



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 830 OF 2013
WITH
CIVIL APPLICATION NO. 12803 OF 2012
IN SA/830/2013

Sow. Mahananda w/o. Baburao Dhade,
Age 65 years, Occu. Household,
R/o. Majge Nagar, Lohar Galli, Latur,
Tq. and Dist. Latur.

...APPELLANT
(Ori. Plaintiff)

Versus

1. Shrihari s/o. Ramchandra Baldava,
Age 50 years, Occu. Business,
R/o. Central Hanuman Latur,
Tq. And Dist. Latur.
2. Shaikh Miyasaheb,
Died through L.Rs.
- 2A. Fathrubee w/o. Miyasaheb,
Age Major, Occu. Household,
- 2B. Anwar s/o. Miyasaheb,
Age Major, Occu. Nil,
- 2C. Khairun w/o. Rasul Pathan,
Age Major, Occu. Household,
3. Anwar s/o. Miyasaheb,
Age Major, Occu. Nil.
4. Fathrubee w/o. Miyasaheb,
Age Major, Occu. Household,

All 2A to 2C & 3 and 4 R/o. Majge
Nagar, Lohar Galli Latur,
Tq. And Dist. Latur.

...RESPONDENTS.
(Ori. Defendants)

Mr. G.L. Deshpande, Advocate for the appellant.

Mr. A.S. Deshpande, Advocate for respondent No. 2 to 4.

CORAM : KISHORE C. SANT, J.

Dated : July 10, 2024

PER COURT :-

1. None appears for respondent No. 1 in spite of service. Heard the parties at length.
2. This appeal arises out of the R.C.S. No. 455/1999 filed for declaration of ownership and possession by removing encroachment on the land purchased by the plaintiff. Plaintiff purchased land from C.T.S. No. 2153 from defendant No. 1 bearing plot admeasuring 116 Sq. Mt. Situated at Meghraj Nagar, Latur. The sale deed was executed on 13.5.1996 for an amount of Rs.50,000/-. It is the case of the plaintiff himself that while purchasing the plot, there was a hut of defendant Nos. 2 to 4 admeasuring 18 x 9 ft. Defendant No. 1 had assured that the said hut will be vacated as the same is occupied by his servants who are living in the said hut. The plaintiff further states that he was under bona-fide belief that the hut would be vacated and removed by the defendants. The plaintiff wanted to construct the house on the said property. He waited for some time and requested the defendants to vacate the hut on 17.7.1999. It is the case of the plaintiff that the defendants flatly refused to remove the encroachment and therefore, the suit was filed.
3. Defendant No. 1 i.e. vendor did not file written statement. Defendant Nos. 2 to 4 by filing written statement, denied the averments made in the plaint including the execution of sale deed, possession etc. and more specifically encroachment.
4. The parties lead the evidence. The learned Trial Judge i.e. Jt. Civil Judge, Junior Division, Latur by judgment and order dated 11.7.2006 dismissed the suit mainly on two counts, first, no encroachment is proved

and secondly, the suit is barred by limitation as the plaintiff failed to prove the exact date of cause of action. It is observed that the defendants were in occupation of the suit portion since last 20 years. The suit ought to have been brought within 12 years from the date of cause of action. The Court also considered the plaintiff's admission in the cross examination that while purchasing the suit plot, she had not seen the four boundaries of C.T.S. No. 2153 and the documents. She only relied upon the oral promise of the vendor.

5. Being aggrieved by the said judgment, the appellant filed Regular Civil Appeal No. 118/2006 in the District Court, Latur. The learned Ad-hoc District Judge -1 by judgment and order dated 4.8.2011 dismissed the appeal, confirming the judgment of the Trial Court. The appellate Court did not find any illegality or any reason to interfere with the judgment and order of the learned Trial Court by holding that the suit was beyond the limitation. It also held that the plaintiff failed to prove that two huts are situated on the part of C.T.S. No. 2151.

6. The learned advocate for the appellant vehemently argued this appeal. He submitted that defendant No. 1 was the owner of C.T.S. No. 2151. Plaintiff is the owner of C.T.S. No. 2152 which is situated on the north. He specifically submitted that while purchasing the plot, the vendor had assured that the defendant Nos. 2 to 4 will vacate the hut. The Courts below failed to appreciate this aspect. So far as limitation is concerned, the learned advocate submits that the plot was purchased in the year 1996. The plaintiff had filed suit in the year 1999 within three years from the date of purchase. He noticed the encroachment only at the time of purchase of the land. Thus, from the date of knowledge, the suit is within limitation and the

substantial question of law arises in this case is that whether the period of 12 years is to be reckoned from the date of knowledge from the date of actual encroachment. Ultimately, he submits that to ascertain the encroachment the matter needs to be remanded back to the Trial Court for fresh trial with direction to appoint a Commissioner for measurement of the land so that the exact encroachment can be ascertained.

7. The learned advocate for defendant Nos. 2 to 4/respondents support the judgments of the Courts below. He submits that there are concurrent findings of the fact. No substantial question of law is raised in the appeal. The appellant had purchased the plot with open knowledge. The appellant/original plaintiff failed to prove encroachment and also the date of alleged encroachment. Both the Courts below have rightly considered the point of limitation.

8. Thus, considering the arguments and the judgments, this Court does not find any error committed by the Trial Court as well as the Appellate Court. No substantial question of law is made out to call for interference at the hands of this Court or even requiring admission of the appeal. In view of the same, this Court comes to the conclusion that the appeal deserves to be dismissed and the same is hereby dismissed with no order as to costs. Pending civil applications, if any, stands disposed of in view of the dismissal of the second appeal.

(KISHORE C. SANT, J.)

ssc/