

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Second Appeal No. 0145 of 2015

District : Beed

Parwatibai w/o. Manohar Kashid,
Age : 39 years,
Occupation : Household,
R/o. Swarajya Nagar, Beed,
Taluka & Dist. Beed.

.. Appellant
(Original
plaintiff)

versus

1. Yashodabai w/o. Deorao Jadhav,
Age : 72 years,
Occupation : Household,
R/o. Dhande Galli, Beed.
(Abated).

.. Respondents
(Original
defendants)

2. Sangita w/o. Shivaji More,
Age : 39 years,
Occupation : Household,
R/o. Dhande Galli, Beed,
Taluka & Dist. Beed.

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*Mr. Girish K. Thigle (Naik), Advocate, for the
appellant.*

Appeal abated as against respondent no.01.

Mr. Rahul P. Dhase, Advocate, for respondent no.02.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21ST FEBRUARY 2019

JUDGMENT :

01. Present appeal has been filed by the original plaintiff challenging the judgment and decree passed in Regular Civil Appeal No. 38 of 2008 by learned District Judge-1, Beed, dated 19-12-2014, whereby her appeal came to be dismissed. In the said appeal, she had challenged the dismissal of her suit bearing Regular Civil Suit No. 0222 of 2004 by Joint Civil Judge (Senior Division), Beed, on 19-12-2006.

02. Present appellant - original plaintiff had filed the said suit for permanent injunction. She had come with a case, that land bearing Survey No. 170 situated at Beed Taraf Baljujar was originally owned by one Kalyan @ Raju Deorao Jadhav. He had entered into an agreement to sell a piece of land from the said survey number admeasuring 33 feet X 60 feet for a consideration of Rs. 60,000/- on 15-06-2002 to the plaintiff. Plaintiff had paid earnest amount of Rs. 10,000/- at that time. Thereafter, on 19-06-2002, Kalyan @ Raju had accepted the remaining amount and executed sale deed in her favour. She has given boundaries of the said piece of land out of that survey number which was sold to her. She has further stated that in the sale deed, inadvertently the number of the plot was mentioned as 09 when, in fact, it ought to have been number 08. So also, one of the boundary i.e. southern boundary was wrongly mentioned. When this fact was brought to the notice

of Kalyan @ Raju, Kalyan @ Raju executed correction deed in her favour on 16-07-2002. It is also stated that in the month of March, when defendant no.02 tried to obstruct possession of the plaintiff over plot no.08, which was sold to the plaintiff, Kalyan @ Raju had instructed defendant no.02, not to obstruct plaintiff. Since the date of agreement to sell, plaintiff possess plot no.08. When she was putting boundary to her plot on 27-06-2004, both the defendants came and obstructed her possession. Hence, suit has been filed.

03. Both the defendants have resisted claim of the plaintiff by saying that they are mother as well as sister of deceased Kalyan @ Raju. Plaintiff has given wrong boundaries of plot No.08. They have given correct boundaries of plot no.08 in their written statement. It is stated that on the day when the alleged sale deed was executed in favour of plaintiff by Kalyan @ Raju, Kalyan @ Raju was not owner of that property. He had already sold the said plot to one Ramesh Sitaram Gangadhare and, therefore, Ramesh Gangadhare is necessary party to the suit. It is also stated by the defendants, that Kalyan @ Raju had executed gift deed in respect of plot no.07 in favour of defendant no.02 on 04-06-2002. The boundaries which have been mentioned for plot no.07 are different from the boundaries of plot no.08. Defendants have no concern with plot no.08 but when

they were putting boundaries to plot no.07, they were obstructed by plaintiff and, therefore, they had resisted the plaintiff. Further contention was raised by the defendants, that Kalyan @ Raju had divided Survey No.170 into 08 plots only. No such plot by giving no.09 was ever carved from the said land and, therefore, plaintiff has no right to file the suit.

04. Taking into consideration the rival contentions, issues came to be framed. Parties have led oral as well as documentary evidence. Taking into consideration the evidence on record, the trial Court has dismissed the suit.

05. Said judgment and decree was challenged by the original plaintiff in appeal and after hearing both sides, learned first appellate Court has dismissed the appeal. Hence, the plaintiff has knocked doors of this Court in this second appeal.

06. Heard learned Advocate Mr. G.K. Thigle (Naik) appearing for the appellant and learned Advocate Mr. R.P. Dhase appearing for respondent no.02.

07. It has been vehemently submitted on behalf of the appellant, that both the Courts below have not considered the evidence properly. Plaintiff had

produced documentary evidence in the form of registered sale deed and also the correction deed in respect of suit plot no.08 which was admeasuring 60 feet X 33 feet from Survey No.170 situated at Beed Taraf Baljujar and the boundaries were also given. There was no occasion for the Courts below to consider the point of ownership of the plaintiff. The documentary evidence was sufficient enough to prove the ownership of the plaintiff over the suit land. Both the Courts below have not considered the provisions of Section 91 and 93 of the Evidence Act. Nobody could have gone beyond the contents of the documents. Learned first appellate Court had also not taken into consideration the scope of Section 96 read with Order XLI of C.P.C. and went on to re-appreciate the evidence. Therefore, the substantial question of law that is arising in this case is, whether the first appellate Court had not taken into consideration the provisions of Section 96 read with Order XLI of C.P.C. From those documents which were in the nature of sale deed as well as correction deed, it was clear that plaintiff was possessing plot no.08 and, therefore, both the Courts ought to have decreed the suit. He placed reliance on the decision in *Boodireddy Chandraiah & others Vs. Arigela Laxmi & another* [(2007) 8 SCC 155], wherein it has observed thus :-

" The phrase 'substantial question of law', as occurring in the amended Section 100 CPC is not

defined in the Code. The word substantial, as qualifying 'question of law', means – of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of 'substantial question of law' by suffixing the words 'of general importance' as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance."

Further, it has been observed in the said case as under :-

" To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable

findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case."

Thereafter, the Apex Court went on to lay down the principles relating to Section 100 of C.P.C. and, therefore, according to the learned Advocate for the appellant, when both the Courts below have misread or misunderstood the evidence i.e. oral as well as documentary, on record, definitely a substantial question of law is arising.

08. Further reliance has been placed by the learned Advocate for the appellant, on the decision in *P. Chandrasekharan & others Vs. S. Kanakarajan & others* [(2007) 5 SCC 669]. In this case, it was held that "*When thus the courts below misread and misinterpreted a document of title read with other documents and the plan for the identification of the suit lands whereupon the plaintiffs themselves relied upon, a substantial question of law arose for determination of the High Court in between the parties to the suit.*"

09. Per contra, learned Advocate appearing for respondent no.02 fully supported the reasons given by both the Courts below and submitted that there was no misreading or misinterpretation of any of the documents by both the Courts below. On the contrary, the sanctioned map which was sanctioned even prior to

the sale deed in favour of plaintiff was placed on record which showed that there was no plot no.09 carved out in the said survey number. Even after correction deed is taken into consideration, yet, the boundaries are not tallying and, therefore, when the ownership of the plaintiff was denied specifically, burden was on the plaintiff to prove the ownership with cogent evidence. No substantial question of law arises in this case.

10. The first and the foremost fact that is required to be considered is that both the Courts below on the facts of the case have concurrently held that plaintiff has failed to prove ownership as well as possession over plot no.08 as described in para 01 of the plaint. Though the plaintiff relied on registered documents, yet, on the basis of other documents, defendants were challenging the ownership of the plaintiff. Under such circumstance, it was necessary for the plaintiff to establish existence of the plot purchased by her. It has come on record, that plan of Survey No.170 to divide it in plots was sanctioned much prior to the agreement to sell which was executed in favour of the plaintiff. It was the duty of the plaintiff to go through the said sanctioned map and then have a correct description of the plot purchased by her in agreement to sell as well as in second sale deed. Perusal of agreement to sell Exhibit 19 would show that there was absolutely

no mention of number but only boundaries were mentioned. In sale deed Exhibit 20 also, same description was mentioned. Thereafter, plaintiff has come with a case that it was then realized that there is mistake in describing the southern boundary in the sale deed and, therefore, the correction deed Exhibit 21 was executed. In the correction deed, it was said that instead of Gaikwad's land on the southern side, it should be read as Sarjerao's land. However, perusal of these three documents with the sanctioned map would show that still the description is not matching with plot no.08 because according to the plaintiff, now she had purchased plot no.08. Further, it has come on record that plot no.08 was already sold to Ramesh Sitaram Gangadhare prior to the execution of Exhibits 19, 20 or 21. Both the Courts were not concerned with the gift deed given by Kalyan @ Raju in respect of plot no.07 to defendant no.02 directly but only it was related to the description of the property. There was no dispute regarding description of plot no.07. Under such circumstance, the adjacent plot no.08 in which dispute was there, should have common boundary. Documents do not show the said position.

11. Therefore, from all the angles, when both the Courts below have considered the oral as well as documentary evidence, it cannot be stated that they have in any way misread or misinterpreted document of

title deed. Mere existence of registered documents in favour of plaintiff, plaintiff will not get any right over the same when it comes to the question of challenge to the said title. The ratio laid down in both the above said authorities cannot be denied. Taking into consideration the ratio laid down in both the authorities, no substantial question of law has been pointed out by the appellant.

12. In the result, the second appeal fails and the same is hereby **dismissed**.

13. At this stage, learned Advocate for the appellant prayed for continuation of interim relief granted earlier, for a period of eight weeks.

14. Perusal of the record would show that on 06th April 2015, this Court directed that the litigating parties shall maintain *status quo* with regard to the suit property. In fact, what was the position on that day, in respect of the suit property, was not stated in specific words. Present appellant is original plaintiff whose suit for permanent injunction came to be dismissed. The appeal preferred by her was also dismissed. Both the courts below had held that she is not in possession of the suit plot. Under such circumstance, if this fact is taken to be the situation in respect of the suit property, then granting of *status quo* on 06th

April 2015 cannot be said to have created any right in favour of plaintiff. Further, on 2 - 3 occasions, the said interim relief was continued. But thereafter on 04th July 2016, learned Advocate appearing for the appellant sought time. He also submitted that there is no interim relief and, therefore, adjournment was granted. Thereafter, when the matter was on board on 19th July 2016, again learned Advocate for the appellant sought time and in clear words, it was stated that the interim relief is already vacated. Thereafter, there was no attempt on the part of the appellant to get the things clarified on almost three occasions when the matter was on board. But again on 07th September 2016, it is stated that the mentioning Counsel was not aware about the position that the interim relief was operating and then order was passed that the interim relief as had been operating till 04th July 2016 to continue.

15. As aforesaid, when both the courts below had come to a specific conclusion that the plaintiff is not possessing the disputed property, there was no question of *status quo*. Under such circumstance, oral prayer to continue the said interim relief is hereby rejected.

(Smt. Vibha Kankanwadi)
JUDGE

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