

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

SECOND APPEAL NO. 644 OF 2018

1. Shri Kishor S/o. Sadashiv Wahane
Aged about 61 years, Occ. Retired,
R/o Plot No. 134, Vivekanand Nagar,
Nagpur-440015. (Original Plaintiff) Appellant

.....Vs.....

1. Chief Executive Officer,
Maharashtra Housing & Development
Authority, Nagpur, Near New MLA Hostel,
Civil Lines, Nagpur. (Original Defendant no. 1)
2. Deputy Engineer,
Division No. 1, Nagpur Housing & Area
Development Board, Nagpur,
Near New MLA Hostel,
Civil Lines, Nagpur (Original Defendant no. 2) Respondents

Shri A. A. Sambaray, Advocate for the appellant.
Shri P. P. Kothari, Advocate for the respondents

CORAM : M. G. GIRATKAR, J.

RESERVED ON : 10/01/2020

DELIVERED ON : 20/01/2020

JUDGMENT

As per order dated 04.12.2019, this appeal was fixed for
final hearing at the stage of admission.

2. With the consent of learned Advocates appearing for the parties heard finally.

3. The present Second Appeal is filed against the judgment of District Judge-13, Nagpur in Regular Civil Appeal No. 60/2015.

4. The facts giving rise to the present appeal can be summarized as under (The parties shall be referred by their status in the trial Court):

The plaintiff (appellant) filed civil suit before 6th Jt. Civil Judge Junior Division, Nagpur (For short the “trial Court”) vide R.C.S. No. 876/2002. The said suit was filed for declaration and injunction against the defendants (respondents). The defendants appeared, filed their written statement and denied the claim of the plaintiff. The defendants have submitted before the trial Court that the lands in Khasra Nos. 131, 133 and 134/1 were allotted to the defendants on lease for a period of 30 years. The defendant-Maharashtra Housing & Development Authority (for short the “MHADA”) prepared lay out plan. It was submitted to the Nagpur Improvement Trust (for short the “NIT”). The approved plan is at Exh. 110.

It is the contention of the plaintiff that he purchased plot nos. 1 to 4 out of the land Khasra no. 134/1 from Nagbhoomi Co-operative Housing Society (for short the “Nagbhoomi Society”). Those

Sale Deeds were executed by Secretary of the Nagbhoomi Society on 25.08.1999. It is contention of the plaintiff that he is owner and in possession of the said plot nos. 1 to 4. The defendants without any right issued notice to remove the encroachment. Therefore, suit was filed for declaration of his title and injunction against the defendants restraining them from disturbing his possession.

The defendants have contested the suit by filing their written statement. Issues were framed by the trial Court at Exh. 26. The plaintiff and defendants both parties adduced their respective evidences. After hearing both sides, the trial Court dismissed the suit on 20.12.2014.

First Appeal (R.C.A.No. 60/2015) was filed before the District Judge-13, Nagpur (For short the "First Appellate Court"). The said First Appeal came to be dismissed. Hence, the Second Appeal before this Court.

5. Heard Shri Sambaray, learned Advocate for the appellant/plaintiff. He has submitted that the appellant/plaintiff has purchased plot nos. 1 to 4 from Nagbhoomi Society. Sale Deeds are filed on record. Those are at Exh. 60 to 63. Learned Advocate has submitted that Kisan Jivtu Deshbhratar was the original owner of land Khasra no. 134/1. Land of Khasra no. 134/1 was acquired alongwith land in Khasra

nos. 131, 133, total area admeasuring 22.15 acres were acquired. The remaining area of land in Khasra no. 134/1 and 135/1 admeasuring 2.46 acres had not been acquired by the respondents/defendants. Nagbhoomi Society prepared lay out plan. The appellant/plaintiff has purchased the plot nos. 1 to 4 from Nagbhoomi Society. He is owner of the plot nos. 1 to 4. The respondents/defendants have not acquired that portion of plot nos. 1 to 4. The respondents/defendants cannot claim the ownership and possession. Learned Advocate has pointed out the documents filed on record vide Exh. 104, 105, 107 and 108. Learned Advocate has pointed out letter (Exh. 116) issued by the NIT and submitted that some of the plots were regularized by the NIT.

6. It is contention of the Shri Sambaray, learned Advocate that the whole land in Khasra no. 134/1 was not acquired by the MHADA for the purpose of construction of buildings to the Lower Income Group, Medium Income Group and Higher Income Group persons and, therefore, MHADA cannot claim any ownership.

7. Shri Kothari, learned Advocate for the respondents/defendants has raised objection and submitted that the Second Appeal is not maintainable as it is against the findings based on appreciation of evidence. In support of his submission, he has pointed out the following decisions:

- (i) *M/s. Sea Princess Reality Vs. Mr. Rajesh Mehta & Anr.* reported in 2019(2) ALL MR 239,
- (ii) *Nivruti Dnyanu Patil Vs. Shankar Krishna Bhagat-Patil and another* reported in 2018(6) Mh.L.J. 167,
- (iii) *Syeda Rahimunnisa Vs. Malan Bi (dead) by L.Rs and another* reported in 2017(1) Mh.L.J. 934 and
- (iv) *Dattatray Narayan Aher Vs. Bhaskar Narayan Aher* reported in 2011(2) Civil L.J. 227.

