

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.254 of 2016
[Namdeo Gangaram Ramteke Vs. Birla Agro Pvt. Ltd.]

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

Court's or Judge's orders

Ms. P. P. Choube, Adv. [appointed] for the appellant.

- - - -
CORAM : A. S. CHANDURKAR, J.

DATE : 28th June, 2017

This appeal has been filed by the original defendant who is aggrieved by the decree for possession passed by the trial Court which has been maintained by the appellate Court.

It is the case of the respondent-plaintiff that it had purchased land admeasuring 9 hectares 65 Are from Survey No. 54/2 for constructing a factory. On 7th January, 1999/8th January, 1999, the defendant committed encroachment and constructed a temporary structure thereon. After issuing notice, on 22nd May, 1999 suit for removal of encroachment was filed.

The trial Court held that the plaintiff had proved its ownership over the suit property. On the basis of other evidence on record, it did not accept the defence as raised that the defendant became owner by way of adverse possession. The suit was accordingly decreed.

The appellate Court after re-considering this evidence has confirmed said judgment.

Ms. Choube, learned counsel appointed to represent the appellant, submitted that without determining the encroached portion, the suit could not have been decreed. She submitted that from the evidence on record, the alleged encroachment was not proved. In that regard, she placed reliance on the decisions in **[1] Manguesh Devasthan of Priol Vs. Krishna Gawade (since deceased) through LRs.** [2015 (1) Mh.L.J. 285], and **[2] Shyam Janardan Chaoudary Vs. Smt. Asha Ramdas Katkar & another** [2015 (1) ALL MR 48].

After perusing the material on record, I do not find that both the Courts committed any error in decreeing the suit. The title of the plaintiff was duly proved on the basis of its sale-deed. The plaintiff examined its surveyor who deposed about the manner in which the plaint map was prepared. It indicated the extent of encroachment. This witness was not cross-examined. For supporting the plea of adverse possession, the defendant could not come out with a specific date as to when he came in possession. Considering the findings recorded by both the Courts, the conclusion arrived at cannot be said to be incorrect. In this backdrop, the decisions relied upon do not support the appellant. There is no perversity found in

the appreciation of evidence. In that view of the matter, the ratio of aforesaid decisions cannot be made applicable to the facts of the present case.

In view of aforesaid, I do not find any merit in the Second Appeal. The same is accordingly dismissed.

Counsel's fees are quantified at Rs.3,000-00 [rupees three thousand only].

Judge

||hedau||