

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.265/2016
WITH
CIVIL APPLICATION NO.506/2016

Kamlakar Mahadeo Yashwantrao

... Appellant

V/s.

Shree Kshetra Sangameshwar Shankar
Devsthan Trust & Anr.

... Respondents

Mr. Shriniwas Sathaye with Yogesh Dabke for the Appellant
Mr. Nikhil Patil i/b. Zunjarrao and Co. for Respondent Nos.1 and 2.

CORAM: K.K. TATED, J.
DATED : DECEMBER 15, 2017

PC. :

1. Heard the learned counsel for the parties. By the Second Appeal, the defendant challenges the concurrent findings of facts recorded by both the courts below.

2. In the present proceedings, the respondent - plaintiff had instituted Regular Civil Suit No. 18/2001 before the Civil Judge, Junior Division, Murbad for removal of encroachment from Sy.No.271. The Trial Court, considering the evidence on record and particularly the revenue record held that the defendant has encroached upon some land from Sy.No.271 and constructed the area admeasuring 31' x 21'. The Trial Court has specifically recorded that when the suit was filed, the construction was started. During pendency of the suit, the

defendant completed construction. Hence, the Trial Court, by judgment and decree dated 31.07.2006 directed the defendant to remove the encroachment from the suit land within three months from the date of the decree or the Plaintiff is entitled to get the same removed through the court.

3. Being aggrieved by the said decree the Defendant preferred Civil Appeal No.107/2006 before the District Judge, Kalyan u/s.96(1) of the Code of Civil Procedure, 1908 on several grounds. The appellate court, considering the evidence on record particularly a map produced by the TILR vide Exhibit- 54 confirmed the order passed by the trial court. Hence, the present Second Appeal.

4. The learned counsel for the Defendant submits that both the courts below erred in coming to the conclusion that the Defendant constructed the suit premises on the Plaintiff's property being Sy.No.271 situate at village Sangam, Tq. Murbad, Dist. Thane. He submits that the report submitted by the TILR at Exhibit- 54 was prepared by not giving notice to other owners of adjoining land holders i.e. Sy.No.272 and 273. He submits that during pendency of the Second Appeal, they obtained report/map from the concerned authority showing that the suit structure is not constructed in Sy.No.271. He submits that in similar other three matters, the District Court has remanded the matters to the trial court for considering the fresh map prepared by the TILR. He submits that in view of these facts, the judgment and decree passed by both the courts below are required to be set aside and the matter may be remanded to the trial

court with permission to the Defendant to file their evidence on record and decide the matter on merits. He submits that if the Second Appeal is not allowed, irreparable loss will be caused to the Defendant.

5. On the other hand the learned counsel for the Plaintiff submits that there are concurrent findings of facts recorded by both the courts below. He submits that the Plaintiff has filed the suit for removal of encroachment from Sy.No.271. He submits that as soon as Defendant started construction, they immediately issued notice and filed Regular Civil Suit No.18/2001. He submits that during pendency of the suit the Defendant, without any authority completed the construction and started claiming possessory rights in respect of the suit property. He submits that even the concerned Grampanchayat issued certificate that they never permitted the Defendant to carry out any construction over the suit premises. He submits that both the courts below specifically relied on the report submitted by TILR along with map and held that the Defendant has failed and neglected to prove his right, title and interest in respect of land, where they constructed the suit premises. He submits that Exhibit- 54 produced by the TILR clearly shows that the Defendant has encroached upon the portion admeasuring 31' x 21' from the Plaintiff's land. He submits that initially the Plaintiff had allotted 15 x 10' strip of land to the Defendant. The Defendant has encroached upon 31' x 21' without awaiting for sanction of the Plaintiff Trust. Even the Defendant has failed and neglected to take note of notice dated 08.10.1997 issued by the Plaintiff. On the basis of these facts, the learned counsel for the Plaintiff submits that there is no substance in the Second Appeal. Same may be dismissed with costs.

6. Heard both sides, gone through the concurrent findings of facts recorded by both the courts below. It is to be noted that the Plaintiff has filed the suit for removal of encroachment. He has proved his title over land Sy.No.271. The Plaintiff has relied on Exhibit- 54 (map) produced by the TILR during the trial. Exhibit- 54 is clear that the Defendant has carried out encroachment on the Plaintiff's land. As there are concurrent findings of facts recorded by both the courts below, there is no substantial question of law involved in the Second Appeal. Hence, the Second Appeal stands dismissed.

7. In view thereof, nothing survives in the Civil Application. Same stands dismissed as infructuous.

(K.K. TATED, J.)