

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

APPEAL AGAINST ORDER NO.08 OF 2018

Ramdas Natthuji Bhagat.

Vs

Shri Shankarrao Ganpatrao Kothar and others.

WITH

APPEAL AGAINST ORDER NO.09 OF 2018

Ramdas Natthuji Bhagat.

Vs.

Sayyad Zafar Sayyad Liyaka and others.

WITH

APPEAL AGAINST ORDER NO.10 OF 2018

Ramdas Natthuji Bhagat.

Vs.

Iftekhhar Ahemad Habib Khan and others.

WITH

APPEAL AGAINST ORDER NO.11 OF 2018

Ramdas Natthuji Bhagat.

Vs.

Pravin Madhukarrao Patil and others.

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

Court's or Judge's orders

Shri C. A. Babrekar, Advocate for appellant in all petitions.

Shri S. S. Patil, Advocate for respondent nos.1 and 2 in AO No.8/2018.

Shri Sawan Alaspurkar, Advocate for respondent no.1 in AO No.9/2018.

Shri M. M. Agnihotri, Advocate for respondent no.1 in AO No.10/2018.

Shri M. M. Agnihotri, Advocate for respondent no.1 in AO No.11/2018.

CORAM : AVINASH G. GHAROTE, J.

DATE : JANUARY 21, 2020.

1. Shri C. A. Babrekar, learned counsel for the appellant in all these appeals submits that by an agreement dated 23.12.2009 between the appellant and respondent nos.2 to 4, the 1/3rd portion of land admeasuring 1.22 HR, out of the entire land of Survey No.11/2 admeasuring 1.75 HR, situated at Mundni Shankarrao, Tq. Nandgaon Khandeshwar,

Dist. Amravati was agreed to be sold to the appellant. The demarcation of 1/3rd share in the land admeasuring 1.22 HR was to be done by laying a dividing line East – West and the Southern portion was the subject matter of the agreement. It is an admitted position that towards the South stands the field of Mr. Mangle i.e. Survey No.13. The suit property is described in para 1 of the plaint in Special Civil Suit No.58/1996 (page 68-AO No.9/2018). The Trial Court decreed the suit by the judgment and decree dated 27.07.2001, in which the same description is given (page 82-AO No.9/2018). The appeal carried by the respondent was dismissed on 28.03.2008 and the second appeal also came to be dismissed 17.09.2009. In the execution proceedings SD No.06/2012, a draft of the proposed sale deed was submitted by the appellant, which having been accepted, sale deed was duly registered in favour of the appellant on 17.08.2015. The land is also claimed to have been measured on 03.03.2016 with police aid and is claimed to be in consonance with the description of the sale dated 17.08.2015.

2. The respondents are objectors before the executing Court claiming to have purchased plots of land namely Plot no.31 (AO No.11/2018), Plot No.32 (AO No.9/2018), Plot No.33 (AO No.8/2018) and Plot No.33 (part in AO No.8/2018 and part AO No.10/18). The objections as filed by the objector were rejected by the executing Court by an order dated 06.02.2017 against which an appeal was carried to the

District Judge, 6th Amravati who by a common judgment dated 22.12.2017 allowed the appeals and by setting aside the order dated 06.02.2017 remitted the matter back to the executing Court to decide the objections in accordance with the provision of CPC after giving the objectors an opportunity to lead evidence. It is this common judgment dated 22.12.2017 which is under challenge.

3. On 20.01.2020, learned counsel Mr. Babrekar for the appellant was asked to demonstrate that the location of the plots held by the objectors were falling within the land which was the subject matter of the suit and the decree as passed in favour of the appellant. Learned counsel has today produced a plan of measurement dated 03.03.2016, which is a part and parcel of the record of the executing Court at Exh.83 and contends that the location of plot No.31, 32 and part of 33 are shown to be falling within the suit property.

4. As against this, the learned counsel for the respondents have invited my attention to the description of the suit property as given in the plaint Para 1 and in judgment Para 2, to urge that the Southern portion of the land of Survey No.11/2, after its demarcation as indicated therein was the subject matter of the agreement, plaint and judgment. It is submitted that the description of the property in the sale deed dated 17.08.2015 (page No.152 AO No. 9/2018), is contrary to the description as mentioned in the plaint and judgment, in

as much as the Southern 1/3rd portion of Survey No.11/2 by dividing the land admeasuring 1.22 HR out of the total land of 1.75 HR was the subject matter of the plaint, however the sale deed dated 17.08.2015 (page 152) mentions that the Northern 1/3rd portion has been transferred, instead of the Southern 1/3rd portion. It is further submitted, that this is further demonstrable from the admitted position that the Southern boundary in the description of the property as mentioned in the plaint as well as the judgment shows that to the South side is situated the land of Survey No.13 belonging to one Mangle. The measurement map at Exh.83 also depicts this position. It is thus apparent that instead of the 1/3rd share towards the Southern side, as stated in the plaint and judgment, what has been transferred under the sale deed dated 17.08.2015, in favour of the appellant is the Northern 1/3rd share, which has caused the entire litigation to erupt.

