

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

Second Appeal No.717 of 2017

(Ashok Shardapasad Gupta .vs. Ambadas Landguji Mendhe)

with

Second Appeal No.721 of 2017

(Ashok Shardapasad Gupta .vs. Shrawan Govindrao Sahare)

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

Court's or Judge's orders.

Mrs. Meena Hiwase, Advocate for Appellant in SA 717/17 & 721/17
 Mr. P.A. Markandeywar, Advocate for Respondent in SA 717/17.
 Mr. S.M. Nafde, Advocate for Respondent in SA No. 721/17

CORAM : Manish Pitale, J.
DATED : March 27, 2018.

These two appeals arise out of the two suits filed by the appellant-original plaintiff claiming that the respondent in Second Appeal No. 717/2017 had encroached upon southern part of the suit property being City Survey Nos. 5313 and 5317 situated at Umrer, district Nagpur, while the respondent in Second Appeal No.721 of 2017 had encroached upon western part of the said suit property.

2. The appellants filed Regular Civil Suit No.131 of 2004 from which Second Appeal No.717 of 2017 arises and he filed Regular Civil Suit No.132 of 2004 from which Second Appeal No.721 of 2017 arises. The appellant sought identical reliefs in the said two suits. He claimed a declaration regarding ownership of the said suit plot and further sought declaration that the construction work undertaken by the defendants depicted in the plaint maps filed with aforesaid suits, be declared as illegal and a further direction to the

defendants to remove such illegal construction. It was further claimed by the appellant that the respondents in these appeals should be permanently restrained from making construction on the southern and western side of the suit plot.

3. Court of Civil Judge, Junior Division, Umrer, passed its separate judgment and order in the two civil suits on 16.10.2014, finding that the appellant had failed to place on record any document to prove his case of having purchased the suit plot by two registered sale deeds dated 17.06.1983 and 12.11.1982. The sale deeds were not placed on record and said Court found that there was no other document or evidence placed on record by the appellant to prove his ownership in the suit plot. It was also found that specific boundaries were not mentioned in the plaint by the appellant and that, therefore, only a report of the Commissioner was the document on which the appellant strongly relied in support of his claim that the defendants had encroached upon the southern and western side of the suit plot. The trial Court found that there were certain discrepancies in the report of the Commissioner and that in any case the person who had been appointed as a Commissioner had expired and another Officer of the City Survey Office had appeared before the Court to depose in support of the said report. It was found that the said witness had no personal knowledge about the measurement undertaken by the Commissioner and that, therefore, said report was also not reliable and on this basis, findings were rendered by the trial Court

against the appellant and the suit was dismissed.

4. Aggrieved by the same, the appellant filed Regular Civil Appeal Nos. 449/2014 and 450/2014 before the District Court at Nagpur. By the impugned judgments and orders, the appellate Court has dismissed the appeals and confirmed the findings of the trial Court. The appellate Court has found that when the respondents (defendants) had denied the claim of the appellant of being owner of the suit plot, it was incumbent upon him to produce evidence in support of his prayer for being declared as owner of the suit plot. It was found that no documentary evidence was produced by the appellant to show that he was the owner of the suit plot and that there was no documentary evidence in the nature of city survey map to substantiate correctness of the plaint map. The appellate Court found in Regular Civil Appeal No. 449 of 2014 that the evidence of PW2, the Officer of the City Survey Office, who appeared as a witness in support of the report of the Commissioner that his evidence was not reliable and that he had no personal knowledge of the alleged measurement that had been undertaken. The appellate Court found that there was absolutely no evidence to show that there was a lane between the suit plot and the plot of the defendants, as claimed by the appellant-plaintiff. In Regular Civil Appeal No.450 of 2014, the appellate Court found that there was no evidence and no witness was produced on behalf of the appellant in respect of the report of the Commissioner. In this appeal also, it was found by the appellate Court

that the appellant-plaintiff had failed to produce any documentary evidence on record to prove his ownership. There was nothing to show that encroachment as claimed by him was proved. On this basis, by separate orders, both dated 11.07.2017, the appellate Court dismissed the appeals filed by the appellant.

5. Aggrieved by the same, these two second appeals have been filed. It is the contention of the learned counsel Mrs. Meena Hiwase, appearing on behalf of the appellant, that even if there was lack of evidence on record to show the ownership of the appellant in the suit plot, the report of the Commissioner was on record, which demonstrated that there was indeed encroachment by the defendants on the southern and western side of the suit plot. It was contended that the report of the Commissioner had been sufficiently proved by PW2, an Officer of the City Survey, who had appeared as a witness. His cross-examination also did not show any discrepancy in the report on record, which was proof enough for the encroachment committed by the defendants.

6. On the other hand, Mr. Mankandeywar and Mr. Nafde, learned counsel appearing on behalf of the respondents in these two second appeals, submitted that when the appellant had come with a positive case to the Court seeking a declaration about the ownership of the suit plot and on that basis claiming that there was encroachment by the defendants on the southern and

western side of the suit plot, it was necessary for the appellant to have first proved his ownership in the suit plot and to have produced cogent evidence in the form of measurement of the plots to show that there was indeed any encroachment by the defendants. It was contended that in the absence of any evidence, reliance only on the plaint map and the report of the Commissioner, was not enough to prove the claim made by the appellant.

7. Having heard the learned counsel for the parties and having perused the record, it is found that the appellant sought a declaration in this case about being the owner of the suit plot. The appellant gave details of the dates of sale deeds whereby he had purchased the suit plot, yet, no documentary evidence in the form of the said sale deeds or the city survey extract was produced by the appellant (plaintiff) to prove that he was indeed owner of the suit plot. When the appellant failed to prove this basic fact, the other issue pertaining to alleged encroachment was difficult for the appellant to prove. This was because unless specific boundaries of the suit plot and proof of ownership thereof was produced on record, it was not possible for the appellant to prove the extent of alleged encroachment by the respondents-defendants in the present case. The plaint map produced on record was also not substantiated by further evidence in the form of city survey map. The report of the Commissioner on which the counsel for the appellant has heavily relied, is also rendered doubtful because the author of the said

report could not be examined. Hence, PW2 who appeared as a witness to prove the said report had no personal knowledge about the contents of the report and the manner in which measurements, if at all, were carried out leading to the said report. There is nothing on record to show that while measurement of the suit plot was carried out, the measurement of the adjoining plots was also carried out or not, which would be a crucial factor for determining whether there was any encroachment on the suit plot by the respondents (defendants) as claimed by the appellant (plaintiff).

8. The two Courts below have rendered concurrent findings of facts, based on appreciation of the evidence and material available on record. As the appellant (plaintiff) has failed to place reliable material on record to show encroachment by the respondents and he has failed to produce any material on record to prove ownership in the suit plot, the findings rendered by the Courts below cannot be said to be perverse. Therefore, the present second appeals do not give rise to any substantial question of law for consideration by this Court to exercise jurisdiction under Section 100 of the Civil Procedure Code, 1908.

9. Accordingly, these second appeals are dismissed. There shall be no order as to costs.

JUDGE