

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**APPEAL FROM ORDER NO.82 OF 2018
WITH
CIVIL APPLICATION NO.15033 OF 2018**

Maruti S/o Sitaram Agarkar & another

Appellants

Versus

Kushinath @ Krushinath s/o Rambhau Kesarkar

Respondent

Mr. K.N. Shermale, advocate for the appellants.

...

CORAM : **RAVINDRA V. GHUGE, JUDGE**
(Date : 20th March, 2019)

PER COURT :-

1 The appellants are the original defendants, who are aggrieved by the Judgment and order delivered by the Appellate Court dated 30.10.2018, by which Regular Civil Appeal No.15/2013 has been allowed. Consequentially, the Judgment of the Trial Court dated 5.2.2013 rejecting RCS No.192/2010 filed by the plaintiff, has been quashed and set aside and the Suit is remanded with direction for a re-hearing.

2 The learned Advocate for the appellants has strenuously criticized the impugned Judgment. His submissions can be summarized as under:-

(a) *The plaintiff did not place on record the sale-deed, indicating that he has purchased the land – suit property.*

(b) *The suit property is not properly described in the plaint.*

(c) *No sketch map is placed on record.*

(d) *Though TILR was appointed for measurement of the suit property, he has deposed against his own report and contrary to the claim of the plaintiffs.*

(e) *The Judgment delivered by this Court on 15.12.2008 in Second Appeal No.314/1990 Harsing Kewala Rathod vefrsus Ramji Hemla and the Judgment delivered by this Court dated 9.4.2014 in Second Appeal No.123/2013 in the matter of Laxman Wamanrao Nagapure versus Shankar Haribhau Adhau & another, would apply to this case.*

(e) *Because of the fault of the plaintiffs, the appellants should not suffer.*

3 I have perused the record available, in the light of the submissions of the learned counsel for the appellants. With his assistance, I have gone through the Judgments of the Trial Court as well as of the Appellate Court.

4 It requires no debate that, on account of laxity, negligence or fault of an Advocate representing a litigant, such a litigant should not suffer. This is a classic case of suffering of a litigant with reference to an immovable property/agricultural land. It was the case of the plaintiff, right from the beginning that, he had purchased the suit property. The purchase was on the basis of a sale-deed. Unfortunately, the sale-deed was not produced before the Trial Court.

5 The advocate, drafting the plaint for the plaintiff did not describe the suit property as is required by law. A sketch map

was not placed on record. The plaintiff was produced as a witness, who stated that the sale deed is not produced on record

6 The difficulties of the plaintiffs were further aggravated since the TILR did not follow the due procedure laid down in law and carried out the measurement. To add to his miseries, the TILR admitted in cross-examination that there was no Phalni in gut No.525, he did not show any encroachment in his map, he had not perused and considered the documents of the title of the suit property, he did not show boundaries of the defendants' land, he cannot say how much excess area was found in the possession of either of the parties, he admitted that the measurement carried out by him does not show how much area of the plaintiff was found in the possession of the defendants, he did not consider the fallow land, he did not intimate the date of measurement , no notices were addressed to the adjacent land holders and he did not show the chari or trees in gut No.525.

7 It is unfortunate that this type of evidence on record, led the trial Court to reject the suit. The appellate Court noticed these defects and relied upon the Judgment of this Court in the matter of ***Jamir Khan s/o amir Khan versus Dharmchand s/o Roopchand Sawla (2018 (1) Mh.L.J.174).***

8 I find that in Jamir Khan (supra), this Court concluded on the basis of the Judgments in the matters of :-

(1) Chandrarao s/o Hanumantrao Wable versus Dhondu s/o Phula Patil (2012 (2) Mh.L.J.847)

(2) Maria Pereira and Ors. Versus Dolorosa Christina Rodrigues (D) thr: L.R.s. , (2015 (5) (Mh.L.J.577)

(3) Vijay s/o Shrawan Shende & Ors. Versus State of Maharashtra and Ors., 2009 (5) Mh.L.J.279

(4) Vasant Tukaram Prabhu versus Xalinibai Borcar Alias Shalinibai Borcar, 2014 (5) Mh.L.J.382

(5) Kashinath S/o Ramkrishna Chopade versus Purushottam Tulshiram Tekade and Ors., 2005 (4) Mh.L.J. 471.

(6) Girish Vasntrao Bhoyar & Anr. Versus Nimbaji Warluji Bambal, 2009 (4) Mh.L.J. 371.

9 If the TILR did not perform his job correctly and parties were made to suffer because of the casualness of the TILR, the Court needs to remand the matter, in order to ensure that substantial cause of justice is sub-served.

10 In my view, the First Appellate Court has taken a practicable view in the matter and has kept in focus the object of law that the parties must be permitted to produce their best evidence. It cannot be ignored that agriculturists, most of whom are illiterate, would not realize the defects in their suit. If deficient assistance is extended to a litigant by his lawyer, he is bound to suffer a loss in the litigation.

11 The judgments cited by the appellant are distinguishable on facts. None of those can indicate similarity with the facts of this case.

12 In view of the above, I do not find that the first appellate Court has delivered a judgment which can be termed as being perverse or erroneous or likely to cause gross injustice to the appellant.

13 As such, the appeal being devoid of merit, is dismissed.

14 The Civil Application would not survive and stands disposed off.

**(RAVINDRA V. GHUGE),
JUDGE**