

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.51 OF 2011
WITH
CIVIL APPLICATION NO.131 OF 2011

Smt. Shantabai Vitthal Bhelke Appellant

Vs.

Smt. Sitabai Dinkar Yelgude & Ors. Respondents

Ms. Sonali Kunekar i/by Mr. Vikas Mahangare for the Appellant/
Applicant.

Ms. Anjali Ranade for Respondent Nos. 1 to 3.

Coram : N.M. Jamdar, J.

Date : 26 April 2017

ORAL ORDER :

This appeal is filed by the original defendant in Civil Suit No.49 of 1999 instituted by the Respondents-Plaintiffs.

2 The suit was filed by the Respondents in the Court of Civil Judge, Junior Division, Bhore, District Pune seeking possession of 29

ares land from the survey No.263/6, situated at village Bhor, District Pune from the Appellant.

3 The learned Civil Judge held that the Respondents had established that they were the owners of the suit property, and by the judgment and decree dated 26 September 2007, the learned Civil Judge partly decreed the suit. An appeal bearing No.739 of 2007 was filed by the Respondents in the District Court, Pune. The learned District Judge, by the judgment and order dated 13 August 2010, allowed the appeal and decreed the suit and directed the Appellant to handover possession of the suit property.

4 The appeal is filed in the year 2011 and perusal of Farad sheet that it was adjourned on numerous occasions at the request of the Appellants. The appeal was even dismissed for non-prosecution and restored. Ultimately by the order dated 24 April 2017 it was adjourned to today by way of last chance.

5 Heard the learned counsel for the parties.

6 Learned counsel for the Appellant submitted that the learned District Judge has not taken into consideration the fact that earlier a suit was filed by the Appellant bearing No.186 of 1997 where

a measurement carried out, which measurement clearly show that there was no encroachment. The learned counsel submitted that the Surveyor in the present proceedings has clearly admitted that he has not carried out the measurement of the entire survey number, which will make the survey report unreliable. Learned counsel for the Respondent supported the impugned order.

7 As far as the ownership rights of the Respondents are concerned, both the Courts have concurrently held that the Respondents are the owners of the property. The theory of the Appellant of adverse possession has been rejected by both the Courts.

8 As far as the two contentions raised by the learned counsel for the Appellant are concerned, both cannot be accepted. Firstly, the learned District Judge has noted that the earlier suit was in respect of survey No.263/1 and not the present survey number. The cause of action in the earlier suit was obstruction by the Respondents to the Appellant for plantation of Mango trees in survey No. 263/1. The aspect of measurement carried out in the earlier suit has been taken into consideration by the learned District Judge. The learned District Judge compared the report filed in the earlier suit with the present suit. The Commissioner appointed in the earlier suit was an advocate and not an expert in the field, as against the Cadestral Surveyor, who

submitted a report and examined by the Respondents in the present suit. The learned District Judge has found that the report of the Cadestral Surveyor was cogent to accept the case of the Respondents/Plaintiffs. The Commissioner appointed in the earlier suit, an advocate, was not directly concerned with the controversy in the present suit.

9 As far as the argument that the Surveyor has not measured the entire land, the statement by the Surveyor in his oral evidence is sought to be relied upon and there is no such negative statement found in the Report. The surveyor was deposing after a period of six years and therefore the learned District Judge found that this variance could be due to lapse of time and the fact that the surveyor must have carried out various surveys in the meanwhile. Therefore, the learned District Judge did not find it sufficient to discard the report on this lapse alone. This approach is a possible view and cannot be termed as perverse. Though the Surveyor has stated that it cannot be inferred from the Report that the complete area was measured, it is only a reply to a suggestion. In the cross-examination, he has denied the specific suggestion that he had directly prepared the map, without measurement.

10 Therefore the learned District Judge had before him the report of the Cadestral Surveyor and his evidence, as against a report of an advocate appointed in the earlier suit for different cause of action. The learned District Judge has accordingly assessed the relative worth of evidence of the parties and found that the evidence relied upon by the Respondents is more believable and cogent. Each piece of evidence has been considered and evaluated. There is no perversity in the same. It is not possible to undertake the task of re-appreciation of evidence.

11 There is no substantial question of law involved in this appeal. The Second Appeal is accordingly dismissed. The Civil Application stands disposed of.

(N.M. Jamdar, J.)