



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 31 OF 2023
WITH
CIVIL APPLICATION NO. 6365 OF 2024
WITH
CIVIL APPLICATION NO. 6249 OF 2023

Prakash s/o Pandurang Palodkar
Age : 41 Years, Occupation-Agriculturist;
R/o Purna, Tahsil Purna, District Parbhani. ... APPELLANT

VERSUS

1. Subhadrabai w/o Balaji Kadam
Age : 71 Years, Occupation-Agriculturist;
R/o Purna, Tahsil Purna, District Parbhani.
2. Prayagbai w/o Kishanrao Kadam
Age : 66 Years, Occupation-Agriculturist;
R/o Purna, Tahsil Purna, District Parbhani.
3. Padminibai w/o Prakash Kadam (Dead)
through L.Rs.
- 3-A. Satyashila w/o Balasaheb Siraskar
Age : 62 Years, Occupation – Household;
R/o Jogeshwari, Dadar, Mumbai, At present
R/o Purna, Tahsil Purna, District Parbhani. ... RESPONDENTS

WITH
APPEAL FROM ORDER NO. 32 OF 2023
WITH
CIVIL APPLICATION NO. 6248 OF 2023

Prakash s/o Pandurang Palodkar
Age : 41 Years, Occupation-Agriculturist;
R/o Purna, Tahsil Purna, District Parbhani. ... APPELLANT

VERSUS

1. Subhadrabai w/o Balaji Kadam
Age : 71 Years, Occupation-Agriculturist;
R/o Purna, Tahsil Purna, District Parbhani.
2. Prayagbai w/o Kishanrao Kadam
Age : 66 Years, Occupation-Agriculturist;
R/o Purna, Tahsil Purna, District Parbhani.
3. Padminibai w/o Prakash Kadam (Dead)
through L.Rs.
- 3-A. Satyashila w/o Balasaheb Siraskar
Age : 62 Years, Occupation – Household;
R/o Jogeshwari, Dadar, Mumbai, At present
R/o Purna, Tahsil Purna, District Parbhani.

... RESPONDENTS

Mr. Mahesh V. Ghatge, Advocate for Appellant in both the Appeals.

Mr. Mahesh P. Kale, Advocate for Respondent Nos.1, 2 & 3-A in both the Appeals.

Mr. Jayant R. Patil, Advocate for Respondent Nos.4 & 5 in Civil Application No. 6365/2024 in Appeal from Order No. 31/2023.

CORAM : SANDIPKUMAR C. MORE, J.
JUDGMENT RESERVED ON : OCTOBER 10, 2024.
JUDGMENT PRONOUNCED ON: DECEMBER 11, 2024.

COMMON JUDGMENT

. Both the Appeals are filed against the Judgment and order dated 27/2/2023 passed by the learned District Judge-3, Parbhani, whereby Regular Civil Appeal Nos.95/2019 and 96/2019 are decided under common Judgment.

The Appeal from Order No. 31/2023 is filed by the Appellant/Prakash Pandurang Palodkar, challenging the order of remand of his Regular Civil Suit No. 50/2012, whereas Appeal from Order No. 32/2023 filed by the same person Prakash Palodkar i.e. Original Defendant in Regular Civil Suit No. 142/2011 filed by the present Respondents, to challenge remand of the said Regular Civil Suit No. 142/2011 under the Judgment in Regular Civil Appeal No. 96/2019.

2. To avoid ambiguity, the Appellant is referred by his name as Prakash and the Respondents are referred as Subhadrabai and others.

3. Brief facts leading to these Appeals are as under :

The Appellant/Prakash has filed Regular Civil Suit No. 50/2012 for perpetual injunction against Subhadrabai and others for not to disturb his possession over the suit lands, *viz* – land bearing Survey No.141/1 (admeasuring 68 R.), Survey No.141/2 (admeasuring 68 R.) and Survey No.141/3 (admeasuring 69 R.) total admeasuring 02 H. 05 R. situated at village Purna. As against this, Respondents Subhadrabai and others have also filed Regular Civil Suit No. 142/2011 for perpetual injunction against Prakash for not to disturb their possession over the land Survey No.141/4,

admeasuring 5 Acres 6 Gunthas out of the total area of 7 Acres 6 Gunthas situated at village Purna itself.

The learned trial court i.e. Civil Judge Junior Division, Purna, vide Judgment and decree dated 22/10/2019 dismissed the suit of Subhadrabai and others, whereas the same trial court, under the Judgment and decree dated 22/10/2019, decreed the suit of Prakash by declaring him as owner of lands Survey Nos.141/1, 141/2 and 141/3 total admeasuring 2 H. 05 R. The learned trial court also restrained Subhadrabai and others from disturbing his peaceful possession over the aforesaid lands.