8. Learned Advocate Shri Kothari has submitted that the judgments of the trial Court as well as First Appellant Court are perfectly legal and correct. The appellant/plaintiff is claiming ownership through Nagbhoomi Society.

9. Learned Advocate Shri Kothari has pointed out the judgment in R.C.S. No. 1666/1995. The said civil suit was filed by Nagbhoomi Co-operative Housing Society against the NIT and other defendants. In the said civil suit prayer was for declaration and injunction. It is contended by the Nagbhoomi Society that whole land in Khasra nos. 134/1 and 135/1 were not acquired and there was 2.46 acres land available. That land was sold by original owner-Kisan Jivtu Deshbhratar to the Nagbhoomi Society and one Milind Co-operative Housing Society. It is held by 4th Jt. Civil Judge Junior Division, Nagpur in the said suit that whole land in Khasra nos. 134/1 and 135/1 were acquired. Original owner-Kisan Jivtu Deshbhratar had received the

compensation and, therefore, Kisan Jivtu Deshbhratar had no any title to sale the said lands in favour of Nagbhoomi Society and Milind Co-operative Housing Society.

10. Learned Advocate Shri Kothari has submitted that the appellant/plaintiff is claiming title through Nagbhoomi Society. Title of the Nagbhoomi Society is already decided by the competent Court holding that Nagbhoomi Society is not the owner of the disputed lands and, therefore, the appellant/plaintiff cannot claim ownership on the basis of so-called Sale Deeds filed on record. Learned Advocate has pointed out the Sale Deeds filed by the appellant/plaintiff on record. The Sale Deeds are at Exh. 60 to 63. Those Sale Deeds do not show the exact location of the plots. The contents of the Sale Deed clearly show that plot nos. 1 to 4 were sold to the appellant/plaintiff, as shown in the maps attached with the Sale Deeds. But those maps were not filed alongwith the Sale Deeds by the appellant/plaintiff, therefore, exact location of the plots are not proved by the appellant/plaintiff. Learned Advocate has pointed out the letter issued by the NIT vide Exh. 116. This letter does not show that the plots of the appellant/plaintiff were regularized. Regularized plots were of Milind Co-operative Housing Society and, therefore, the appellant/plaintiff cannot claim that he is owner of plot nos. 1 to 4.

11. The judgment of trial Court is confirmed by the First Appellant Court. From the perusal of the judgment, it is clear that the appellant/plaintiff failed to prove his ownership of plot nos. 1 to 4 as stated by him. The original owner-Kisan Jivtu Deshbhratar received the compensation of the acquired land. He had no any title to sale the said lands in favour of Nagbhoomi Society. The appellant/plaintiff is claiming title by virtue of Sale Deeds executed by Secretary of Nagbhoomi Society. It is pertinent to note that no such maps, as stated in the affidavit, are filed alongwith Sale Deeds. The plaintiff cannot claim the title because the vendor itself had no any title to sale the plots to the plaintiff.

12. The civil suit filed by Nagbhoomi Society vide R.C.S. No. 1666/1995 was dismissed by 4th Jt. Civil Judge Junior Division, Nagpur. In R.C.S. No. 1666/1995, Nagbhoomi Society prayed for declaration of ownership and injunction. That suit came to be decided. Till date, that judgment is not reversed. When the vendor of the plaintiff had no any title to sale the plots, then appellant/plaintiff cannot claim title by virtue of Sale Deeds executed by his vendor. The appellant/plaintiff not examined the vendor. Original owner-Kisan Jivtu Deshbhratar was also not examined. Secretary of Housing Society who executed the Sale Deed was also not examined. The appellant/plaintiff cannot claim the title by saying that only 10.04 acres land, out of land in Khasra no. 134/1 was acquired and handed over to MHADA. The appellant/plaintiff cannot

claim title only on that basis. Letter (Exh. 103) shows that entire land area 26.29 acres from Khasra nos. 131, 133 and 134/1, was given to MHADA for lease for 30 years. There is no dispute that MHADA has prepared lay out plan for the construction of houses for specific income groups. That map is approved by the NIT.

13. The plaintiff has to stand on his own leg. He has to prove his case. The plaintiff has to prove his ownership. He cannot claim that the defendants are in excess possession of the area granted to them. The plaintiff has failed to establish his ownership by virtue of the Sale Deeds executed by Secretary of Nagbhoomi Society. Nagbhoomi Society itself failed to prove its ownership. The suit filed by Nagbhoomi Society came to be dismissed. That suit was for declaration of ownership and injunction. It is clear from the copy of judgment in R.C.S. No. 1666/1995 that the contention of Nagbhoomi Society for claiming ownership and possession was dismissed by 4th Jt. Civil Judge Junior Division, Nagpur. Till date, that judgment is not reversed. Vendor of the plaintiff had no any title to sale the plots to plaintiff. Therefore, the plaintiff cannot claim ownership. The appeal is devoid of any merit.

14. In that view of the matter, no any substantial question of law arises. Hence, the Second Appeal is **dismissed** at the stage of admission with no order as to costs.

CIVIL APPLICATION (CAS) NO. 1547 OF 2018

In view of the disposal of the Second Appeal, this application praying for grant of injunction under Order 39 Rule 1 and 2 r/w. Sec. 151 of the Code of Civil Procedure does not survive. Accordingly, it is **disposed** of.

JUDGE

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