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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.603 OF 2014
WITH
CIVIL APPLICATION NO.736 OF 2014**

Shri. Shyamrao Ramchandra Jadhav and Ors.	... Appellant
Versus	
Shri. Balaji Vithal Jadhav	... Respondent

Mr. V.S. Talkute the Appellant.
Mr. Ajay A. Joshi for the Respondent.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 6th DECEMBER, 2019

PC.:

1 The appellant herein impugns the judgment dated 8th November 2013 passed by the District Judge, Pandharpur in Civil Appeal No.133 of 2010 thereby setting aside the judgment and decree dated 30th August 2010 in Regular Civil Suit No.148 of 2009 passed by the learned 8th Jt. Civil Judge, Junior Division, Pandharpur.

2 Substantial question in the present case is not just a substantial question of law but a mixed question of facts and law. Very first substantial question framed by the appellant is as follows :-

“Whether the observation of the learned lower Appellate Court in paragraph 11 of the judgment that the plaintiff nowhere in the plaint or in the evidence as claimed that his land is adjoining the road running east west on the southern side is contrary to the pleadings of the plaintiff in paragraph 4 of the plaint and therefore the same indicates non-application

of mind by the learned Judge.”

Next question framed is “whether the learned lower Appellate Court ignored that the respondent – plaintiff failed to prove boundaries of the suit property and therefore, relief of perpetual injunction ought not to have been granted to the plaintiff - respondent.

3 These two issues need to be answered in view of the fact that in the present case the plaintiff has not placed on record the sale deed which would demarcate boundaries of the land purchased by him. That the measurement of the said land were not on record. The onus was on the plaintiff to prove the boundaries of the suit land which is not done and all these issues were considered by the learned first Court. More so, since the original defendant (present appellant) had placed on record the sale deed and had also specifically contended that out of 20 Ares, 14 Ares is on the southern side and 6 Ares are on the northern side and that the road passes East-West in between. All this was not considered by the first appellate Court. Claim of the plaintiff was for perpetual injunction and not for possession. It was not the case of the plaintiff that the defendant has encroached upon his land, however, he was asking the Court to demarcate the boundaries of his land without placing on record any cogent and corroborative material.

4 The Apex Court has further held that the default or carelessness of the parties does not absolve the trial Court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming the subject-matter of the suit being filed.

5 The Hon'ble Apex Court in the case of *Pratibha Singh and Anr. v. Shanti Devi Prasad and Anr.*¹, has observed as follows :

“Order 7 Rule 3 CPC requires whether the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such description enables the Court to draw a proper decree as required by Order 20 Rule 3 of Civil Procedure Code. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers.”

6 Another important issue is that the present appellant had filed Civil Suit No.304 of 2008 which was mentioned in the plaint by the present respondent. The suit was for perpetual injunction and the same is dismissed by the judgment and order dated 27th July 2012. The appellant herein has filed Civil Appeal being FA No.164 of 2012 before the District Court at Pandharpur challenging the said judgment. The said appeal is pending final disposal.

7 This is precisely, the reason why this Court is of the opinion that the present appeal involves a mixed question of facts and law. The

1 (2003) 2 SCC 330

appellant has filed his sale deed and placed on record specific boundaries of his property whereas the plaintiff i.e. the present respondent had not discharged his onus by doing so. However, the trial Court has dismissed R.C.S. No.304 of 2008 and hence, the same is challenged before the first appellate Court. It is in view of this that the present case needs to be remanded back to the appellate Court for consideration of the facts on record put forth by both the parties before the Court while claiming the relief of perpetual injunction against each other.

8 The learned counsel for the respondent has vehemently opposed grant of remand to the appellate Court and submits that the said error cannot be rectified and that the appellant herein cannot be allowed to take advantage by demonstrating errors in the plaint. However, it is later submitted that the respondent be granted permission to place on record the sale deed along with a map demarcating the boundaries of his suit property.

9 In the eventuality, such an application is filed before the appellate Court the same shall be considered in accordance with law and the present appeal can be adjudicated along with Regular Civil Appeal No.164 of 2012.

10 In view of the above discussions, the second appeal is disposed of by remanding the matter to the first appellate Court for considering the same afresh on the basis of the records submitted by both the parties before the trial Court. In view of the above order, parties are hereby directed to maintain the status-quo till the disposal of the appeal and 60 days thereafter. The appeal stands disposed of. Civil Application No.736 of 2014 is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)