

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

SA NO.255/2019

Narayan s/o Gangaram Kathole

..VS..

Ganeshgir Hiragir Sansthan thr. its President Nandkishor s/o Sakharam
Kathole and ors

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

Court's or Judge's Order

Shri A.J.Thakkar, Counsel for the Appellant.

CORAM : V.M.DESHPANDE, J.

DATED : JULY 8, 2019.

1. This appeal is filed by original defendant no.1 – Narayan Kathole challenging the concurrent judgments passed against him by the Courts below. Respondent nos.1 to 6 are the original plaintiffs. Respondent no.7 is original defendant no.2. The plaintiff no.1 is a registered public Trust and respondent nos.2 to 6 are its Trustees. The suit was filed for possession and removal of encroachment. The suit property is as under :

A] Plot no. 497 out of Sheet NO.2, admeasuring 15 feet east-west and 23 feet north-south having kaccha construction over it, which is shown by letters A,B,C,D, in the plaint map.

B] A portion of plot no. 585, out of sheet no.2.

2. According to the plaintiff, respondent no.1-Trust is the owner of the suit properties. It was the case before the Court below that the plaintiff purchased plot no. 497 from one Gangubai Barai by a registered Sale Deed dated 11.2.1943. Since at the time of purchase of the properties, the trust was not registered, therefore, the properties were purchased in the name of the Manager of Wanjari Panchmandal. According to the plaintiff, the said plot was given to the present appellants/defendant nos.1 and 2 as its licensee. Consequently, they erected a kaccha construction and are residing therein.

3. As per the plaint, so far as plot no. 585 is concerned, the appellant has made encroachment on this plot. The suit was filed for possession and also for removal of the encroachment.

4. The appellant/defendant no.1 filed his written statement (Exh.20) and in the said he not only denied the title of the plaintiff/trust in respect of plot no. 497, but also claims that he is the title holder of the suit plot.

In respect of plot no. 585 is concerned, it was his case that he has not made encroachment.

5. Learned Judge of the trial Court vide the judgment and order dated 24.01.2008 partly decreed the suit and granted decree of possession of suit plot no.497, however found that the plaintiffs have failed to prove that the defendants have made encroachment.

6. Two different appeals were filed before the learned lower Appellate Court challenging the said judgment

and decree passed by the trial Court. Regular Civil Appeal No. 20/2008 was filed by the original plaintiffs, whereas Regular Civil Appeal No. 22/2008 was filed by original defendant no.1 – Narayan Kathole, the present appellant. It appears that original defendant no.2 Kasturibai did not prefer any appeal. The learned District Judge-2, Akola, by the judgment and decree dated 31.10.2018 disposed of both the appeals by a common judgment. Regular Civil Appeal No. 20/2008 filed by original plaintiffs was allowed, whereas Regular Civil Appeal No. 22/20008 filed by present appellant/original defendant no.1 was dismissed. In the present second appeal, the appellant is challenging the judgment and decree of possession passed against him by the trial Court and which is confirmed by the Appellate Court in Regular Civil Appeal No. 20/2008.

7. Only submission made before this Court by learned counsel Shri A.J.Thakkar for the appellant is that at no point of time the appellant has made encroachment on plot No.585.

8. Before learned Judge of Lower Appellate Court a statement was made by learned counsel for the appellant that the appellant is not owner of plot No.585 and original plaintiff alone is owner of the said plot. Learned Judge found that the appellant has also made encroachment on plot No.585 by supplementing good reasons.

9. In view of the aforesaid, I am of the view that the present appeal does not involvement any substantial question of law. Hence, the second appeal is dismissed. No

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costs.

JUDGE

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