

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

SECOND APPEAL NO.53/2019

Narmadabai wd/o Vishnaji Khandare and ors

..VS..

Smt.Tulsabai wd/o Ramkrishna Bochare and ors

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

Court's or Judge's Order

.....
Shri A.V.Bhide, Counsel for the Appellants.

CORAM : V.M.DESHPANDE, J.

DATED : JUNE 14, 2019.

1. Heard learned counsel Shri A.V.Bhide for the appellants.

2. The present appeal is by original plaintiffs who filed a suit for removal of encroachment and consequently relief of placing them in possession after removing the encroachment stands dismissed by learned Judges of both Courts below.

3. According to learned counsel for the appellants, Exhibit 114 which is "Copy-C" (प्रत-क) is different than original measurement map Exhibit 116 (प्रत-अ) and, therefore, the plaintiffs are having doubt in their mind and in view of the said, judgments of both the Courts below are required to be interfered with.

1. From the impugned judgment, it is clear that the respondents/original defendants during the suit set up a plea that they have perfected title in respect of portion which

according to the plaintiffs is encroachment. Learned Judge of the Trial Court dismissed the suit and also recorded a finding that the defendants have perfected their title by adverse possession. The plaintiffs preferred an appeal challenging the said finding by filing an appeal i.e. Regular Civil Appeal No.50/1999. On 30.4.2003, learned Judge of the Lower Appellate Court upset the finding recorded by learned Judge of the Trial Court that the defendants have perfected the title by adverse possession. Learned Judge of the Lower Appellate Court was of the view that in absence of any joint measurement of 3 agricultural fields in question, it would be unsafe to record a finding about encroachment. Therefore, learned Judge of the Lower Appellate Court remanded the matter back to the Trial Court for appointment of TILR to measure fields in question.

2. Undisputedly, after the remand, the TILR was appointment for joint measurement and the measurement took place. After the remand, learned Judge of the Trial Court on 29.3.2008 again dismissed the suit by recording findings that the defendants have perfected the title by adverse possession and the plaintiffs have failed to prove encroachment at the hands of the defendants.

3. The appellants again preferred an appeal challenging the aforesaid judgment and decree passed by learned Judge of the Trial Court. The appeal was registered as Regular Civil Appeal No.34/2008. Learned Judge of the Lower Appellate Court on 31.7.2018 dismissed the appeal. However, while dismissing the appeal, learned Judge of the

Lower Appellate Court set aside the findings recorded by learned Judge of the Trial Court in respect of perfection of the title by the defendants by adverse possession. However, on re-appreciation of facts, learned Judge of the Lower Appellate Court concurred the findings recorded by learned Judge of the Trial Court that the plaintiffs could not prove their case that the defendants have made encroachment and consequently the appeal was dismissed.

4. From the aforesaid and in the light of the submissions, the attempt on the part of unsuccessful plaintiffs before this Court is about in respect of maps which are placed on record. According to learned counsel for the appellants, there are certain corrections at Exhibit 116 and those are not at Exhibit 114 and, therefore, the findings recorded by learned Judges of the Courts below are required to be interfered with.

5. There is no dispute on the part of the appellants before this Court that after the appointment of the TILR for joint measurement, Notices were given to the appellants and also to the defendants. It is also not in dispute that in presence of the appellants the measurement took place.

6. Exhibit 116 copy of original map known as (प्रत-अ) is always to be kept in the office of the TILR. Whereas, Exhibit 114 known as "Copy-C" (प्रत-क) is to be given to the party. During cross-examination of the TILR it is brought on record that Exhibit 114 is drawn on the basis of Exhibit 116. Learned Judge of the Trial Court considered the

aspect of the correction at Exhibit 116 since in the evidence of the TILR it is brought on record that those corrections were initialled by the said Authority. Obviously, Exhibit 114 could not have any initial since it is issued on the basis of Exhibit 116 which is original map and is kept in the office of TILR. All these aspects were considered by learned Judges of both the Courts below. Further, it is not the case of the appellants before this Court that while conducting the joint measurement, there was any lapse on the part of measuring Authority.

7. In that view of the matter, the present second appeal does not involve any substantial question of law. As such, consideration of the said is nothing but an agitation against and appreciation of facts, which is not permissible in law. Hence, the second appeal fails and is dismissed. There shall be no order as to costs.

JUDGE

!! BRW !!

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