

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 96 of 2017
[Aljamiatur Razvia Daruloolum Amjadia & others Vs. Ali Ahmad Vakil Ahmad]

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

Court's or Judge's orders

Mr. V. S. Kukday, Adv., for the appellants.
Mr. S. P. Kshirsagar, Adv., for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : 05th June, 2018

The appellants are the original plaintiffs who had filed a suit for declaration that they are entitled for possession of land admeasuring 200 sq. ft., towards the eastern side of Survey No. 269 which was said to be encroached by the defendant. A further prayer seeking a declaration that sale-deed dated 12th October, 2000 executed in favour of the defendant was null and void was also sought. According to the plaintiffs, they were the recorded owners of Survey No. 269 having purchased the same by virtue of sale-deed at Exh.56. The defendant without any title had encroached upon land admeasuring 10 ft. x 20 ft., thus, giving rise to the aforesaid suit. In defence, the defendant relied upon the sale-deed dated 12th October, 2000 at Exh.128 and justified his possession.

The trial Court on consideration of the evidence

on record found that the plaintiffs by virtue of their sale-deed at Exh.56 were not the owners of the land admeasuring 200 sq. ft, which was the suit property. For said purpose, the map at Exh.83 was taken into consideration. The sale-deed of the defendant at Exh.128 was found to be validly executed. The evidence of the Court Commissioner and his report at Exh.162 was also taken into consideration while holding against the plaintiffs. The suit was accordingly dismissed and the appellate Court confirmed that decree.

It is submitted by the learned counsel for the appellants that in absence of any valid title with the defendant, the plaintiffs could not be denied entitlement to the suit property. After purchase of Survey No. 269, the plaintiffs acquired easementary right over the suit property for its access and the defendant's vendor had no legal authority to sell the suit land to the defendant. The burden of proving the invalid title of the defendant was also shifted on the plaintiffs. According to the learned counsel, the evidence on record was sufficient to decree the suit for possession of 200 sq. ft. land.

The learned counsel for the respondent supported the impugned judgment. According to him, the plaintiffs had no legal right in the suit property which was subsequently purchased by the defendant on 12th October, 2000. The findings recorded by both the Courts were based on evidence on record which could

not be treated to be perverse.

Heard learned counsel for the parties at length and perused the records of the case.

On considering the entire evidence on record, It can be seen that as per the sale-deed at Exh.56 with regard to Survey No. 269, the land admeasuring 10 ft. x 20 ft. is not shown to have been purchased. This fact is clear from the map attached to the sale-deed at Exh.56. Same has been shown to be sold to the defendant as per sale-deed dated 12th October, 2000. The oral evidence as well as the report of the Commissioner do not support the contentions of the plaintiffs. As the defendant had a valid title to the suit property, it cannot be said that the Courts committed any error while dismissing the suit. The defendant was also found in possession of the suit property. The findings recorded by both Courts are based on evidence available on record. Second Appeal does not give rise to any substantial question of law. Same is, therefore, dismissed. No costs.

Judge