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SECOND APPEAL 424.24R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 424 OF 2024

Pandhari s/o. Govindrao Panchal,
Age 71 years, Occ. Carpenter,
R/o. Shivankhed (Kh.)
Tq. Ahmedpur, Dist. Latur.

.. APPELLANT

VERSUS

1. Gram Sevak, Gram Panchayat
Karyalaya, Village Shivankhed (Kh.)
Tq. Ahmedpur, Dist. Latur.
2. Sarpanch, Gram Panchayat,
Village Shivankhed (Kh.)
Tq. Ahmedpur, Dist. Latur.

.. RESPONDENTS.

...

Mr. G.D. Kale, Advocate for appellant.

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 9th DECEMBER, 2024.

ORDER :-

1. The appellant/original plaintiff impugns the judgment and decree dated 6.9.2024 passed by District Judge – 1 at Ahmedpur, in R.C.A. No. 6 of 2020, upholding the judgment and decree dated 5.2.2020 passed by Civil Judge Senior Division, Ahmedpur in R.C.S. No. 72 of 2016.

2. For the sake of convenience, parties are referred as per their original status in suit.

3. The appellant/plaintiff instituted a suit seeking relief of declaration of ownership and perpetual injunction against defendant Gram Panchayat in respect of suit house bearing Gram Panchayat House No. 50, situated at Village Shivankhed (Kh). According to plaintiff, the area of house No.50 is 60 feet (East-West) x 55 feet (South-North) including open space admeasuring 50 feet (East-West) and 44 feet (South-North). The defendant Gram Panchayat issued a notice dated 25.9.2013 directing plaintiff to remove the stone fencing and trying to dispossess him from the open space. Plaintiff further contends that certified copy of Gav Namuna No.8 of Gram Panchayat House No.50, placed at Exhibit 67, shows ownership and possession of plaintiff over suit property. Defendant No.1 illegally carried out re-assessment/revaluation of the properties on 28.3.2018 and reduced the area of house No. 50.

4. The defendant – Gram Panchayat refuted plaintiff's claim contending that plaintiff is the owner and possessor of the area admeasuring 44 feet x 34 feet, which includes the open space of 44 feet x 10 feet (total 1496 square feet). The main door of the plaintiff's house opens towards eastern side abutting to public road. Plaintiff is illegally claiming right over the open space beyond the constructed house. He has created obstruction to the public way. Consequently, plaintiff was served with the notice for removal of encroachment.

5. The trial court framed issues based on pleadings of the

parties. To substantiate his claim, plaintiff relied upon oral evidence of four witnesses and documentary evidence in the form of Gav Namuna No.8 (Exhibit 67), Gav Namuna No.8 (Exhibit 7 and 74) in respect of house No. 50. Per contra, defendants relied upon evidence of five witnesses in support of their claim.

6. On evaluation of evidence, trial court concluded that plaintiff failed to prove that he is owner and possessor of the area as claimed in the plaint. However, he was found to be owner of House No.50 admeasuring 44 feet x 24 feet and open space admeasuring 44 feet x 10 feet, at village Shivankhed (Kh.) Consequently, trial court partly decreed suit and restrained the defendants from disturbing and interfering in possession of the plaintiff over the suit house, as specified above.

7. Aggrieved plaintiff, approached the appellate court in Regular Civil Appeal No. 6 of 2020. Appellate Court concurred with the judgment and decree of trial court and dismissed the appeal vide impugned judgment and decree dated 6.9.2024.

8. Mr. G.D. Kale, learned advocate appearing on behalf of the appellant vehemently submits that Gav Namuna No.8 at Exhibit 67 of House N0.50 has been issued by defendant Gram Panchayat. Contents thereof are admitted by D.W, No.1 – Gram Sevak. Further, revaluation report/re-assessment extract dated 28.3.2018 prepared by defendant supports case of the plaintiff. The suit house is an ancestral property of plaintiff. His ownership and possession is established through cogent evidence of plaintiff's witnesses coupled with admission of D.W. No.1. However, courts below have erroneously discarded consistent and

reliable evidence and restricted relief only to the extent of area 44 feet x 24 feet and open space of 44 feet x 10 feet, by discarding claim for the balance area. He would, therefore, urge that findings recorded by courts below are perverse. Non-appreciation of evidence would constitute a substantial question of law for consideration in this Second Appeal.

