

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.8148 OF 2020
IN
SECOND APPEAL NO.814 OF 2006

VITTHAL SITARAM GORE, DECEASED, THROUGH LR BABASAHEB VITTHAL
GORE
VERSUS
THE SARPANCH AND ANOTHER

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Mr. S.S. Kulkarni, Advocate h/f Mr. S.D. Kulkarni, Advocate for the applicant
Mr. P.R. Nangare, Advocate for respondent Nos.1 and 2 in SA

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CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 03rd AUGUST, 2021.
PRONOUNCED ON : 06th SEPTEMBER, 2021.

ORDER :

1 Present application has been filed by the appellant-original plaintiff for issuing directions to the respondents or their agents, servants or claiming through them for not to change the nature of suit house No.276 admeasuring 140 x 100 sq.ft. situated in village Ralegan Therpal, Tq. Parner, Dist. Ahmednagar, till the decision of the Second Appeal and other consequential reliefs.

2 Heard learned Advocate Mr. S.S. Kulkarni holding for learned Advocate Mr. S.D. Kulkarni for the applicant and learned Advocate Mr. P.R. Nangare for respondent Nos.1 and 2.

3 It has been submitted on behalf of the applicant that the Second Appeal has been admitted by this Court by framing substantial questions of law. The respondents are now trying to change the nature of the suit property, taking advantage of the fact that the suit filed by the present appellant-applicant was dismissed and her appeal has also dismissed by the First Appellate Court. Tender has been issued and the respondents intend to construct shopping complex at the suit site. The respondents have started work and the action has been taken just to frustrate the claim of the applicant. It is stated that the respondents have not taken mandatory permission to make such kind of construction and, therefore, now, the *status quo* at the spot is required to be maintained.

4 Per contra, the learned Advocate appearing for the respondents submitted that the Courts below have held that the plaintiff-appellant has failed to prove the location of the property, which according to him, belongs to him. Now, by showing some other property, which is the property of the Grampanchayat, the applicant intends to stall the proceedings. Necessary permissions have been taken. In fact, the Grampanchayat by its resolution in

the meeting dated 31.08.2020 granted permission to Ralegan Gram Vikas Manch, to construct shopping complex in Grampanchayat property No.12, situated at Ralegan Therpal and property No.133 situated at Hakigatpur. The resolutions have been produced on record. Necessary permissions have been sought from Zilla Parishad. The appellant-applicant with intent to grab the property on the basis of some such entries, which he could not justify before the First Appellate Court as well as Trial Court, is coming with this application, it deserves to be rejected.

5 At the outset, it is to be noted that the present applicant-appellant had filed Regular Civil Suit No.336/1991 before Civil Judge Junior Division, Parner for declaration, perpetual injunction as well as mandatory injunction. He claimed that the suit property Grampanchayat House No.276 is his ancestral property. He used to pay house tax to the Grampanchayat, however, on 30.11.1991 the Grampanchayat passed illegal resolution and gave the suit site i.e. open plot to defendant No.2 for Rs.5,000/-. Defendant No.2 had started digging foundation in the suit site, at that time and, therefore, the suit was filed. The defendants resisted the claim of the plaintiff by filing written statement. The description of the property was changed and it is specific say that the name of the plaintiff to the said property was hallow. Both the Courts below have considered the evidence

led by both the parties and come to the conclusion that the plaintiff has failed to prove that suit property is his ancestral property. It is also held that the plaintiff has failed to prove that defendant No.1 has made illegal transaction on 30.11.1991 by giving the said property to defendant No.2 by receipt of Rs.5,000/-. It was also held that the plaintiff has failed to prove that defendant No.2 has made illegal construction on the suit property. Plaintiff is not possessing the suit property and, therefore, the suit was dismissed. If we consider the Judgment, it is stated that the plaintiff has neither proved the title nor he is entitled to get any relief claimed. When the existence of the property itself is in question, then the question arises, as to whether such injunction can be granted, at this level. The documents showing the name of the present plaintiff-appellant to the property extract of the Grampanchayat to Gat No.276 has been produced, however, it is to be noted that the present respondents have also produced on record documents, to show that what they are erecting is on the plot numbered as 12 and 133. Necessary permissions have been taken for the construction. It is to be noted that even at the time when the suit was before the Trial Court, there was construction in the disputed site. Yet, mandatory injunction appears to have been prayed, which was not granted, in fact, suit in its entirety was dismissed. It has not been pointed out by the appellant-applicant, at this stage, that after the dismissal of the suit he had sought injunction or *status quo* in respect of the

suit property, till the decision of the appeal. When this Court admitted the Second Appeal by framing substantial questions of law, at that time also, no civil application was filed for injunction or in anticipation that the property should remained as it is, till the decision in Second Appeal. Under such circumstance, even if this Court had come to the conclusion that substantial questions of law are made out; yet, definitely, the facts and circumstances before this Court are not such that any interim protection as claimed should be granted to the plaintiff. Both the Courts below have consistently held that the existence of the property as described in the suit has not been proved. Therefore, the applicant is not entitled to get any such relief, as claimed. Application, therefore, stands rejected.

(Smt. Vibha Kankanwadi, J.)

Date : 06.09.2021.

Later on :

6 Learned Advocate for the applicant, after the pronouncement of the order, pressed for continuation of the interim protection. It is to be noted

that the applicant is the original plaintiff, whose suit came to be dismissed and thereafter his appeal has also been dismissed. However, in view of the subsequent developments, when the respondents issued tender, this Court had directed the parties to maintain *status quo*. The respondents intend to construct shopping complex and it was contended that it is at the suit site. It has been specifically noted by this Court that when the Second Appeal was admitted by this Court, even at that time, there was no application filed for injunction or in anticipation that the property should remain as it is, till the decision of the Second Appeal. It can be seen that when the suit was before the Trial Court itself, there was construction on the disputed site. Though mandatory injunction was prayed, it was refused. Basically, both the Courts below have gone on the point that the description of the property has not been proved. By order dated 11.12.2020, when interim order was passed, it was in these words, "In the meantime, the respondents are directed to maintain *status quo* in respect of the suit property exists as on the date of communication of this order." It can be seen that there was no reference to any documentary evidence produced by the present applicants, regarding what was the construction and what was the position at the suit site. Though a photo copy of a photo having pits appears to have been produced, however, it does not show the date, on which the photograph was taken. Under such circumstance, though this Court had earlier passed the order of *status quo*,

the details of the specific property have not been stated, now, it cannot be extended. Oral request is, therefore, rejected.

(Smt. Vibha Kankanwadi, J.)

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