

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.**

SECOND APPEAL NO.308 OF 2004

APPELLANTS: Jageshwar Das S/o Jammumal
(Ori.Plffs. on R.A.) Lodepota, aged about 31 years, by
Occupation: Business, resident of Mohan
Nagar, Nagpur.

-VERSUS-

RESPONDENTS: 1. The State of Maharashtra through the
(Ori. Defts. on R.A.) Collector, Nagpur.
2. The Sub-Divisional Officer, Soil
Conservation, Nagpur.

Shri Sirsikar, Advocate with Shri D. G. Paunikar, Advocate for the
appellant.
Shri H. D. Dubey, Asstt. Government Pleader for respondent nos.1
& 2.

CORAM: A.S. CHANDURKAR, J.

DATED: SEPTEMBER 21, 2017.

ORAL JUDGMENT :

1. The appellant is the original plaintiff who has filed this
appeal being aggrieved by the dismissal of the suit for possession
and damages by the trial Court and affirmed by the appellate

Court.

2. It is the case of the plaintiff that by virtue of the sale deed dated 29-7-1992, he had purchased Survey No.3, admeasuring 7 Hectares 80R. On the basis of permission obtained in the year 1984, the standing trees were cut down with a view to start cultivation in the suit property. In the month of May, 1987 the defendants encroached upon the plaintiff's field and constructed a tank on the half portion of his land. The plaintiff, therefore, issued a notice on 14-5-1987 and filed suit for possession along with damages of Rs.5000/-.

3. In the written statement filed by the defendants at Exhibit-16, it was pleaded that on the basis of sanction granted on 31-3-1986, the work of Nalla Bunding commenced from 2-4-1986 and was completed on 29-1-1988. This construction was for the benefit of cultivators and the plaintiff though his agent had consented to such work being carried out in his field. It was denied that any damage was caused to the plaintiff's field. It was pleaded that the actual area in which there was water stagnation was to the extent of 0.43 Hectares.

4. The plaintiff examined himself and three other witnesses. He placed on record various documents including a map. The defendants did not lead any evidence. The trial Court

by its judgment dated 28-7-1995 held that the encroachment was not proved by the plaintiff or that he had been so dispossessed. The suit was therefore dismissed. The appellate Court confirmed this judgment on 3-2-2004. Being aggrieved this second appeal has been filed.

5. While admitting the appeal, the following substantial question of law was framed:

“Whether the Courts were justified in dismissing the suit of the plaintiff when the plaintiff had produced voluminous evidence on record to show that the State had taken possession of the land belonging to the plaintiff and defendant – State had not produced any evidence whatsoever to refute the claim of the plaintiff?”

6. Shri Sirsikar, learned Counsel for the appellant submitted that both the Courts ignored the documentary evidence placed on record by the plaintiff. He submitted that from the pleadings of the parties it was clear that Nalla Bunding Project was implemented in the plaintiff's field as a result of which there was water stagnation leading to loss being caused to the plaintiff. He submitted that in the written statement it was clearly admitted that the area submerged under water was to the extent of 0.43 Hectares. He referred to the deposition of PW-4 below Exhibit-42

to indicate that as per the map at Exhibit-43 prepared by the Engineer almost half of the plaintiff's land was affected by the aforesaid construction. Without compensating the plaintiff, his land was utilized for making construction and therefore the plaintiff was entitled for the decree as prayed for. In support of his submissions, the learned Counsel placed reliance on the following judgments:

- (1) State of Mah. vs. Bhimashankar 2009(5) Mh.L.J. 76.
- (2) Raghbir Singh vs. State of Haryana 2012(3) Mh.L.J. 81.
- (3) Daulat Singh Surana & Ors. v. First Land Acquisition Collector & Ors. AIR 2007 SC 471.
- (4) State of Maharashtra Vs. Punja Trambak Lahamage 2008(3) ALL MR 379.

