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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 865 OF 2022
WITH
INTERIM APPLICATION NO. 30693 OF 2022**

Sadashiv Subhana Mhakave ... Appellants
(Since Decd through LRS)
Kamal Sadashiv Mhakave and Others

vs.

Joti Dadu More ... Respondents
(since deceased) through LRs
Parshuram Joti More and Others

Mr. Yuvraj Narvankar for the Appellants.

CORAM: GAURI GODSE, J.

RESERVED ON: 28th AUGUST 2024

PRONOUNCED ON: 24th OCTOBER 2024

ORDER:

1. This Second Appeal is preferred by the heirs and legal representatives of the deceased plaintiff to challenge the concurrent judgments and decrees dismissing their suit for injunction against the defendants restraining them from obstructing the plaintiff's possession.

The suit was initially filed for injunction; however, by way of amendment, the plaintiff claimed relief of possession. Both the courts refused to accept the plaintiff's title over the suit property, hence dismissed the suit.

2. Learned counsel for the appellants submits that there was no dispute on the plaintiff's title; hence, the courts should not have framed the issue of title. He submits that since the suit was based on the plaintiff's title and possession, the issue of title was not required to be dealt with by both courts. He submits that when there was no written statement disputing the plaintiff's title, the suit could not have been dismissed by framing an issue casting burden upon the plaintiff to prove the title.

3. To support his submissions, learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case of *Lallu Yeshwant Singh vs. Rao Jagdish Singh and Others*¹. He submits that the Hon'ble Apex Court held that in a suit simplicitor for injunction, the court is not required to deal with the plaintiff's title. He thus submits that in view of the legal principles settled by the Hon'ble Apex Court in

¹ 1967 SCC Online SC 327

the case of ***Lallu Yeshwant Singh***, the dismissal of the suit by framing the issue of title is not sustainable.

4. Learned counsel for the appellants referred to the trial court's finding in paragraph 4. He submits that the Court Commissioner's report produced at Exhibit 27 would indicate that the defendants had encroached upon the plaintiff's property. He submits that the Court Commissioner was examined to prove the map. He submits that the defendants led no evidence to rebut the Court Commissioner's evidence. He thus submits that there was no reason to disbelieve the plaintiff's case that the defendants had encroached upon the plaintiff's property.

5. Learned counsel for the appellants also relied upon the decision of the Apex Court in the case of ***Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRS and Others***². He submits that in view of the legal principles settled by the Apex Court in the case of ***Anathula Sudhakar*** when the matter in issue is simple and straightforward, which does not involve any question of facts and law relating to title, the Court need not venture to examine the plaintiff's title. Learned

² (2008) 4 SCC 594

counsel for the appellants thus submits that the Second Appeal would require consideration by this court as the aforesaid grounds raise substantial questions of law.

6. I have considered the submissions made on behalf of the appellants. A perusal of the impugned judgments indicates that defendant no.1, by filing a written statement and an additional written statement to the amended plaint, denied the plaintiff's title and the description of the suit property. According to defendant no.1, the plaintiff's predecessor had purchased the property in 1957, and the plaintiff's property was Gat no. 291/3. According to defendant no. 1, the plaintiff had vaguely described the suit property as Gat No. 291. Defendant no. 1 pleaded the description of all the adjacent properties and contented that Gat No. 291/1/B was situated on the west side of his land and the land belonging to the plaintiff and other co-sharers was situated beyond Gat No. 292/1/B. Defendant no. 1 thus contended that Gat No. 291 contains more than the area pleaded by the plaintiff, which clearly shows that the description of the suit property was incorrect.

7. To support defendant no. 1's title, the registered sale deed dated 3rd May 1974 was referred to show that the defendant nos. 1 to 14 and others had purchased 40.40 R out of Survey no. 291 totally admeasuring 3 H 81.2 R from the owner, Ramu Bala Yadav. Defendant no. 1 thus contended that the plaintiff was never the owner of the land adjacent to the land purchased by defendant nos. 1 to 14 and others. Defendant No. 1 also relied upon mutation entry to support his title and possession of the property as described by him in the written statement.

8. Though defendants nos. 2 and 3 failed to appear, and the suit proceeded against them ex-parte, and defendants nos. 4 and 5 failed to file their written statement, both the courts referred to and relied upon the pleadings of defendant no.1. The contentions raised by defendant no. 1 were on the facts and title that is also referable to rest of the defendants. Thus, the ground raised on behalf of the appellants in the Second Appeal that in the absence of any written statement by the rest of the respondents, there was no reason to examine the plaintiff's title has no substance.

9. The defendant no.1's pleadings are examined in detail by both the courts. Thus, based on the written statement filed by defendant no. 1, the issues were framed on the plaintiff's title, and both the courts have recorded concurrent findings that the plaintiff failed to prove his title over the suit property as pleaded in the plaint. The written statement filed by defendant no.1 was not restricted to any independent right of defendant no. 1's contention. Thus, even in the absence of a written statement by the rest of the defendants, it was necessary for the trial court to frame the issue on the plaintiff's title as serious doubt was raised on the plaintiff's title by exhaustive pleadings on the description of the suit property and documents of title relied upon by defendant no.1.

10. Thus, there is no substance in the argument raised on behalf of the appellants by relying upon the decisions of the Apex Court to contend that the issue of title did not arise in the present suit. The Court Commissioner's report relied upon by the learned counsel for the appellants is not required to be examined any further in view of the concurrent findings of facts recorded disbelieving the plaintiff's contention of ownership over the suit property. Both the courts

exhaustively examined the pleadings and evidence on record regarding the description and title of the suit property.

11. I do not find any reason to interfere in the conclusions recorded in the impugned judgments, disbelieving the plaintiff's claim of title over the suit property. Once the plaintiff's title over the suit property is not accepted, the plaintiff would not be entitled to seek any relief only based on the Court Commissioner's report. The appellants are relying upon the Court Commissioner's report in support of the plaintiff's prayer for possession after the removal of encroachment. Once the plaintiff fails to prove his title over the suit property, he would not be entitled to any prayer of possession of the encroached portion. Even otherwise, both courts have discussed the court commissioner's report in detail and held that it indicates that more area than the area purchased by the plaintiff's father is shown in his possession. Thus, after thoroughly examining the revenue record, the court commissioner's map and the oral evidence, both courts recorded findings on facts that the plaintiff failed to prove his ownership of the entire area of 713 square meters as claimed by him. Both the courts thus concluded that there was no record to indicate any encroachment

by the defendants as alleged by the plaintiff.

12. I do not find any illegality or perversity in the reasons recorded by both courts. In view of the concurrent findings of facts, the grounds argued on behalf of the appellants would not require consideration by this court as they do not raise any substantial question of law.

13. The second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

14. In view of the dismissal of the Second Appeal, Interim Application No. 30693 of 2023 is disposed of as infructuous.

[GAURI GODSE, J.]