

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

SECOND APPEAL NO.87 OF 2020

APPELLANT:- Shri Umakant @ Umesh S/o Laxman
(Ori. Defendant) Randive, Aged – 45, Occ:- Tailor,
(On R.A.) R/o Plot No.8, Binaki Mangalwari,
Indira Nagar, Nagpur.

... VERSUS ...

RESPONDENTS:- 1. Shri Ramkrishna S/o Balaji Randive
(Ori. Plaintiff) Aged – 60, Occ:- Retired,
(On R.A.) R/o Plot No.8, Binaki Mangalwari,
Indira Nagar, Nagpur.

2. Shri Chintaman S/o Narayanrao Yewalekar,
Aged about 60 Yrs., Occ:- Pvt. Business,
R/o Timki, Nagpur.

Shri C.N. Funde, Advocate for the Appellant.
Shri A.K. Choube, Advocate for Respondent No.1.

CORAM : S.M. MODAK, J.
DATE : 29th SEPTEMBER, 2021

ORAL JUDGMENT:-

Today, I have heard learned Advocate Shri Funde for the appellant/original defendant and learned Advocate Shri Choube for the respondent No.1/original plaintiff.

02] As per the order dated 31st August, 2021, this Court has directed the appellant to produce copies of evidence. Accordingly, they

were filed. Both the learned Advocates have advanced their arguments by referring to the said evidence.

03] According to learned Advocate for the appellant, as the first Appellate Court has reversed the judgment given by the trial Court, certainly there are certain substantial questions of law involved which require interference by this Court. In the memo of appeal in paragraph 10, those substantial questions of law are proposed. Whereas, according to respondent No.1, in fact, no substantial questions of law are involved. The respondent No.1 has also filed submission before admission.

04] After hearing both the learned Advocates at great length, this Court is inclined to admit the appeal on the following substantial question of law—

Substantial Question of Law	Finding
<i>Whether the first Appellate Court was right in reversing the findings given by the trial Court in respect of ownership of the plaintiff over suit property?</i>	In Affirmative

05] **Admit.** Both the parties have consented to decide the appeal on above substantial question of law. Considering the narrow controversy, it was taken up for final hearing.

FILING OF SUIT

06] It is true that there is a claim and rival claim on behalf of both the sides. The plaintiff has treated the defendant to be in possession of the suit structure as a permissive user. Whereas the defendant has claimed ownership over the suit structure. On one hand, the defendant has pleaded that the present plaintiff along with one Chintaman Yewalekar has agreed to purchase the land on which the structure is standing and the plaintiff could not prove his ownership of the structure and the land beneath the structure. So also, the defendant has pleaded that as the land was lying vacant, he has erected a structure on the said land. It is in the year 1994.

07] Both the parties have adduced oral as well as the documentary evidence. The plaintiff examined himself and one Chintaman Yewalekar. He is the person with whom the plaintiff has agreed to purchase the land on which the suit structure is standing. Whereas, the defendant examined himself and one Pandhari Namdeo Tinpatre. The said Pandhari is the neighbour of the defendant. He is aware about the construction being made by the defendant on plot No.8. Whereas, one Yadorao Natthuji Kanpate is examined by the defendant who claims to have taken a contract for erecting the structure of four rooms on plot No.8.

08] Both the sides have also relied upon various documents in the form of tax receipt, ration card, election commission identity card, electricity bills etc. The trial Court, after considering the above evidence, was pleased to observe that “plaintiff could not prove his ownership over the suit property”. The trial Court further observed that “the plaintiff could not prove his theory of giving temporary accommodation to the defendant”. These were the main issues. Other issues about suit being barred for non-rejoinder of necessary party was answered in the negative. The trial Court was pleased to dismiss the suit mainly because first two issues were answered against the plaintiff.