5. Mr. C. A. Babrekar, learned counsel for the appellant had submitted that there was a correction deed executed to the sale deed dated 17.08.2015, on 20.08.2016, however a perusal of the same does not depict any correction as to the boundaries or the location of the land. Faced with this situation, Mr C. A. Babrekar, learned counsel for the appellant prays that the matter be kept in second half, in order to enable to examine him to clarify the situation. Considering which the matter be taken in the second half today.

At 2.30 p.m.

6. Learned counsel Mr. Babrekar for the appellant submits that the appellant, was entitled to get $1/3^{\text{rd}}$ share in the land admesuaring 1.22 HR from and out of the entire land of Survey No.11/2 admeasuring 1.75 HR, which is an undisputed position. The issue is in which portion / side / location was this $1/3^{\text{rd}}$ share in the land admeasuring 1.22 HR was situated. Though the description in the agreement, plaint, judgment of the suit property states that the land admeasuring 1.22 HR is to be divided by laying a demarcation line East – West, and the land to be had by the appellant was $1/3^{\text{rd}}$ share therein, the entire agreement, plaint as well as judgment is silent about which portion would be $1/3^{\text{rd}}$ share of the appellant / plaintiff. The contention by Mr. Babrekar, learned counsel for the appellant that this $1/3^{\text{rd}}$ share would be the Northern portion as shown to have been demarcated in Exh.83, is not borne out from the record. Mr. Babrekar, learned counsel for the appellant was asked to point out a single sentence in the entire record which would demonstrate this position, he however, was unable to do so. In absence of defining a location of this $1/3^{\text{rd}}$ share within the land of 1.22 HR, either in the agreement, plaint, judgment, it is difficult to accept the contention of learned counsel for the appellant that it was the Northern portion of this 1.22 HR which was the subject matter of the suit and decree as passed in Special Civil Suit No.58/1996. The $1/3^{\text{rd}}$ share in the land admeasuring

1.22 HR, could thus be either the Southern, middle or the Northern portion. The only indication of the location of the land which can be gathered is from the description as given in the agreement, plaint, judgment, that the suit land was to be on the Southern side, which would indicate that the 1/3rd share land admeasuring 1.22 HR, to which the appellant was entitled could be adjacent to the Southern boundary as shown in the map at Exh.83, beyond which the land of Survey No.13 commences.

7. No doubt, that in that light of the matter, the learned counsel for the appellant will have to get the description of the property as mentioned in the sale deed dated 17.08.2015 corrected from the executing Court and then seeks possession of the same.

8. In that light of the matter, the properties as purchased by the respondents no.1 in the appeals, may not fall within the area of the suit property and they would thus become strangers to the decree, entitled to hold the property in their independent right, without being affected by the principal of lis pendens.

9. In that light of the matter, the common judgment dated 22.12.2017 as passed by the learned Appellate Court setting aside the order dated 06.02.2017 passed by the executing Courts below Exhs.54, 59, 64, 68 and 73 in Regular

Darkhast No.6/2012 and directing the executing Court to decide the objections in accordance to the procedure as prescribed in CPC permitting parties to lead evidence cannot be faulted with. It is trite that where an objection under Order 21 Rule 97 is raised claiming independent right in the property the same has to be adjudicated in accordance with the provisions as contained in Order 21 Rule 101. In light of what is stated above, the question whether the objectors were indeed transferee pendent lite, so as to invoke order 21 Rule 102, is again one which will have to be determined by the executing Court.

10. Thus, there is no reason or cause to interfere with the common judgment dated 22.12.2017 as passed by the District Judge – 6, Amravati in Regular Civil Appeal Nos.33/2017, 34/2017, 35/2017 and 41/2017. The present appeals, therefore are without any merits and are accordingly dismissed. Needless to say that the appellant before the executing Court will be entitled to take all steps as in law as deemed necessary for securing a proper and correct title to the suit property and getting its possession through the process of the Court. In the circumstances, there would no order as to costs. Needles to say that the interim order as passed on 14.02.2018, stands vacated.

JUDGE