

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

SECOND APPEAL NO.271/2019

Kalluparasad s/o Kalidin Gupta

..VS..

Mahesh s/o Hariratan Lakhota and anr

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

Court's or Judge's Order

.....

Shri H.I.Kothari, Counsel for the Appellant.
Shri A.B.Patil, Counsel for Respondent No.1.
Shri V.P.Gangane, Assistant Government Pleader for R-2.

CORAM : V.M.DESHPANDE, J.

DATED : AUGUST 1, 2019.

1. This appeal arises out of judgments and decrees passed by learned Judges of both Courts below dismissing suit filed by the appellant/plaintiff for declaration, mandatory and permanent injunction.
2. Heard learned counsel Shri H.I.Kothari for the appellant/plaintiff and learned counsel Shri A.B.Patil for respondent No.1/defendant.
3. Claim of the appellant/plaintiff in suit is as under:

“(i) a decree declaring that the defendant has no right to carry out construction towards southern side of plaintiff's house beyond the limits of House No.J/1075 and J/1076 as per Nazul/Revenue Records,

(ii) a decree declaring that the defendant has no right to disturb/block air, light and ventilation of plaintiff's house being the same is easementary right of plaintiff,

(iii) a decree granting mandatory injunction for removal of construction towards southern side of plaintiff's house and clear the supply of air, light and ventilation to plaintiff's house,

(iv) a decree of permanent injunction restraining the defendant from carrying out construction towards southern side of plaintiff's house at any floor and stage,

(v) saddle the costs proceedings on defendant,

(vi) grant any other relief on this Hon'ble Court deems fit and proper under the facts and circumstances of the case, in the interest of justice.”

4. The suit was contested. The parties entered into the witness box. Learned Judge of Trial Court, after appreciating facts and evidence, found that both the parties have made encroachment on Nazul land and made construction. It is case of the respondent/defendant that he applied for obtaining lease of the land on which he made encroachment.

5. Be that as it may, as on today, no Lease Deed is there. Similarly, learned Judge of Trial Court in paragraph No.23 of judgment found that the appellant/plaintiff himself admitted that new construction made on the land situated

on backside of his house is an encroached portion. Thus, the Court found that the appellant/plaintiff himself made encroachment. The said is not disputed before this Court also.

6. From record, it is clear that on the said encroached portion, the appellant/plaintiff constructed door and window. The Court below, therefore, rightly found that it will affect ingress of air and light and, therefore, it does not lie in the mouth of the appellant/plaintiff that his right of air and light are affected. Learned Judges of both Courts below concurrently recorded findings against the appellant/plaintiff. This Court refrain himself from exercising any jurisdiction in favour of the appellant/plaintiff who himself is an encroacher.

7. It was revealed during the course of hearing before this Court that though Kamptee Municipal Council was party in the suit, nobody appeared and consequently the said Municipal Council which is a planning Authority remained *ex parte*.

8. It is duty of the planning Authority to sanction construction. If plans submitted are as per the Maharashtra Regional & Town Planning Act, 1966 and the Regulations made therein, litigants cannot be permitted to fight with each other in the Courts by encroaching upon the Government and public or Nazul land.

9. When it is brought to the notice of this Court that both the appellant and respondent No.1 had made encroachment on public land and had made construction,

the Court cannot remain a mute spectator.

10. In view of the above, I pass following order:

ORDER

(i) The second appeal is dismissed.

(ii) Kamptee Municipal Council, District Nagpur, which is a planning authority, is directed to take necessary steps in accordance with law against the appellant/plaintiff as well as the respondent/defendant by giving an opportunity of hearing to them and if it is noticed by planning Authority that there is an encroachment on the part of the appellant/plaintiff or the respondent/defendant, it is expected that the planning Authority will take suitable steps for removal of such encroachment.

(iii) The exercise of submitting objections with the Municipal Council along with documents and decision of planning Authority shall be taken after complying principles of natural justice within a period of 3 months from the date of receipt of writ of this order.

(iv) Learned Assistant Government Pleader Shri V.P.Gangane, is requested to communicate this order to the Chief Officer, Kamptee Municipal Council, District Nagpur.

(v) Copy of this order be furnished to learned Assistant Government Pleader to be acted upon.

JUDGE

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