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IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.13 OF 2021

SURESH BABANI
GAONKAR (DEC) THR. LRS.APPELLANTS

Versus

PARVATI@MANIK DEU
BHAMAIAKAR AND 11 ORS.RESPONDENTS

Mr Prashil Arolkar, Advocate under Legal Aid Scheme for the Appellants.

Mr Dhaval Zaveri, Advocate for Respondent Nos.10(a) to 10(c).

CORAM : M. S. SONAK, J.

DATE : 22nd JUNE 2023

ORAL ORDER :

1. Heard Mr Prashil Arolkar, who appears under the Legal Aid Scheme for the appellants and Mr Dhaval Zaveri for legal representatives of respondent no.10.

2. This Second Appeal is directed against the concurrent decrees dated 12.08.2015 and 27.02.2019 made by the Trial Court and the First Appellate Court dismissing the appellants' (plaintiffs') suit for a mandatory injunction to remove the encroachment allegedly carried out by the defendants in the plaintiffs' suit property.

3. Mr Arolkar submits that the plaintiffs had engaged the private Surveyor, who prepared a plan and also deposed in the matter. Instead of relying upon his evidence, he submits that the Trial Court chose to go by the evidence of the Court Commissioner, who was appointed. Mr Arolkar points out several defects in the Court Commissioner's report, including that the encroached structures were not shown in the plan. He, therefore, submits that the finding that there was no encroachment suffers from perversity and warrants interference.

4. Mr Arolkar proposed the following substantial question of law:

“(i) Whether in the facts and circumstances of the case and in the light of pleadings on record, the Lower Appellate Court was right in holding that the Appellants have failed to prove that the Respondents have carried out encroachments in the suit property?”

5. Mr Zaveri, learned Counsel for legal representatives of respondent no.10, defends the impugned decrees based on the reasoning reflected in the judgments based upon which the two decrees were made. He points out that the two Courts have evaluated the evidence on record, and the concurrent findings of fact suffer from no perversity. He points out that during the course of evidence, Commissioner's report was not seriously challenged even though the Court Commissioner was examined in the matter. Mr Zaveri submits that this is entirely a matter of evaluation of evidence involving no substantial question of law.

6. The rival contentions now fall for my determination.

7. This matter turns entirely on appreciation and evaluation of the evidence on record. No perversity is demonstrated either in the approach or in the concurrent findings recorded by the two Courts. Accordingly, the substantial question of law as proposed does not arise in this appeal.

8. The petitioner's private Surveyor/witness was unsure about his deposition. Besides, he admitted that he prepared the plan at his office without taking any measurements. Accordingly, no fault can be found in the two Courts in referring to the Court Commissioner's plan and report.

9. The Court Commissioner in this case was examined as a witness. In the course of his cross-examination, there was no serious challenge to the report or the plan prepared. No proper suggestions were put and, in any case, nothing was elicited from this witness to demolish his report and the consequent plan.

10. As noted earlier, this is a dispute on facts and the two Courts, on evaluating the evidence, have returned a finding that no case of encroachment was made out. The evidence on record backs the finding.

11. Accordingly, for all the above reasons, this appeal is dismissed. There shall be no order for costs.

12. This Court records the appreciation for the efforts put in by Mr Prashil Arolkar. The Goa State Legal Services Authority must ensure that his fees following the rules are duly paid. The fees are in addition to the gratitude the Court expresses to him for his time and efforts.

M. S. SONAK, J.

NITI K
HALDANKAR

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