

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.253 of 2015
(Pandharinath s/o Krishnaji Khutemate and others v. Murlidhar s/o
Narayan Ponnalwar and another)

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and Registrar's order

Dr. Anjan De, Advocate for Appellants.
Shri Rohit Joshi, Advocate for Respondents.

Coram : R.K. Deshpande, J.
Date : 16th January, 2017

The Trial Court passed a decree in Special Civil Suit No.36 of 1996 on 21-3-1997 for possession of the suit property. The defendant was directed to deliver the possession to the plaintiffs by removing the structure thereon at his cost. The lower Appellate Court has dismissed the appeal, and the legal representatives of the original defendant are directed to deliver the vacant possession to the plaintiffs by removing the structure thereon. Hence, the legal representatives of the original defendant are before this Court in this second appeal.

The title of the plaintiffs over the suit property is not in dispute. It was the defence raised by the appellant-defendants that they are in adverse possession of the suit property since 1968, that they are in possession by way of part performance of

contract, and that they are the licensees, and having made *pacca* construction, the licence becomes irrevocable in view of Section 60 of the Indian Easements Act, 1882. The Courts below have rejected all the contentions and the decree of declaration of title and possession has been passed in favour of the plaintiffs.

Dr. Anjan De, the learned counsel appearing for the appellant-defendants, has urged that in view of Section 60 of the Indian Easements Act, the Courts below ought to have held that the defendants, acting upon the licence, executed the work of a permanent character and incurred the expenses in the execution of the work, and hence the licence becomes irrevocable.

The lower Appellate Court has recorded the findings in para 24 of its judgment as under :

“24. In the instant case, though issues No.11 and 12 were framed in respect of the permanent construction of the defendant over the suit land and issue of mandatory injunction, but I think when the suit itself was for possession then it was only duty of defendant to adduce evidence that he had made construction over the suit land with consent of the plaintiffs. As I have already observed that the defendant has miserably failed to establish this fact whatever kachha or pucca construction made by the defendant over the suit

land was absolutely illegal. When defendant was not in a position to get protection for his possession itself then such issues in respect of permanent construction or mandatory injunction are useless. Therefore, even if the learned trial court was ignored or forgotten to discuss these issues, but I think, this will not create any impact on the adjudication of the matter. On the other hand, learned trial court has properly appreciated the oral as well as documentary evidence and came to the proper conclusion. I do not find any perversity or illegality in judgment of the learned trial Court.”

Both the Courts below have rejected that the defendants have failed to establish that they had made *pacca* or *kachha* construction over the suit property. There is nothing to show that the construction was made in terms of the licence granted. The Courts below having rejected the defences raised by the appellant-defendants to protect their possession, no substantial question of law arises for consideration.

The second appeal is dismissed.

Judge.