

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 482 OF 2017****ALONGWITH****CIVIL APPLICATION NO. 878 OF 2017****IN****SECOND APPEAL NO. 482 OF 2017****Sanjay Yashwant Kadam & Ors.****..... Appellants****VERSUS****Dattaram Laxman More****Since deceased through his legal heirs****Laxmi Dattaram More & Ors.****..... Respondents**

Mr.Shankar Marathe for the Appellants.

CORAM: RAJESH S. PATIL, J.**DATE : 29th NOVEMBER, 2023****P.C. :-**

This second appeal is filed challenges the concurrent findings recorded by the District Court and by the Civil Judge, Junior Division, Chiplun, thereby decreeing the suit for damages.

2. The appellants herein are the original defendants in the suit. The respondents are the legal heirs of the original plaintiff. The original plaintiff had filed a suit claiming to be the owner of the suit property pursuant to an Sale Deed dated 9th March, 1992 from the erstwhile owner Mr.Mahadev Gangadhar Sane. According to the plaintiff, the

defendants had cut four 'Shivan' trees from the land of the plaintiff. Hence, the plaintiff's wife lodged a complaint with the Forest Department pursuant to which the Forest Department held an enquiry. Pursuant to which the statements of the parties were recorded. The plaintiff also made a complaint with the Tahsildar. However, the Tahsildar by letter dated 21st September, 2001 directed the plaintiff to approach the Civil Court. The plaintiff thereafter issued a notice to the defendants on 17th December, 2001 and shortly thereafter filed a suit for damages on the allegations that the defendants have cut four 'Shivan' trees from plaintiff's land, and claimed an amount of Rs.30,000/- along with interest at the rate of 15% per annum till realization.

3. The defendants appeared in the suit and filed their written statements denying the averments made by the plaintiff and further the defendants mentioned about the suit being R.C.S.No. 55 of 1994 filed by the defendants against the plaintiff. The defendants stated that there is no cause of action to file the present suit.

4. The plaintiff led his evidence by entering into the witness box.

The defendants' advocate cross examined the plaintiff. However, the defendants did not enter the witness box to lead evidence.

5. The Trial Court after hearing the parties, decreed the suit by its judgment and order dated 2 May, 2009 thereby directing the defendants to pay a sum of Rs.10,000/- to the plaintiff along with interest at the rate of 6% per annum from the date of filing of the suit till realization.

6. The defendants preferred an appeal before the District Court being Civil Appeal No. 51 of 2009. The District Court after hearing the parties by its judgment and order dated 28 June, 2016 dismissed the appeal of the original defendants, thereby confirming the findings of Trial Court.

7. Being aggrieved by the Judgment and order passed by both the Courts, the present second appeal has been filed by the original defendants.

8. The learned counsel for the appellants submitted that the appellants had not cut any trees and the Courts have arrived at the

findings without there being any document or evidence on record. He further submitted that as regards to the quantum for damages suffered, there is no assessment. He submitted that hence, the Second Appeal be admitted and there should be stay to the implementation of the impugned Judgment and Order.

9. It is a matter of record that the defendants did not enter the witness box to prove their case. In fact, the plaintiff was cross examined by the defendants' advocate and the suggestions were put to him in the cross examination that :-

(i) The trees which were cut, were in the possession of the plaintiff?

Ans :- The plaintiff had denied the possession.

(ii) The defendant is not related with the cut trees ?

Ans :- The plaintiff had denied the suggestion.

(iii) A question was put to the PW No.2 (Ms.Laxmi More) that the trees which are cut, are lying in the suit property ?

Ans :- She has denied the suggestion.

(iv) 'Shivan' trees were fallen in the storm.

Ans :- She has denied the suggestion.

(v) It was suggested that the 'Shivan' trees are falling in the land of the defendants but due to the obstruction of the plaintiff, the defendants have sustained loss ?

Ans :- It was denied.

10. All these questions clearly indicate that the 'Shivan' trees were in the suit property and they were cut down by the defendants.

11. It is a matter of record that the defendants had filed a suit being R.C.S.No. 55 of 1994 against the plaintiff and the erstwhile owner for a declaration that he has become the owner of the suit land, by adverse possession and also further for a declaration that the sale deed dated 9 March, 1992 is void. The said suit of the defendants was dismissed by order dated 19 December, 2003. This fact itself proves that the defendants have no concern with the title of the suit property and the 'Shivan' trees were infact standing in the suit property and they were cut off by the defendants.

12. The plaintiffs had demanded compensation of Rs.30,000/- for

cutting four 'Shivan' trees. The Trial Court has granted compensation of Rs.10,000/- along with interest at the rate of 6% per annum from the date of filing suit till realization. Hence, the Trial Court has granted compensation at the rate of Rs.2,500/- per 'Shivan' tree. This rate accordingly to me in at a lower rate. Hence, I conclude no fault can be found in the findings of Courts below on assessment.

13. Hence, in my view, no substantial question of law arises, both the Courts, i.e. Trial and District Court have rightly decreed the suit.

14. Second appeal is dismissed. Pending Civil Application also stands dismissed.

[RAJESH S. PATIL, J.]