

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 127 OF 2022

Sikandar Ramji Gaikwad & others

Appellants

Versus

Rozlin Michael Pareira

Respondent

Mr. M. B. Ubale, Advocate for the appellants.

Ms. Nandini Chittal, Advocate holding for Mr. P. P. Kothari, Advocate
for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 17th APRIL, 2023.

PER COURT :

1. Heard.

2. This appeal is preferred by the defendants in Regular Civil Suit No. 601/2012 which was dismissed and appeal against the said judgment and decree was reversed in Regular Civil Appeal No. 125/2019.

3. Learned counsel for the defendants states that the suit filed by the plaintiff for simplicitor injunction is not maintainable. According to him, once the plaintiff comes with a case that she is owner and defendants are obstructing her possession, the burden is

on the plaintiff firstly to show that the suit houses fall within the land owned by her. In this regard, it is submitted that the plaintiff has failed to prove the four boundaries of the property and in absence of any documentary evidence to show that the suit houses are forming part of the property of plaintiff, no injunction ought to have been granted and the suit was rightly dismissed by the Trial Court. According to him, the learned First Appellate Court has committed error in misconstruing the evidence on record and reversed the findings recorded by the Trial Court.

4. Learned counsel for the plaintiff, on the other hand, states that there is no dispute about the fact that the plaintiff is owner of Survey No. 93/3 admeasuring 0.78 R and that the suggestions made to the plaintiff in the cross examination are more than sufficient to hold that the suit houses are within the four boundaries of Survey No. 93/3. It is further submitted that plaintiff is a lady and any attempt by defendants to create new way would affect her right of privacy.

5. Plaintiff has filed suit with specific averment that she is owner of Survey No. 93/3 situated at Mauje Maliwda Shivar,

Ahmednagar. It is claimed that there are three tenaments admeasuring 12 x 12 ft. towards east side. The said tenaments are the suit properties. It is alleged by plaintiff that the defendants are the licensees on the suit property and that they are trying to create new way from the western side of the room which is the only way available to the plaintiff.

6. Defendants resisted the suit with a submission that the suit property is situated in Kedar Vasti which is situated at the eastern side of the suit property. It is further claimed that there already exists door towards western side of the said rooms occupied by the defendants. Defendants denied the contention of the plaintiff about the relationship of licensor and licensee.

7. The issue before the Trial Court was as to whether the defendants have any right to create any new way and thereby cause obstruction to the peaceful possession of the plaintiff over the suit property. There was no other issue involved including the status of the defendants as licensee or otherwise. There is no dispute about the fact that the plaintiff is the owner of the property Survey No. 93/3. The question arises as to whether the suit rooms/properties

fall within the four corners of Survey No. 93/3. There are specific suggestions made to the plaintiff in the cross examination that when plaintiff went for the first time to the suit property, the said vasti was there. It is candidly suggested that when the suit property was purchased since then, the defendants are staying in the property of plaintiff and inspite of the same no suit was filed against them for recovery of possession. Plaintiff has explained that it was not so done as there was no harassment caused to the plaintiff by defendants at that time. Thus, the evidence on record does not dispute the ownership of plaintiff over Survey No. 93/3 and also about the fact that the suit rooms/houses form part of Survey No. 93/3.

8. In such circumstances, when defendants have come out with a case that there already exists door towards western side of the suit rooms, the burden is on the defendants to prove said fact. There is no dispute about the fact that there is no evidence to show that any such door exists to the western side of these rooms. In such circumstances, the Trial Court ought to have decreed the suit. The error committed by the Trial Court is rightly corrected by the First Appellate Court by taking into consideration the pleadings of the

parties and material evidence available on record. In the circumstances, this Court finds no perversity in the findings recorded by the First Appellate Court in reversing the decree passed by the Trial Court. For want of involvement of any substantial question of law, the present appeal deserves to be dismissed and the same is accordingly dismissed. Parties to bear their own cost.

9. Pending civil application if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb