

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.390 OF 2020
WITH
CIVIL APPLICATION NO. 7516 OF 2020
IN
SECOND APPEAL NO. 390 OF 2020

Shrikrushna Pranami Mandir Trust Sansthan

... Appellant

Versus

The Chief Officer, Zilla Parishad, Dhule
and others

... Respondents

...

Mr.N.L. Chaudhari – Advocate for Appellant

Mr.N.N. Desale – Advocate for respondent no.1.

Mr.S.B. Pulkundwar – AGP for respondent/State.

....

CORAM : GAURI GODSE, J.

DATE : 21st February, 2023

PER COURT :

1. Heard. This second appeal is for challenging concurrent judgment and decree thereby dismissing the suit for simplicitor injunction filed by the appellant.
2. The appellant filed Regular Civil Suit No.278 of 2015 for simplicitor injunction restraining respondent nos.2, 3 and 4 from obstructing and/or from demolishing the property as described

in paragraph nos.4 and 5 of the Plaint. The Plaint describes the suit property being Shrikrushna Temple as described in paragraph no.4 of plaint and a Samadhi adjacent to the property. The plaint shows that there is a specific prayer for injunction restraining respondent nos.2 and 3 from obstructing the possession of the appellant and/or demolishing the Samadhi constructed adjoining to the property described in paragraph no.4 of the plaint. Second prayer is for restraining respondent no.4 from demolishing and/or destroying Samadhi situated as shown in paragraph no.5 of the plaint. Perusal of the plaint shows that the description of property is a 150 years old Shrikrushna Temple belonging to appellant at village Songir in city survey nos.257, 258 and 259 as described in paragraph no.4 and there is no specific description of any property in paragraph no.5 of the plaint.

3. Trial Court framed issue with respect to the rights of the appellant being in lawful possession over the suit property and whether construction made on the suit property was lawful construction. There was also a issue framed as to whether the respondents are illegally trying to demolish the construction on

the suit property. All the issues are answered in negative after appreciation of documentary as well as oral evidence on record. The Trial Court has recorded a specific finding that there was no record produced to show that the property as described in the plaint was any time handed over to the appellant/trust, and that, there was no source of possession or title produced in support of the contention of the appellant in respect of the suit property. It is not in dispute that no title document was produced on record in respect of the suit property for claiming any right by the appellant over the suit property. It was the contention of respondent no.3 – Gram Panchayat that there was encroachment on the property belonging to the Gram Panchayat, and therefore, notice under section 53 of the Maharashtra Village Panchayat Act was issued. With respect to the allegations made against respondent no.4 is concerned, the contentions of the plaintiff was not accepted for want of any supporting evidence. Learned trial Court thus after examining the evidence on record dismissed the suit filed by the appellant.

4. Being aggrieved by dismissal of the suit, the appellant preferred Regular Civil Appeal No.87 of 2019. By the judgment and

decree dated 12th October, 2020, the learned Adhoc District Judge-1, Dhule has dismissed the appeal. Hence, second appeal is filed.

5. Learned counsel for the appellant submitted that the construction made on the suit property is more than 150 years old and the Samadhi, which is in dispute, was also constructed almost 50 to 60 years back. He submitted that defendant no.4 had filed complaints and hence under the pressure of respondent no.4, respondent no.3 had issued notices of demolition. It was further submitted on behalf of the appellant that construction was carried out by the appellant after taking necessary permission from respondent no.3. He, therefore, submitted that, as the very existence of the temple as well as Samadhi being in existence for last many years and construction being carried out after taking permission is not considered by both the Courts, the second appeal needs to be admitted for examining the contentions of the appellant.
6. Learned counsel for respondent no.1 submitted that there was no question of granting any construction permission by respondent no.3. He submitted that respondent no.3 had no powers under

the Maharashtra Village Panchayat Act to grant any construction permission, and that, at the most no objection certificate is required from respondent no.3 for the purposes of any construction to be carried out. He thus supported the dismissal of the suit on the ground that the appellant had failed to show any legal right for seeking injunction as prayed by the appellant.

7. Respondent no.4 appears in person. He also submitted that the appellant has no legal right on the suit property and false allegations were made against respondent no.4. He further submitted that both the Courts have examined all the documents and evidence on record and have rightly refused to grant any injunction in favour of the appellant as appellant has failed to make out any legal right for seeking any such injunction.
8. I have considered the submissions made by rival parties. Perusal of the judgments passed by both the Courts show that all the records have been examined by both the Courts. Submission with respect to grant of construction permission is concerned, it is not in dispute that the construction permission has to be granted by the concerned planning authority. I have not been shown any provision of law under which the Gram Panchayat can grant

construction permission. Even otherwise copy of any construction permission is not produced on record. Hence, plain assertion that there was construction permission would not create any legal right in faovur of the appellant. It is further not in dispute that the appellant have not produced any title documents to show that they are having valid lawful possession over the suit property. The suit is simplicitor for injunction. Hence, decree for injunction can be granted provided there is a specific case made out about the lawful possession of the appellant over the suit property. Perusal of the judgments of both the Courts show that the appellant has failed to prove the allegations made against the respondents with respect to the obstruction made to the possession of the plaintiff. Even otherwise in absence of any lawful right over the property, there is no question of grant of injunction.

9. It is necessary to record that the pleadings of the plaintiff shows that the construction of Samadhi is shown adjacent to the property claimed to have been in lawful possession of the appellant. Thus, it is not even the case of the appellant that, the Samadhi is in the property of the appellant. Hence, there is no

question of grant of any injunction in respect of a property (Samadhi), which as per the pleadings of the appellant is not in the property claimed to be in lawful possession of the appellant. In such circumstances, all the submissions made on behalf of the appellant are based only on facts. Re-examination of the evidence is not permissible in second appeal. I do not find that second appeal involves any substantial question of law. Hence, second appeal is dismissed. Since the second appeal is dismissed, the pending civil application stands dismissed.

10. At this stage, learned counsel for the appellant seeks extension of ad-interim order of status-quo, which was granted on 10th November, 2020. Considering the nature of dispute, the order of status-quo, which was granted on 10th November, 2020 will continue for a period of four weeks.

[GAURI GODSE, J.]