FIRST APPEAL

09] The plaintiff was successful when he filed the first appeal. The first Appellate Court has considered the documents filed by both the parties vis-a-vis their pleadings. On the basis of documentary evidence filed by the plaintiff, the first Appellate Court concluded that they are sufficient to presume about the ownership of the plaintiff over the suit property. After balancing the documentary evidence filed by the plaintiff on one hand and the documentary evidence filed by the defendant on the other hand, the first Appellate Court observed that the documentary evidence filed by the plaintiff is required to be given more weightage.

10] The first Appellate Court has also discussed about the contention of the defendant of a construction of a permanent structure on the land. The first Appellate Court observed that “the construction of house is one thing and the construction of a permanent nature is another thing. The evidence adduced by the defendant do suggest that it was a permanent construction”. However, the first Appellate Court concluded that “this evidence do not suggest that the defendant constructed the house which was there on the land originally”.

SECOND APPEAL

11] These findings are challenged by the defendant before this Court. There is emphasis on behalf of the defendant that the first Appellate Court has erred in interpreting the principles of law as to proof of ownership. According to learned Advocate for the defendant/appellant, the documents relied upon by the plaintiff are not the documents of title. According to him, the land on which the suit structure is standing was agreed to be purchased by the plaintiff along with one Chintaman Yewalekar. Those documents were not proved.

12] During the arguments, my attention is also invited to the operative order passed by the first Appellate Court. There is a direction to the defendant to handover the possession of the suit property admeasuring 500 sq. ft. Whereas, in the prayer clause of the plaint, the

plaintiff has described the suit property as land admeasuring 29×60 sq. ft. on which the house is constructed.

13] Learned Advocate for the appellant invited my attention to variances about the description of the suit property in the plaint. He also relied upon a judgment in the case of **A. Subramanian & Another Vs. P. Pannerselvam¹**. It says about necessity to ask for declaration of title and mere asking the relief of permanent injunction is not enough. The Hon'ble Supreme Court on the basis of facts of that case "held that it was not necessary to ask for declaration of title and simplicitor suit for injunction was held maintainable". In that matter there was a finding about title in previous litigation between the parties and hence those observations.

14] As against this, learned Advocate Shri Choube submitted that an enquiry as to title of the plaintiff needs to be conducted in the light of the pleadings in the plaint. According to him, he along with Chintaman Yewalekar has agreed to purchase the land admeasuring 5200 sq. ft. and out of which half of the portion of the land belongs to the plaintiff. He submitted that the half of the structure i.e. 500 sq. ft. is standing on the land belongs to the plaintiff. He has brought to my notice to the various documents filed by the plaintiff in support of the

¹ (2021) 3 SCC 675

ownership over the structure. According to him, the defendant who was a relative of the plaintiff was permitted to use the structure as he was taking education and he came to Nagpur for that purpose. He also submitted that the theory of permissive possession was not specifically denied by the defendant in the written statement.

15] He relied upon a judgment in the case of **Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones²**. It has been observed that the title of the licensor cannot be allowed to be disputed by the licensee in view of the provisions of Section 116 of the Indian Evidence Act, 1872. In paragraph 16 of the said judgment, the Hon'ble Supreme Court has reiterated the necessity of incorporating principle of estoppel in the Indian Evidence Act. It has been observed that "it is based upon healthy and salutary principle of law and justice that a tenant who could not have got possession but for the contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation".

CONCLUSION

16] On the above background, I have perused the findings given by the first Appellate Court. On going through them, this Court is of the opinion that the first Appellate Court has not committed any wrong in appreciating the evidence. In fact, the trial Court has misdirected

himself while appreciating the evidence. It is important to note that the suit property is the structure admeasuring 500 sq. ft. The plaintiff in the plaint as well as in his evidence has clarified about the nature of the suit property. Those references are as follows:-

a)	The suit house bears No.1732/8, wrongly typed as 1732/B. This is owned by the plaintiff and one Chintaman Yewalekar.
b)	Total area of the land is 5200 sq. ft.
c)	There is a division of the plot and of the house. Half of the land is in possession of the plaintiff.
d)	The plaintiff is the owner of the structure admeasuring 500 sq. ft.

