

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 53 OF 2022

WITH

INTERIM APPLICATION NO.400 OF 2022

Lokappa Sangappa Bagali

...Appellant.

Versus

Mahadevappa Ishwarappa Bagali And Ors. ...Respondents

....

Mr. Tejal Shrikant Ingale, for Appellant.

Mr. P. S. Pise, for Respondent No.1.

....

CORAM : SANDEEP V. MARNE, J.

DATED : 31 JANUARY 2024.

P.C. :

By this Appeal, Appellant challenges Judgment and Decree dated 18 February 2020 passed by District Judge, Sangli dismissing Regular Civil Appeal No.69 of 2018 and confirming decree dated 23 January 2018 passed by Civil Judge, Junior Division, Sangli in Regular Civil Suit No.50 of 2009.

2. Plaintiff filed RCS No.50 of 2009 for injunction in respect of land admeasuring 2 H 75 R. In the Suit, Defendant appeared and filed counter-claim contending that the Plaintiff was disturbing possession of

Defendants in respect of land in excess of 01 H 63 R. The Trial Court has proceeded to dismiss Plaintiff's suit and has allowed counter-claim filed by the Defendants injuncting Plaintiff from interfering with possession of Defendants in respect of land of the Defendants except area of 01 H. 63 R and encroached portion 60 ft. X 60 ft. belonging to the Plaintiff. The first Appellate Court confirmed the decree passed by the Trial Court.

3. I have heard Mr. Ingale, the learned counsel appearing for Appellant and Mr. Pise, the learned counsel appearing for Respondent Nos.1 to 9.

4. After having considered submissions canvassed by the learned counsel appearing for parties, it is seen that Plaintiff's claim for possession of land admeasuring 2 H. 75 R is premised on alleged partition which took place in the year 1965. However, admittedly in Revenue Record, Plaintiff's name was mutated in respect of area admeasuring 01 H. 63 R. He did not take any steps in respect of mutation of less area than the one allegedly allotted to him in the partition. For the first time in the year 2008, mutation entry No.2326 certified on 15 October 2008 by which the area of Plaintiff's land was increased from 01 H. 63 R to 02 H. 73 R. This was apparently done on account of dismissal of Second Appeal arising out of RCS No.40 of 1976 filed

by predecessor of Defendants for removal of encroachment of area admeasuring 60 ft. X 60 ft. by Plaintiff. Plaintiff thus, took advantage of dismissal of the Second Appeal arising out of RCS No.40 of 1976 and got the area of his land increased from 01 H. 63 R to 02 H. 73 R by effecting mutation entry No.2326 of 2008. The said mutation entry was immediately cancelled by the Sub-Divisional Officer by Order dated 02 May 2009 and said cancellation has been attained finality by the Order of Additional Collector. Thus, as on the date of filing of the Suit, the area reflected in respect of Plaintiff's land was only 01 H. 63 R. Baring that period from 15 October 2008 to 07 March 2009, the area of land in possession of Plaintiff was always shown as 01 H. 63 R.

5. Mr. Ingale has strenuously contended that RCS No.40 of 1976 filed by predecessor of Defendant for recovery of encroached area of land against Plaintiff came to be dismissed and decree in RCS No.40 of 1976 has attained finality. It is sought to be suggested by Mr. Ingale that the land in respect of which obstruction is caused by Defendants giving rise to cause of action for filing of RCS No.50 of 2009, is the same in respect of which RCS No.40 of 1976 was filed. I am unable to agree. Order of the Trial Court would indicate that Court Commissioner was appointed in RCS No. 40 of 1976,

who gave report that the measurement of encroached portion was only 60 ft. X 60 ft. Thus, it cannot be stated that RCS No.40 of 1976 was filed by predecessor of the Defendants in respect of area admeasuring 02 H. 75 R. The Trial Court has already protected Plaintiff's possession over the encroached area of 60 ft. X 60 ft. in addition to his own area of 01 H. 63 R while allowing the Defendants' counter-claim. It also appears that Plaintiff has given a specific admission during the cross-examination that land in his possession appears to be 04 Acre and 01 Gunta which more or less corresponds to area admeasuring 01 H. 63 R.

6. Considering overall conspectus of the case, I am of the view that no serious error can be traced in the concurrent findings of facts against Appellant. No substantial question of law is involved in the Appeal. Appeal is accordingly rejected. Since the Appeal is rejected nothing survives in the Interim Application and it is also disposed of.

Mr. Ingle would submit that observations made by Trial Court, First Appellate Court and by this Court, about possession of Plaintiff's land admeasuring 02 H. 75 R, would not come in the way of Plaintiff while claiming title in respect of entire land admeasuring 02 H. 75 R. Since the Plaintiff's Suit was only for injunction, involvement of issue of title any

observations made by the Trial Court, First Appellate Court or by this Court would not come in the way of Plaintiff while deciding any claim raised by the Plaintiff in respect of title.

SANDEEP V. MARNE, J.