9. Having considered submissions advanced and after going through the reasoning adopted by trial court and first appellate court, it can be gathered that plaintiff is claiming his ownership and possession over House No.50, admeasuring 60 feet x 55 feet alongwith adjacent open space admeasuring 50 feet x 44 feet, situated at village Shivankhed (Kh.). He has been served with notice dated 25.9.2013 by defendant No.1 directing removal of encroachment on open space. Consequently, plaintiff approached the civil court seeking relief of declaration and perpetual injunction in respect of suit property.

10. Since plaintiff claims that Gram Panchayat House No.50 is his ancestral property and claims ownership over the area specified in the plaint, it is for the plaintiff to establish the ownership and possession over that area, by adducing cogent and acceptable evidence. In his endeavor, plaintiff relied upon oral evidence of four witnesses who, by and large, supports the case of plaintiff stating that he is in possession of area as claimed. However, documentary evidence relied upon by plaintiff would be decisive as regards to the area within his ownership. Plaintiff relied upon 8A extract of the house property (Exhibit 7) issued by Gram Panchayat which shows the area of house admeasuring 44 feet x 24 feet and open space of 44 feet x 10 feet, (Total admeasuring 1498 square feet) This extract pertains to the year 2009-10. The plaintiff has further

placed his reliance on Gav Namuna No.8 (Exhibit 67), pertains to year 2017-18 but shows excess area of house No. 50 as claimed in plaint. No explanation is coming on record as to how the area of house property as recorded in the year 2009-10 has been increased in the year 2017-18. It is true that D.W. No.1 has accepted contents of Exhibit 67 to be true and correct, but subsequent entry in the Gram Panchayat record has to be based on some authentic document. Plaintiff cannot assume ownership on the basis of entry in Gav Namuna No.8, which is inconsistent with the old record of 2009-10. Pertinently, Gram Panchayat has later on carried correction in the record and restored the position in consonance with entry of 2009-2010 by invoking provisions of relevant Regulation. The extract of corrected area is placed at Exhibit 74.

11. In view of aforesaid legal and factual position, trial court has rightly concluded that plaintiff could prove his ownership over house No.50 to the extent of area 44 feet x 24 feet and open space of 44 feet x 10 feet. Eventually, partial decree of ownership and perpetual injunction has been granted. The appellate court concurred with the finding recorded by trial court.

12. Although learned advocate for appellant endeavors to contend that document at Exhibit 67 has been admitted by D.W. No.1, which depicts the area within ownership and possession of plaintiff as claimed, it is difficult to accept claim of plaintiff on solitary document. The oldest entry available on record is for the year 2009-2010, which depicts ownership of plaintiff over area admeasuring 44 feet x 24 feet with open space of 44 feet x 10 feet. There is no authentic record by which the area within ownership of plaintiff is enhanced as depicted in Exhibit 67.

13. Pertinently, lateron correction has been carried out in Gram Panchayat record to bring it in tune with the old record. Therefore, merely because at some point of time the area of plaintiff's house property alongwith open space was excessively shown without any basis, plaintiff can never assume ownership and title over that much property. It is trite that entries in the mutation record are for fiscal purpose and cannot be treated as document conferring title. Plaintiff was, therefore, under obligation to prove his case by adducing cogent evidence on the point of ownership and possession over the area, as claimed in the plaint. The both fact finding courts have concurrently held against plaintiff while partly decreeing his suit. As such, no case is made out to upset such findings. No substantial question arises for consideration. Consequently, second appeal stands summarily dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-