

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.608 OF 2018
WITH
CIVIL APPLCIATION NO.1389 OF 2018

Yogesh Kondiba Jadhav

...Petitioner

vs.

Vikram Sahebrao Murkute

...Respondent

Mr. Jaydeep Deo, for the Appellant

Mr. Chaitanya Nikte, for the Respondent.

CORAM : M. S. SONAK, J.

DATE : MARCH 11, 2019

JUDGMENT

. Heard Mr. Deo, learned counsel for the Appellant and Mr. Nikte, learned counsel for the Respondent

2. Mr. Deo, learned counsel for the Appellant submits that there is no dispute that the Appellant is predecessor title of the Respondent in so far as the suit property is concerned. He points out that as per the sale deed, only an area of 5.20 R was sold to the predecessor, the title of the Respondent. He points out that the area for road widening was 91.50 sq.mtrs. He therefore submits that the effective area of the plot ought to have been 428.50 sq.mtrs. He further submits that if the Gunthewari Plan on the basis of which the Respondent has put up construction on the plot

is perused, then it is evident that Respondent has indicated this total plot area as 696.10 sq.mtrs.

3. Mr. Deo submits that this is clear evidence of encroachment. He submits that in the matter of this nature, the Court ought to allow to appoint Commissioner of Surveyor to ascertain the issue of encroachment. He submits that since this is not been done, substantial question of law as set out in the memo of Appeal arises and consequently this Appeal is required to be admitted and considered.

4. Mr. Nikte, learned counsel for the Respondent points out that this is a case of record of concurrent findings of fact by the two Courts and no substantial question of law arises in this Appeal. He points out that even the Respondent admits that the area of the plot in terms of the sale deed is 5.2 R. He submits that it is a fact that there is road which is consumed 91.50 sq. mtrs and therefore net effective area of the suit plot is 428.50 sq.mtrs. He submits that no area of the plot is 428.50 sq.mtrs and the Appellant is bent upon misconstruing the construction plan. He submits that 696.10 sq. mtrs has been explained by both the trial as well as first Appellate Court. For all these reasons, he submits that this Second Appeal may be dismissed.

5. The rival contentions now fall for determination.
6. At the outset, in the manner in which the controversy is raised, it is apparent that no substantial question of law arises in the matter. There is really no dispute between the parties that the area of the plot sold was 5.2 R and consequently, upon reduction of the area consumed, the road widening, the net effective area of the plat should come 428.50 sq. mtrs.
7. If the Gunthewari plan upon which reliance is placed by Mr. Deo is perused, it is clear that effective area is maintained as 428.50 sq.mtrs. Even Respondent admits that net effective area of the plot in question is required to be 428.50 sq.mtrs. The reference to 696.10 sq. mtrs possibly arises on account of architect referring to plot boundaries as commencing from the center of road and widening land. The same makes no much differences to the basic position that in terms of the sale deed, the Respondent is entitled to net effective area 428.50 sq.mtrs after excluding the area consumed for road widening purpose.
8. From the perusal of the suit, it is apparent that neither the pleadings nor the reliefs were clear and concise. The Appellant applied for declaration in respect of property admeasuring 13.78 R. This is clear from prayer clauses (a) and (c) of the plaint.

Ultimately, Mr. Deo, has made it clear that the Plaintiff does not press for reliefs in term of prayer clause (a) and (c). Mr. Deo submits that only relief in terms of prayer clause (b) is pressed. He points out that this relief basically relates to demarcation of the plot area.

9. At this stage, it will not be appropriate to enter into such disputed issues of fact, particularly now when that there are concurrent findings recorded by two Courts. Again, even the Respondent admits, acknowledges and accepts that area of the suit plot in their possession is only 5.2 R and after counting for the road widening of 91.50 sq. mtrs, the net effective area of the suit plot comes to 428.50 sq. mtrs. This is precisely what even Plaintiff contends. Accordingly, there is really no case made out to entertain the present Second Appeal.

10. Second Appeal is therefore dismissed.

11. There shall be however no order as to cost.

12. Civil Application does not survive and the same is also disposed of.

(M. S. SONAK, J.)