7. Shri H. D. Dubey, learned Assistant Government Pleader for the respondents supported the impugned judgments. According to him, possession of the suit property was not taken from the plaintiff and the project was implemented for the benefit of the cultivators. He submitted that the plaintiff's agent had consented for such construction work and therefore it was not open for the plaintiff to now turn around and seek possession of the suit property. According to him, the consent of more than sixty seven percent cultivators had been obtained under the Scheme in question and therefore, both the Courts rightly

dismissed the suit as filed.

8. I have heard the learned Counsel for the parties at length and I have perused the records of the case. The ownership of the suit property is not in dispute. It is also not in dispute that in a portion of the plaintiff's land, the Nalla Bunding Project was carried out. In para 10 of the written statement it is pleaded by the defendants that due to said construction work, after actual measurement it was found that there was water stagnation to the extent of 0.43 Hectares of land in the plaintiff's field.

9. The plaintiff examined himself below Exhibit-29. According to him, no notice was given by the defendants before the construction work was started. Notice at Exhibit-30 was issued by the plaintiff to the Land Acquisition Officer as well as the Collector who did not respond to the same. In his cross-examination, he referred to the 7/12 extracts of the year 1986-87 and stated that objection was raised when the construction work was started. PW-2 at Exhibit-36 deposed that due to aforesaid work, half portion of the plaintiff's field was submerged in water. The suggestion to this effect was given to him in his cross-examination. The plaintiff examined his father at Exhibit-37 and he stated that no cultivation work was possible due to the construction carried out in the field. PW-4 at Exhibit-42 is the

Engineer who placed on record his map at Exhibit-43 indicating submergence of the plaintiff's land.

The defendants despite grant of opportunity did not lead any evidence before the trial Court.

10. On consideration of this evidence, the trial Court held that though the work of Nalla Bunding was carried out, possession of the suit field was not taken and hence, there was no question of acquiring the same. After holding that there was no encroachment, the suit was dismissed which finding was confirmed by the appellate Court. As noted above, even according to the defendants, there was water stagnation in the plaintiff's field to the extent of 0.43 Hectares land. The suggestions given by the defendants in the cross-examination of the plaintiff and his witnesses are also on the point of the plaintiff's land being submerged due to this work. Though it was the case of the defendants that the consent of the plaintiff's agent had been obtained, no evidence to that effect was led by the defendants. Merely on the basis of the pleading in the written statement, it cannot be assumed that the plaintiff had consented for such work being carried out in his field. Thus, considering the entire evidence on record, it will have to be held that the work of Nalla Bunding was carried out in the plaintiff's field without his consent and as a result of this work, there was

water stagnation to the extent of 0.43R in the plaintiff's field.

11. In so far as the claim for damages of Rs.5000/- for a period of two years is concerned, the evidence on record is not sufficient to grant the same. The plaintiff himself has not deposed about the actual loss caused to him by virtue of the work being carried out in his field. This claim for damages has not been proved by the plaintiff. Be that as it may, the fact remains that even according to the defendants there was water stagnation in the plaintiff's field to the extent of 0.43R land.

12. Though the plaintiff has prayed for possession of the suit property as described in para 1 of the plaint, it cannot be ignored that the work of Nalla Bunding for the benefit of various cultivators was carried in the plaintiff's field. Though it is the case that such consent was obtained there is no evidence to indicate that the plaintiff's consent was obtained. The fact remains that the portion of the plaintiff's agricultural land has been affected by this work. Considering the admission of the defendants in their written statement, it is held that by virtue of this construction, the plaintiff's land to the extent of 0.43 hectares has been affected. Though the plaintiff cannot be granted the relief of possession, the relief would have to be moulded by granting liberty to the plaintiff to seek compensation in appropriate proceedings by following the

course as laid by the Hon'ble Supreme Court in *Daulat Singh Surana and others (supra)*.

13. Accordingly, the substantial question of law is answered by holding that the Courts were not justified in dismissing the suit of the plaintiff in the light of the evidence placed on record. Though the plaintiff is not entitled for the relief of possession, by moulding the relief he is granted liberty to initiate appropriate proceedings for being compensated with regard to 0.43 Hectares land of his suit field. The judgment of the trial Court in Regular Civil Suit No.554/1988 stands accordingly modified. The second appeal is allowed in aforesaid terms. No costs.

JUDGE

/MULEY/