Thereafter, Subhadrabai and others preferred Regular Civil Appeal No. 95/2019 for challenging the Judgment and decree in Regular Civil Suit No.50/2012, whereby injunction is granted against them and also Regular Civil Appeal No.96/2019 for setting aside dismissal order of their own suit bearing Regular Civil Suit No. 142/2011.

The learned appellate court under common Judgment dated 27/2/2023, which is impugned in these Appeals, set aside both the Judgments and decrees in the aforesaid civil suits and remanded both the matters back to the learned trial court for fresh trial with liberty to the parties to adduce

evidence in respect of location of collapsed old Purna-Hatta Bridge/Road and the location of new Bridge constructed again.

4. Feeling aggrieved with the aforesaid order of remand, Appellant/Prakash has filed both these Appeals.

5. The learned Counsel for Appellant/Prakash vehemently argued that the learned appellate court has definitely erred in remanding the matters back to the learned trial court for fresh trial and to ascertain the location of old and new Bridge/Road from Purna to Hatta. According to him, the said Bridge/Road was constructed on the same place before it was washed out due to heavy rain, and therefore, the land of Prakash which was upto that bridge from western side needs to be protected. He pointed out that the Respondents/Subhadrabai and others failed to establish the existence of their land Survey No.141/4. He pointed out that the learned trial court, by referring the communication dated 23/10/2018 issued by the Sub Divisional Engineer, Public Works Department, Purna, has specifically observed that the new Purna-Hatta Bridge/Road was constructed on the same place, and therefore, the learned appellate court could have decided the controversy on the available material itself. Thus, shortly, he submitted that there was absolutely no necessity of remanding the matters back. He further pointed out that two

issues suggested by the learned appellate court are also not required in the light of clear evidence on record. In support, he relied on the following Judgments :

1. The Judgment passed by this Court in the case of Vimalbai Gangaram Shingade V/s Bhagirtibai Rakhmaji Wayse, 2024(2) Bom.C.R. 469;
2. The Judgment passed by this Court in the case of Barku Pundlik Patil V/s Subhash Govindrao Pagare and Others, 2023(1) Mh.L.J. 722; and
3. The Judgment passed by the Division Bench of this Court in the Case of Sirajudheen V/s Zeenath and Others, 2023(2) MLJ 264.

6. On the contrary, learned Counsel for the Respondents/ Subadrabai and others supported the impugned Judgment and submitted that the Hon'ble High Court had in fact raised doubt about the location of old and new Bridge on Purna-Zero Phata Road on Bamola Nala and in Writ Petition No. 10899 of 2019 had passed the order dated 3/9/2019, whereby the trial court was directed to consider the issue of position of newly constructed Bridge on Bamola Nala with utmost seriousness and in the light of the oral and documentary evidence, without being influenced by any of the observations set out in the Judgment dated 26/6/2019 passed by the learned appellate court.

7. It is the opinion of the learned appellate court that the learned

trial court, despite such direction, did not deal with the said issue seriously and in casual manner observed that western side boundary of the lands belonging to the Appellant/Prakash was upto the said Bridge, which was reconstructed on the same place. He further pointed out that the new Bridge/Road was in fact constructed on altogether different place and the old Bridge/Road was in fact towards the eastern side of land of Subhadrabai and others and newly constructed Bridge/Road was constructed towards western side of their land, and therefore, the location of newly constructed Bridge/Road is of utmost importance and by remanding the matters back and after adducing evidence on this aspect, the true position would definitely come on record, which will be helpful to decide the main controversy.

8. The learned Counsel for Appellant/Prakash also placed reliance on the order passed by this Court in Writ Petition No. 4979 of 2018 on 1/8/2018, whereby this Court had directed the Taluka Inspector of Land Records to measure the lands of both the rival parties and to prepare map accordingly. The learned Counsel for the Respondents/Subhadrabai and others, therefore, relied on the copy of the said map, wherein the locations of old Bridge/Road and new Bridge/Road are shown and certain part of land of Subhadrabai and others is also located in between those locations. As such, he prayed for dismissal of both the Appeals.

9. Heard rival submissions. Also perused the documents on record.
10. It is significant to note that the Appellant/Prakash has claimed permanent injunction against the Respondents/Subhadrabai and others claiming that western boundary of his lands is upto Purna-Hatta Bridge/Road, which is constructed at the same place, where the old washed out bridge was in existence. As against this, Subhadrabai and others are claiming that their land Survey No.141/4 was earlier situated towards western side of old Purna-Hatta Bridge/Road, but since it was washed out and new Bridge/Road was constructed at different location, part of their land is now situated towards eastern side of such newly constructed Bridge/Road.
11. Admittedly, while dismissing the suit of Subhadrabai and others, the learned trial court has observed that the said newly constructed Bridge is situated on the same place, where the earlier bridge was in existence. However, it is equally important to note that under order dated 1/8/2018 passed by this Court in Writ Petition No.4979 of 2018, it is clearly observed that dispute between the parties was over the eastern and western boundaries of their respective lands. Under the said order, this Court had directed the Taluka Inspector of Land Records to measure the lands bearing Survey Nos.141/1, 141/2, 141/3 and 141/4 of the rival parties.

12. It appears that thereafter those lands were got measured and the map to that effect was also prepared. However, the learned trial court disbelieved the evidence of said Surveyor by observing that he did not measure the parts of Survey No. 141 by making separate demarcation by mentioning their respective areas.

13. It is specifically observed by the learned trial court in the Judgment of Regular Civil Suit No. 142/2011 that the measurement of suit properties was not conducted as per the order of this Court. However, the map prepared by the said Surveyor at Exhibit-148, if perused, indicates the locations of lands held by the rival parties. The copy of said map is produced on record by the Respondents/Subhadrabai and others along with their reply, which is also the part of record. On perusal of the said map, the location of old Purna-Hatta Bridge/Road is shown by red dotted line, which appears to be in between the fields of rival parties. It is not disputed that Prakash is owner of Survey Nos. 141/1, 141/2, 141/3 and Subhadrabai and others are owners of Survey No. 141/4. The 7/12 extracts of these lands were also with the Surveyor mentioning their respective areas, however, in the map the demarcation of these lands is not shown, but only the areas in possession of the rival parties out of Survey No.141 are shown.

14. It is the case of Respondents/Subhadrabai and others that since the location of old Bridge/Road was changed, their land which was at western side of old Bridge/Road came to the eastern side and newly constructed Bridge/Road. The map further indicates that newly constructed Bridge/Road appears to be shown by blue or green dotted line, and in the notes, it is mentioned that old Bridge/Road indicated by red dotted line was not found on the spot.

15. On the contrary, it is mentioned that the Bridge/Road from Purna to Hatta found in existence on the spot as situated towards western side of area of Subhadrabai and others. Thus, when two distinct locations are shown in respect of earlier Purna-Hatta Road and newly constructed Purna-Hatta Road in the map, then it has to be ascertained on the basis of fresh evidence itself. Merely by referring the letter from Public Works Department, which remained unproved, inference cannot be drawn that the newly constructed Purna-Hatta Bridge/Road was constructed on the same place where it was in existence earlier. Therefore, it appears that the learned trial court has not considered this aspect despite direction by this Court. Therefore, the order of remand for considering this particular aspect, which goes to the root of the controversy between the parties, is perfectly justified. Therefore, no perversity can be seen in the impugned Judgment. The Judgments relied upon by the

learned Counsel for Appellant, in the peculiar facts of this case, are definitely not applicable.

16. Further, it is the settled position that, if the dispute is over the boundary, then the measurement as directed by this Court in respect of separate areas of Survey Nos. 141/1, 141/2, 141/3 and 141/4 is required. It appears that the learned appellate court, by considering these aspects, has remanded the matters back to the learned trial court for deciding it afresh. Thus, no interference is required in the impugned Judgments and resultantly both the Appeals stand dismissed. The interim relief granted earlier, if any, shall stand vacated.

17. In view of dismissal of both the Appeals, pending Civil Application Nos. 6365/2024 and 6249/2023 in Appeal against Order No. 31/2023 and Civil Application No. 6248/2023 in Appeal against Order No. 32/2023 also stand disposed of.

(SANDIPKUMAR C. MORE, J.)

18. After pronouncement of Judgment, the learned Counsel for Appellant in both these Appeals requested to continue an interim relief

granted for further period of four weeks, since he intends to challenge the order passed today before the Hon'ble Apex Court.

19. Though the request is opposed by the learned Counsel for Respondents, but considering the fact that interim relief was in force during the pendency of these Appeals, it is extended further by the period of four weeks only.

20. The Record and Proceedings be sent back to the trial court immediately.

(SANDIPKUMAR C. MORE, J.)

vijaya