

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

SECOND APPEAL NO.584 OF 2018

Keshao S/o Arbaldeo Mahajan,
 aged 80 years, Occ. Cultivator,
 R/o Sonoli, Tah. Katol, District Nagpur ... Appellants
 (Dead). (Ori.Plaintiff)
 Legal representatives of deceased.

- (i) Milobai Wd/o Keshao Mahajan,
 aged about 80 years, Occ. Household,
 R/o Sonoli, Tah. Katol, Dist. Nagpur
- (ii) Raju Keshao Mahajan,
 Aged about 49 years, Occ. Service,
 R/o Sonoli, Tah. Katol, Dist. Nagpur.
- (iii) Vijay Keshao Mahajan,
 Aged about 45 years, Occ. Agriculturist,
 R/o Sonoli, Tah. Katol, Dist. Nagpur.
- (iv) Leelabai Surjandeo Panchbhai,
 Aged about 60 years, Occ. Household,
 R/o Kalambha, Tah. Katol, Dist.
 Nagpur.
- (v) Kamalbai Raghodeo Panchbhai,
 aged about 58 years, Occ. Household,
 R/o Kalambha, Tah. Katol, Dist.
 Nagpur.
- (vi) Sita Sheshraoji Sote,
 aged about 55 years, Occ. Household,
 R/o Rajna Tah. Pandhurna, Dist.
 Chhindwara.
- (vii) Indubai Dhanraj Shipal,
 aged about 52 years, Occ. Household,
 R/o Sonoli, Tah. Katol, Dist. Nagpur.

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1. State of Maharashtra through the

Collector, Nagpur.

2. The Naib Tahsildar (Yenya Circle), C/o
Tahsil Officer, Tah. Katol, District
Nagpur.
3. The Sub Divisional Engineer,
P.W.D. Katol, Tah. Katol, District
Nagpur.
4. The Executive Engineer, ... Respondents
P.W.D. Office, Civil Lines, Nagpur. (Ori. Defendants)

Shri P.R. Parsodkar, Advocate for Appellants.
Ms. Jaipurkar, AGP for the Respondents/State.

CORAM : ANIL S. KILOR, J.

DATED : 6th DECEMBER, 2021.

ORAL JUDGMENT :

This appeal is arising out of the concurrent findings recorded by both the Courts-below in the suit for permanent injunction in holding that the plaintiff has failed to prove that she is the owner of the suit property and is in actual possession of the same.

2. The brief facts of the present case are as follows: (The parties are referred to as per their status before the trial Court)

The plaintiff filed a suit for permanent injunction against the defendants alleging that without acquiring the suit property owned by the plaintiff, they have started construction of road over the suit property and thereby, they have encroached the land of the plaintiff.

3. The defendant Nos.1 to 4 resisted the suit filed by the plaintiff, by filing the written statement and denied the ownership of the plaintiff.

4. The learned 6th Joint Civil Judge Senior Division, Nagpur, after considering the oral as well as documentary evidence on record, dismissed the Regular Civil Suit No.1132 of 2004 vide judgment and decree dated 20.10.2012 which was the subject matter in Regular Civil Appeal No.1076 of 2012 before the District Judge-4, Nagpur. The said appeal came to be dismissed by impugned judgment and decree dated 19.08.2017, which is under challenge in the present appeal.

5. I have heard the learned counsel for the respective parties.

6. This Court on 16.09.2019 framed the following substantial questions of law:

“(i) Whether the Courts below were justified in holding that the appellant had failed to prove his title in the suit property and in disbelieving registered sale deed dated 06.08.1990 (Exh.33), on the basis that the exact area in ownership and possession of the appellant was not clear?

(ii) Whether the Courts below were justified in holding that the appellant had failed to prove his title and possession in the suit property, only on the basis that 7/12 extract was not enough to prove possession in the suit property?”

7. Shri Parsodkar, learned counsel for the appellants/original plaintiff, submits that the both the Courts-below have held against the plaintiff on the ground that the plaintiff has not given complete description of the property as required under Order 7 Rule 3 of the Code of Civil Procedure(CPC). Whereas, it is a settled law that, whenever there is a dispute about the area of land, the boundaries will prevail over.

8. He has placed heavy reliance on the judgment of the Hon'ble the Supreme Court of India, in the case of *Subhaga and others Vs. Shobha and others*¹.

9. It is submitted that in this matter without considering the boundaries of the cattle shed of the plaintiff on an erroneous consideration the suit came to be dismissed.

10. It is submitted that the defendants have completed 98% of work of construction of road over the suit property without acquiring the land of the plaintiff or paying compensation to him in lieu of acquisition.

11. Per contra, learned AGP strongly opposes the case of the plaintiff on the ground that except producing sale-deed for the purpose of showing the ownership over the suit property, the plaintiff has not adduced any sufficient evidence, which required to be adduced in such matters. She has further stated that, admittedly, there is no compliance under Order 7 Rule 3 of the CPC, and on both the counts that the plaintiff failed to prove his ownership over the suit property and also failed to give description of the suit property as required to be given under Order 7 Rule 3 of the CPC. Both the Courts-below have rightly denied a decree of permanent injunction to the plaintiff.

12. To consider the rival contentions of the parties, I have gone through the record and also perused the judgments and decree of both the Courts-below.

13. After perusal of the record, it is revealed that the findings recorded by the both the Courts-below that there is no compliance of Order 7 Rule 3 of the CPC as the plaintiff has failed to file any map showing the exact area sought to be encroached by the respondents and

¹ (2006) 5 SCC 466
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its boundaries. Thus, both the Courts-below have found the suit as defective.

14. As regards the contention of the plaintiff that in such matters boundaries will prevail over. There is no dispute about the law laid down in the case of *Subhaga and others* (supra). However, in the said matter the boundaries were fixed by commissioner and in that view of the said matter, the Court held that the boundaries will prevail over.

15. However, in the present matter, no boundaries were fixed or even no map was filed on record showing the boundaries. Therefore, in view of the facts involved in the present matter, judgment is distinguishable on facts and is no help to the appellant. In the circumstances, 7/12 extract or sale deed are not sufficient to prove possession of the plaintiffs over the suit land.

16. Thus, I do not find any mistake committed by the both the Courts-below in holding that the suit was defective as no description of property and no map was filed on record for showing boundaries.

17. In absence of any perversity in the concurrent findings of both the Courts-below pointed out by the learned counsel for the appellants in this matter and in view of the findings recorded above, I do not find any merit in the present appeal. Accordingly, I have answered the substantial questions of law in the above terms.

18. The appeal is **dismissed**.

19. No order as to costs.

[ANIL S. KILOR, J.]

Digitally signed by NIRANJAN
DOMAJI THAWRE
Signing Date: 18.12.2021
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