

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 56 of 2017
[Ganpat Laxman Parate Vs. Sevakram Daulatrao Kolhe]

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

Court's or Judge's orders

Mr. Mayank Sharma, Adv., for the appellant.
Mr. N. M. Jibhkate, Adv., for respondent.

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CORAM : A. S. CHANDURKAR, J.

DATE : 29th August, 2017

The appellant is the original defendant who is aggrieved by the decree for possession passed by the trial Court and confirmed by the appellate Court.

It is the case of the respondent-plaintiff that by virtue of sale-deed dated 1st March, 1978, the plaintiff had become owner of Municipal Corporation House No. 986 comprising of four rooms. According to the plaintiff, two rooms were in occupation of two tenants, while two rooms facing the Southern side were lying vacant. In March, 2009, it was noticed by the plaintiff that said two vacant rooms on the Southern side were unauthorizedly occupied by the defendant. Hence, after issuing notice, a suit came to be filed.

In the Written Statement, it was pleaded that the property in question belonged to the Nagpur Improvement Trust. After the suit property was purchased by the plaintiff, two rooms were sold by the plaintiff to one Krushnarao Ghoradkar and possession was given. After the death of said Krushnarao, his legal heirs entered into an agreement for selling two rooms in favour of the defendant. On that basis, the defendant claimed entitlement to the suit property. It was also pleaded that the suit property was not correctly shown in the Schedule of Property.

The trial Court after considering the evidence on record held that the plaintiff had proved his title and that the defendant had failed to prove that by virtue of sale-deed dated 27th December, 2000, he had purchased the suit property. The appellate Court confirmed the aforesaid finding.

Shri Sharma, learned counsel for the appellant, submitted that the suit property was not correctly described in the plaint. In the Schedule of Property, entire house bearing no. 986 was described as the suit property consisting of four rooms. In the prayer clause, relief was sought with regard to two vacant rooms without mentioning the area or the boundaries. According to him, as it was the case of the plaintiff that the defendant had committed encroachment, it was

necessary for the plaintiff to have filed a map as required by provisions of Order-VII, Rule 3 of the Civil Procedure Code. In absence of proper description of the suit property, no decree could have been passed. He referred to the dictionary meaning of the word “encroach” to urge that same indicated trespass or intrusion. Absence of proper description of the suit property, therefore, did not entitle the plaintiff for possession. No sketch map of the encroached portion was also filed. Though this ground was raised before the appellate Court, the same has not been duly considered. It was further urged that while the trial Court referred to the aspect of encroachment, the appellate Court considered the aspect of trespass. These aspects, therefore, give rise to substantial questions of law.

Shri N. Jibhkate, learned counsel for the respondent, supported the impugned judgment. He referred to the plaint averments to indicate that the suit property was sufficiently described. It was submitted that a decree was sought with regard to two rooms facing the Southern side. He submitted that considering the nature of defence raised in the Written Statement, the stand of the defendant could not be accepted. A specific case was pleaded by the defendant that he had entered into an agreement for purchase of two rooms on the Southern side from the legal representatives of Krushnarao Ghoradkar. It was submitted that the defendant could not prove his title and hence the decree

passed in favour of the plaintiff was correct.

Having heard the respective counsel and having perused the pleadings as well as the evidence on record, I find that both the Courts were justified in granting a decree in favour of the plaintiff. The description of the property in the plaint is sufficient to identify the same. Considering the specific pleadings of the defendant, it is clear that he was well aware of the relief sought by the plaintiff and that it was with regard to the two rooms on the Southern side. In the plaint, it was pleaded that the defendant had illegally occupied the said two rooms. Merely because the trial Court referred to the act of the defendant as an encroachment, that would not be sufficient to call upon the plaintiff to comply with provisions of Order-VII, Rule 3 of the Code.

Moreover, the specific defence raised in the Written Statement is on the basis of an agreement dated 23rd August, 2007 and sale-deed dated 27th December, 2007 executed in favour of the defendant. Though the defendant intended to examine the son of said Krushnarao Ghoradkar, subsequently he declined to examine that witness by filing Pursis at Exh.46. In other words, the defendant failed to prove his entitlement to remain in possession.

In the light of this material on record, I do not find that appreciation of the evidence by both the Courts

is a result of any perversity.

Hence, the appeal does not give rise to any substantial question of law. The same is dismissed. No costs.

Judge

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