



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 90 OF 2021

1. Kumar Masaji Ghansawant

... Appellant

(Ori. Plaintiff No.4)

VERSUS

1. Motisingh Sajjansingh Munot,

2. The Municipal Council, Jintur,

3. Manoharappa Annappa Kolhe,

4. Ashok Gangadharrao Wadgaonkar,

5. Venkat Nandkumar Wadgaonkar (*dismissed*)
(*as per Court order dated 25.04.2019*)

... Respondents

(Resp. No.1 & 2 – Ori. Defendant Nos.1 & 2
& Resp. No.3 to 5 – Ori. Plaintiff Nos.1 to 3)

...

Mr. A.S. Deshmukh – Advocate for Appellant

Mr. Milind M. Patil (Beedkar) – Advocate for Respondent No.1

Mr. Manish P. Tripathi – Advocate for Respondent No.2

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 6th August, 2024

ORDER :

1. Heard rival submissions on admission. The present Second Appeal appears to be filed against the concurrent findings of both the learned Courts below.

2. **Facts giving rise to the present appeal are as under :**

The present appellant i.e. original plaintiff No.4 alongwith

present respondent Nos.3 to 5 being original plaintiff Nos.1 to 3 has filed Regular Civil Suit No. 88 of 2005 for perpetual as well as mandatory injunction claiming that, respondent No.1 i.e. defendant No.1 should not construct house on the D.P. road and also for removal of constructed house allegedly constructed on the place of reserved development plan road of Municipal Council, Jintur. The learned Civil Judge Junior Division, Jintur, Dist. Parbhani (*hereinafter referred to as “the learned Trial Court”*) vide judgment and decree dated 21.12.2011 dismissed the said suit. Then the plaintiffs had filed Regular Civil Appeal No.18 of 2012 against the said judgment and decree before the learned District Judge – 1, Parbhani i.e. (*hereinafter referred to as “the learned First Appellate Court”*). However, the learned First Appellate Court has also dismissed the appeal by confirming the original judgment and decree on 05.03.2018. Hence, this appeal.

3. Learned Counsel for appellant submits that, respondent No.1 has constructed house No.111 on the part of D.P. road as mentioned in development plan of 1982. He pointed out that, respondent No.2 i.e. Municipal Council, Jintur had in fact refused permission for construction of house No.111 to respondent No.1 on account of the aforesaid D.P. road passing through the said

place. However, in the year 2001 there was private agreement between respondent No.1 and respondent No.2, Municipal Council, Jintur whereby respondent No.1 had agreed to leave certain space for D.P. road and to construct on the remaining space for which respondent No.2, Municipal Council, Jintur had agreed. Learned Counsel for appellant therefore submits that, the aforesaid agreement was clearly illegal. Though he filed in all five substantial questions of law being involved in this matter but on going through the same it appears that, he has raised mainly a substantial question of law, whether private agreement for personal construction by imposing condition contrary to the D.P. plan can be executed between respondent No.1 and respondent No.2. He also pointed out certain evidence on record.

4. However, learned Counsel for respondent No.1 vehemently opposed the submissions made on behalf of appellant. According to him, the substantial question of law raised by the appellant is not at all involved since it has been established by way of reliable and satisfactory evidence that, the D.P. road is not passing through house No.111. He pointed out that, the learned Trial Court has rightly gone through the evidence on record and dismissed the suit, whereas the learned First Appellate Court also

confirmed the same. According to him, the agreement mentioned in the aforesaid substantial question of law has already been declared void and as per the City Survey Officer examined during the trial, no such D.P. road passes through house No.111. Thus, he prayed for dismissal of the appeal.

5. It is significant to note that, appellant/plaintiff No.4 is claiming that respondent No.1 has constructed his house on the D.P. road shown in the plan of 1982. According to the learned Counsel for appellant, respondent No.1 and respondent No.2 by entering into the private agreement had in fact admitted that house No.111 was affected by the said D.P. road shown in the 1982 plan. However, on going through the judgment of the learned Trial Court, it appears that after the agreement of 2001, respondent No.1 by leaving portion of 10 x 40 feet from house No.111 constructed remaining portion of 40 x 15 feet. However, during the trial of original suit it has been transpired the plaintiffs who filed the suit in representative capacity could not lead satisfactory evidence about such D.P. road passing through house No.111 of respondent No.1. On the contrary, it has been transpired that there was no road in existence affecting the area of house No.111. In fact P.W. No. 3 who is in-charge Assistant Director of

Town Planning, Parbhani has stated that, the D.P. road shown in the plan of 1982 was not affecting house No.111 and therefore, it was held that the plaintiffs failed to prove 30 feet area of house No.111 was reserved for D.P. road. Further, the agreement of 2001 between respondent No.1 and respondent No.2 in respect of construction permission by leaving some space towards such D.P. road, has already been held void specially by observing that, it was entered into on the wrong impression that D.P. road passes through the area of house No.111.

6. Thus, considering all these aspects the real substantial question of law appears to be involved in the present appeal is whether any D.P. road passes through house No.111 and that has been answered in negative by both the learned Courts below. Therefore, no substantial questions of law as raised by the learned Counsel for appellant are involved in this appeal. Thus, the Second Appeal is not having any substance and accordingly, it stands dismissed at admission stage.

7. The Second Appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE