

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.174 OF 2016
WITH CA/2547/2016 IN SA/174/2016**

**RANU GANPATI CHAVAN
VERSUS
SAYYED ASHEF SAYYED BAPU AND ORS**

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Advocate for Appellant : Mr. V. H. Solanke
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**CORAM : R.M. JOSHI, J
DATE : APRIL 18, 2023**

PER COURT :

1. This Appeal is filed under Section 100 of the Code of Civil Procedure against dismissal of suit being R.C.S. No. 6/2008 by concurrent judgments passed by Trial Court and the First Appellate Court in R.C.A. No. 69/2012.

2. Learned Counsel for the Plaintiff states that both Courts below have committed error in not considering the evidence on record and in particular, evidence of the Cadestral Surveyor. He also drew attention of the Court to the pleadings in the plaint and findings recorded by the First Appellate Court to the extent that the Plaintiff is owner of the Block No. 41 and once the said finding is recorded, the suit

ought to have been decreed directing the Defendants to handover the possession thereof. In support of his submissions, he relied on order passed by this Court in Munjaji Ganpati More and Ors Vs. Bhujangrao Irba More, Second Appeal No. 2 of 2018.

3. Perusal of the plaint shows that suit was filed initially for injunction against the defendants with the statement that earlier Plaintiff was owner of Block No. 41. He states that he has sold 5 acres of land towards Northern side to Yogiraj and Defendant Nos. 1 to 3 purchased said 5 acres land from Yogiraj. He alleged that Defendant Nos. 1 to 4 are attempting to encroach upon 48R land in the possession of the Plaintiff. After filing of the suit, plaint was amended and it was averred that on 01.07.2003 Defendant Nos. 1 to 3 encroached upon the suit property and dispossessed Plaintiff therefrom. It is further alleged that Defendant Nos. 1 to 4 have committed encroachment to the extent of 15R land from Southern side. With these averments, prayer was made for recovery of possession of the suit properties from these defendants.

4. Defendants filed written statement denying the contentions of the Plaintiff. It is specifically averred that the Defendant Nos. 1 to 3 have purchased 5 acres land from Vinayak, Yogiraj and Bhimrao Mali and except for the land purchased, they are not in possession of any other part of the said property. It is further pleaded that out of entire land from Block No. 41, 2H 2R land was sold to Prashant and Priti Patil. It is specifically averred that after sale of the lands to different persons, there was no land available with the Plaintiff to possess.

5. Since the Plaintiff has filed suit for seeking possession of the suit land, it is essential for him to plead precise description of property which he claims himself to be in possession thereof. Perusal of the plaint however does not show that even after amendment of the suit, Plaintiff has specifically stated as to which defendant has encroached upon the precise portion land of the Plaintiff and dispossessed him therefrom. It is only vaguely stated in paragraph 8.B of the plaint that Defendant No. 4 has encroached upon 15R land towards southern side of Block No. 41. There is

however no particulars provided and description thereof is not given in the plaint. Admittedly even sketch of the suit land is also not placed on record. Undisputedly entire burden is on the Plaintiff to prove that after the sale of the properties, 48R land remained in his possession as owner thereof. There is absolutely no evidence on record to that effect to indicate that any such land in fact remained with him. Merely because the First Appellate Court has held that the Plaintiff was owner of the entire Block No. 41, he is not entitled to seek possession thereof because earlier he was owner of his entire piece of land. Perusal of the judgment of the First Appellate Court shows that there was specific dispute raised by the Defendants about the particular portion of the land which is claimed to be in possession of the Plaintiff.

6. As rightly observed by the First Appellate Court that the Order VII, Rule 3 of CPC requires Plaintiff to precisely describe the property in order to sufficiently identify the same. In the instant case, there is no identification of the property which is allegedly encroached upon by the Defendants herein. It

is pertinent to note that in the cross-examination of Plaintiff he has given admission to the effect that the suit land is not adjacent to the land of Defendant Nos. 1 to 4. If such admission is considered then there remains no room for doubt that for want of lands being adjoining land, question of encroachment upon the same does not arise. It is not the case of the Plaintiff that his property entered into upon by the Defendants forcibly and if it is so, there is no evidence led to that effect. Except for examining himself and leading evidence of Cadestral Surveyor, no evidence is placed on record in form of adjoining owner/cultivator to the suit land, to substantiate his contention about forceful eviction from the suit property. Needless to say that the evidence of Cadestral Surveyor could not be sufficient for deciding the case of the Plaintiff in absence of the proof of any land remained in possession of plaintiff or show encroachment on the part of defendants.

7. The concurrent finding of facts in absence of perversity, cannot be interfered into under Section 100 of CPC. For want of involvement of substantial question

of law, appeal stands dismissed with cost. Pending application is also disposed of, in view of disposal of appeal.

(R.M. JOSHI, J.)

Malani