17] The prayer Clause (i) of the plaint is reproduced below—

- i. *“to pass a decree for possession of the land which admeasures 29×60 in which house is constructed and the same is in possession of the defendant and be further pleased to put the present plaintiff in possession thereof.”*

18] As against this, in the written statement the defendant has pleaded that (a) he constructed kaccha house in the year 1994 on the suit plot and (b) pakka construction was done of two rooms admeasuring 12×12 i.e. 144 sq. ft.

19] From the above, it is clear that the plaintiff is claiming the possession of the structure of 500 sq. ft. He is not claiming the

possession of the land. As such, the Court is supposed to conduct enquiry about title of the plaintiff by keeping in mind what is the nature of the property. If it is structure, enquiry has to be conducted in respect of structure. If it could have been the land on which the structure is standing, the defendant ought to have been right in submitting that the plaintiff has not proved the ownership of the land on which the structure is standing.

20] The trial Court has not correctly appreciated the evidence. The first Appellate Court in paragraphs 10 and 11 has referred to the documents filed by the plaintiff and the defendant. While concluding about the ownership of the plaintiff over the suit structure, the first Appellate Court had laid emphasis on the tax receipt. It was rightly considered as a public document.

21] As against this, the documents of the defendant are also referred in paragraph 11. Some of them do suggest the address of the defendant as that of suit property. The first Appellate Court rightly observed that these documents even though do suggest about the possession of the suit structure, they do not suggest that the defendant is owner of the suit structure, as pleaded by him. The defendant has not produced single document to show that he has been recorded as owner of the suit structure. The local authority used to tax the structure

even though unauthorised. It is not there. The oral evidence of three witnesses including the defendants are not sufficient enough to non-suit the plaintiff. So, I don't find any perversity so far as appreciation of this evidence is concerned.

22] In paragraph 12, the first Appellate Court has also rightly appreciated the evidence adduced by the defendant. The defendant examined witnesses to show that he has made permanent construction. The first Appellate Court rightly observed that “this evidence do suggest carrying out permanent construction, but they do not suggest that the defendant has constructed the house originally”. I do not find any reason to treat this finding being perverse.

23] I do not think that the observations in the case of A. Subramanian (supra) will be helpful to the defendant. Herein the plaintiff has considered the defendant as the permissive user. The observations are given on the basis of the facts of that case. Even they do not support the proposition canvassed before this Court. In every case, declaration as to title is not required. It depends upon the facts of each case. If the Court feels that on the basis of the documents the Court can conclude about the ownership of the plaintiff over the suit property, the plaintiff cannot be non-suited merely because declaration of title has not been sought. Whereas, the Hon'ble Supreme Court in

the case of *Bansraj Laltaprasad Mishra (supra)* has observed that what will be effect if the licensee will deny the title of the licensor. Herein the case pleaded by the plaintiff is about permissive possession. It was without accepting any sum. The defendant though pleaded ownership, could not prove it. Hence, the principle laid down under Section 116 of the Evidence Act comes into picture.

AMBIGUITY ABOUT SUIT PROPERTY

24] If we read the operative order passed by the first Appellate Court, what we find is that the first Appellate Court has referred the suit property as 500 sq. ft. structure. Further description of the land on which the structure is standing and the location is also mentioned. If we see this description on one hand and the description of the suit property given in the relief clause of plaint on the other hand, we find that in the relief clause plaintiff has not mentioned the area of the structure. He has just mentioned the area of the land on which the structure is standing.

25] In the body of plaint, he has described the measurement of the structure as 500 sq. ft. In fact, while passing the operative order, it is clear that the first Appellate Court has taken utmost care in order to rule out the possibility of any difficulty, if the decree is put to execution. So, there is every reason to believe that while passing the

operative order, the first Appellate Court has considered the description given in the prayer clause of the plaint. So, I do not think that there is any ambiguity in the operative order.

26] In view of the above discussion, I answer the question in the affirmative. Hence, the appeal stands dismissed.

27] Pending application, if any, stands disposed of.

(S.M. MODAK, J.)

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