

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

Second Appeal No.128/2018
Purshottam Waghole Vs. Mahadeo Deole and others
With
Second Appeal No.441/2017
Mahadeo Deole and Ors. Vs. Purshottam Waghode

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

Court's or Judge's orders

Mr. A.J. Thakkar, Advocate for appellant
Mr. V.B. Bhise, Advocate for respondents

CORAM : MANISH PITALE, J.

DATED : OCTOBER 11, 2019

Both these appeals arise out of suit for permanent injunction filed by one Purshottam s/o Pandurang Waghole (original plaintiff), claiming that the defendant i.e. Mahadeo s/o Laghuji Deole and others had created nuisance. The plaintiff and the defendants had their houses adjacent to each other and it was claimed by the plaintiff that the defendants had created nuisance by flow of drainage water next to their cattle-shed, thereby causing damage to one of the walls and further that wood, bullocks and bullock-carts were kept adjacent to wall of the cattle shed in another direction, thereby causing further nuisance.

2. The defendants resisted the claim of by the plaintiff and submitted that no such nuisance was caused and that, in fact, there was no open drainage.

It was further contended that the wood, bullocks and bullock-carts were kept in open piece of land belonging to the *Grampanchayat*.

3. The parties led oral and documentary evidence before the Trial Court, including report of Commissioner. The Commissioner prepared a report and map, which was placed before the Trial Court. The Commissioner was also examined.

4. On the basis of oral and documentary evidence available on record, the Trial Court partly decreed the suit of the plaintiff holding that the nuisance pertaining to drain water was not proved, while it was proved by the plaintiff that the defendants had caused nuisance by keeping wood, bullocks and bullock-carts on the southern side wall of the cattle shed of the plaintiff.

5. Both the plaintiff and the defendants filed appeals before the Appellate Court. Both the appeals were dismissed and the findings of the Trial Court were confirmed. Aggrieved by the said judgment and order passed by the Appellate Court, the plaintiff as well as defendants have filed these appeals before this Court. The plaintiff has filed Second Appeal No.128/2018, while the defendants have filed Second Appeal No.441/2017. Both the appeals were taken up for consideration together. In the appeal filed by the

original plaintiff, this Court had not framed any substantial question for consideration. A perusal of concurrent judgments and orders passed by the Courts below shows that it was found that as a matter of fact there was underground drainage facility and that, therefore, there was no question of nuisance being caused by drain water flow from the premises of the defendants, thereby causing damage to one of the walls of the cattle shed of the plaintiff. The said findings of fact do not appear to be erroneous in any manner and, therefore, no substantial question of law arises in Second Appeal No.128/2018, filed by the original plaintiff and accordingly it is dismissed.

6. In so far as Second Appeal No.441/2017, is concerned, by order dated 08/08/2017, the following substantial question of law was framed :

“Whether the report of the Commissioner at Exhibit-19 supports the conclusion that the defendants activities have caused nuisance to the plaintiff?”

7. This Court issued notice after framing the said substantial question of law.

8. The learned counsel appearing for the appellants (original defendants) submitted that a proper appreciation of report of the Commissioner at Exh.19 would show that the findings rendered by the two Courts below regarding nuisance caused by the

defendants were not sustainable. It was submitted that a perusal of report and map would demonstrate that wood, bullocks and bullock-carts were admittedly kept at a distance of 15 ft. from the southern side wall of the cattle shed and, therefore, no obstruction and no nuisance was caused to the original plaintiff. On this basis it was submitted that the suit ought to have dismissed in its entirety and, therefore, the two Courts below had committed an error.

9. On the other hand, the learned counsel for the respondent (original plaintiff) submitted that the two Courts below had rendered the findings of fact on the basis of the Commissioner report as well as admissions given by the defendants themselves before the Trial Court. The said admissions were taken into consideration and it was found that even if the wood, bullocks and bullock-carts were kept on the land belonging to Grampanchayat, admittedly the same were adjacent to the southern wall of the cattle-shed of the plaintiff and that, therefore, nuisance was indeed caused to him.

10. Heard learned counsel for rival parties. A perusal of Commissioner Report at Exh.19 and map appended would show that the defendants had indeed kept wood, bullocks and bullock-carts on open land adjacent to the southern wall of the cattle shed of the plaintiff. It is stated in the report that the said

materials were kept at a distance of 15 ft. from the gate of the southern wall of the cattle shed of the plaintiff, but, a perusal of the map appended with the report read with specific admissions given by the defendants, would show that the said material was kept adjacent to the southern wall of the cattle shed. The fact that such material was kept right next to the wall was specifically admitted by the defendants and on that basis the Trial Court found that nuisance was indeed caused to the plaintiff and that he was obstructed from maintaining the wall. The Appellate Court has agreed with the findings rendered by the Trial Court. The said findings on nuisance given by the two Courts below concurrently are based on a proper reading of the Commissioner report (Exh.19) with specific admissions given by the defendants in their evidence. Therefore, the said findings, which are essentially findings of facts based on the Commissioner report and admissions given by the defendants, do not give rise to substantial question of law in that context.

11. But, the substantial question of law framed by this Court by order dated 08/08/2017, pertains to the question as to whether the report of the Commissioner at Exh.19 supports the conclusion that the defendants indeed had caused nuisance to the plaintiff. A perusal of the report would show that although the distance of 15 ft. is mentioned in the said report, it pertains to distance of the gate on the

southern wall of the cattle shed to the place where the wood and other material were kept by the defendants. The said report read with the map appended therewith and specific admissions given by the defendants would show and that report itself indicates the extent of nuisance caused by the defendants to the plaintiff. Therefore, it cannot be said that the Commissioner report did not sufficiently indicate the nature of nuisance caused to the plaintiff. In that view of the matter the substantial question of law framed by this Court deserves to be answered in favour of the plaintiff and against the defendants.

10. Accordingly, it is found that the present appeal (Second Appeal No.441/2017) filed by the defendants is devoid of merits and concurrent judgments and orders passed by the two Courts below deserve to be confirmed.

11. Accordingly, appeal is dismissed and decree passed by the two Courts below stands confirmed and there shall be no orders as to costs.

JUDGE