proposed Suit to evict the Appellants from the entire Property-‘B’ referred to hereinbefore, the Respondents shall be entitled to dispose of the aforesaid unsold and unencumbered Flats in the manner the Respondents desire and the Appellants shall not have any right, title or interest in the said Flats.
- ix. In view of the aforesaid arrangement, the consent of the Appellants is not required for revision of the Sanctioned Plan which may be filed by the Respondents with the Satara Municipal Council. The Satara Municipal Council is free to consider the revision or modification of the Sanctioned Plan which is to be submitted without insisting upon any separate consent of the Appellants for such revision.
- x. For the purpose of giving effect to the present order, the TILR/Survey Officer, Satara who has carried out commission work pursuant to order dated 28-02-2017 is directed to visit the site on 15-09-2017 for the actual fixing of the boundary marks; the parties shall attend to, and cooperate with, the fixation of the boundary marks.
- xi. The Appellants shall not obstruct the Respondents for the construction of a compound wall with tin sheets between the properties which are in possession of the respective Appellants and Respondents as mentioned in the Judgment and Decree dated 06-05-2016 passed by the learned District Court, Satara in Regular Civil Appeal

Nos. 146 of 2013 and 166 of 2014 and in the map submitted by the Surveyor dated 03-04-2017. The Senior Inspector of Police/In-charge inspector of the local police station is directed to provide police protection for constructing the said compound wall with tin sheets, on the application of the Respondents, if necessary.

- xii. The Appellants shall not create any third party interests or part with the possession of the property described as Property-‘B’ during the pendency of the proposed Suit to be filed by the Respondents.
- xiii. The proposed Suit, if instituted by the Respondents, shall be disposed of by the Ld. Trial Court as expeditiously as possible and in any event within a period of 9 months from its institution.
- xiv. The parties are at liberty to move for clarification or for giving effect to the aforesaid order, if necessary.
- xv. The Second Appeals are disposed of in the aforesaid terms.
- xvi. All concerned to act on an ordinary copy of this order duly authenticated by the PA of this Court.

(S.J.KATHAWALLA, J.)