

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.578 OF 2016

Smt.Latika Subhash Bhosale .. Appellant
Versus
Mukund Abhimanyu Bhosale & Ors .. Respondents

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Mr. Samir Kumbhakoni for the appellant.
Mr.M.A. Chodhari for respondent nos.1 and 2.

CORAM: BHARATI DANGRE, J.

DATED : 25th FEBRUARY, 2020.

P.C:-

1 The present Appeal filed under Section 100 of the Code of Civil Procedure which put forth the four substantial questions of law according to me deserves dismissal on a very simple ground that the Appeal does not involve any “substantial question of law”. The said conclusion is derived from reading of the concurrent findings rendered by the two Courts below and in absence of any illegality or perversity in the said findings recorded basically on the factual aspect of the matter, not giving rise to any question of law.

2 Plaintiff is the owner of land bearing Gat No.86 admeasuring 1H 78R situated at Papari Taluka Mohol, District Solapur. The land of Mukund Bhosale (defendant no. 1) bear Gat No.73A and is adjacent to the land of the plaintiff from Northern side whereas the land of defendant no. 2 bearing Gat No.73B and land of defendant nos.3 and 4 bearing Gat No.87 is adjacent to the western side of the plaintiffs land. On an allegation that the plaintiff got measured her land from learned surveyor from where it was revealed that the defendant no. 1 has encroached upon her land to the extent of 0.01 Are from the Northern side, defendant no.2 had encroached from western side to the extent of 0.04 Are and defendant nos.3 and 4 encroached from western side to the extent of 0.06 Are, she filed Regular Civil Suit in the Court of Civil Judge, Jr. Division, Mohol claiming possession of the encroached and seeking permanent injunction restraining the defendants from causing obstruction to her peaceful possession.

3 The Civil Judge, Jr. Division Mohol, framed the very first issue as to whether she had proved her title and possession over the suit property and proceed to further frame the issue whether she proved obstruction on part of the defendant nos.1 and 2 as alleged and whether they have made any encroachment which would make her entitle for the parcel of land which was encroached.

4 Answering the very first issue about her title over the suit property in the negative, the Civil Judge recorded the findings in the negative on other issues as well.

5 Considering the case put in the plaint that she had applied for measurement of the suit land and also of the defendant's Gat Nos.73/A, 73/B and 87 and that on 17th February 2003, the Survey Department recorded that the defendants have encroached to different extent and the encroachments have reflected in the measurement sheet. When the plaintiff being examined as a witness was subjected to cross examination, she admitted that there is a South/North Baandh in Gat Nos.73, 86 and 87.

6 The other two witnesses examined by the plaintiff admitted that there was no record available in respect of the adjoining Gat numbers and therefore they were not able to state as to from which side who had encroached on the land of the plaintiff. The defendants who contested the suit referred to a 10 feet East West path way road from the baandh of 73A, 73B upto southern side of East-West baandh of Gat No.73A. The witness of the defendants deposed that the said road was used by the forefather and father of the defendants since 100 years and they claimed a right of easement by prescription.

7 Considering the material placed on record in form of measurement maps, the Civil Judge, Jr. Division recorded that the plaintiff was not able to prove her title and possession over the suit land and returned a clear finding that she has failed to do obstruction at the obstruction at the instance of defendant nos.1 and 2 and she is not entitled for the encroachment portion as claimed. The evidence of DW 1 Exhibit 90 was relied upon to return a finding that there was no documentary evidence regarding the road which is in existence since 100 years. The vague pleadings of the plaintiff therefore entitled her to relief claimed.

8 The Appellate Court on the issue as to whether the appellants had proved that the respondent had encroached over her land and answered in the negative and confirmed the finding recorded by the Courts below. The appreciation of facts and evidence by the trial Court was found to be supported by necessary material brought on record and the rejection of the claim of the plaintiff in form of a decree of possession and injunction was found to be without merit and resultantly the Appeal came to be dismissed. Perusal of the Memorandum of Appeal do not raise any question of law far away from raising a substantial question of law. The factual aspect of the matter has been rightly ascertained by the Courts below on the basis of the

plaint, testimony of witnesses and the written statement and the evidence brought on record by the respondent. The locus of the plaintiff itself was questioned and her entitlement for claiming the injunction as prayed for was itself doubted with a positive finding being returned that except her bald statement no material is produced by her to accept the encroachment by the defendants as alleged and even the Appellate Court has considered the objection that while measuring the land, settled principles were not followed and the measurement was not accurate. This contention was set at knot by the Appellate Court by observing that the plaintiff and defendants were present at the time of actual measurement and therefore, no fault can be found in the measurement. In absence of any substantial question of law being raised in the Second Appeal, the Appeal cannot be entertained. Resultantly, the Second Appeal is dismissed.

SMT. BHARATI DANGRE, J