

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 72 OF 2022****WITH****IA/881/2021 IN SA/72/2022**

Rajendra Kamlakar Gujar And Ors.

...Appellants

Versus

Sou. Sunita Ram Shete And Ors.

...Respondents

....

Mr. Jayydeep Suresh Deo, for Appellants / Applicants.**Mr. Vilas B. Tapkir**, for Respondents.

....

CORAM : SANDEEP V. MARNE, J.**DATED : 06 FEBRUARY 2024.****P.C. :**

By this Appeal the Appellants challenge Judgment and decree dated 17 January 2020 passed by the District Judge-2, Pune allowing Civil Appeal No.782 of 2016 filed by the Defendants and rejecting cross objection filed by the Appellants. The First Appellate Court has proceeded to dismiss the Special Civil Suit No.520 of 2014 instituted by Appellants by reversing the decree dated 04 August 2016 passed by the 5th Additional Judge, Small Causes Court and Civil Judg, Senior Division, Pune.

2. The dispute between the parties is about location of land admeasuring 41 R purchased by the Defendants. It is Plaintiff's case that the total land admeasuring 82 R, out of which land admeasuring 41 R on the eastern side of the land towards Nala was sold to the Defendants. According

to Plaintiffs, Defendants erroneously shifted the location of the land purchased by them towards eastern side and committed an encroachment on Plaintiffs' portion of the land. After sale of 41 R land out of total land admeasuring 82 R, what would ideally remain with Plaintiffs would be only area admeasuring 41 R. Admittedly Plaintiffs sold various portions of the land remaining their ownership from time to time by executing various sale deeds in favour of purchasers. Though details of some such sale transactions were placed on record, the First Appellate Court has accused the Plaintiffs for suppressing several other sale transactions. If all the sale transactions are taken into consideration it appears that total land sold by Plaintiffs sold to various purchasers is 45.50 R.

3. On the other hand, if land in respect of which layout is sanctioned in favour of Defendants is taken into consideration it appears that the layout or the total area of land sold by Defendants does not exceed the area of 41 R.

4. Mr. Deo, the learned counsel appearing for Appellants would submit that Plaintiffs are the original owners of the land and therefore if after carving out of land admeasuring 41 R for Defendants, any excess portion is detected, the same would obviously fall in the ownership of Plaintiffs and not of the Defendants. He has submitted that the boundaries indicated in the sale deed executed in favour of Defendants on 14 June 1988 would clearly indicate existence of Nala to eastern side of the land sold the Defendants.

5. In my view, it has been conclusively proved that the Plaintiffs have actually sold more land than what would have remained in his ownership after execution of sale deed dated 14 June 1980. On the other

hand what is actually sold by the Defendants is not more than the area admeasuring 41 R purchased by them. There appears to be some unusable land on the eastern side, possibly affected by Nala. What Plaintiff expects is that Defendants must start measuring their land from the edge of Nala by taking into consideration even that unusable land. However, it is undisputed position that after executing of sale deed dated 14 June 1988 and after delivery of possession immediately thereafter, Plaintiff did not object to Defendants taking possession of the land by excluding the unusable portion of the land of eastern side affected by Nala. For the first time in the year 2014, and after selling all his land, the Plaintiffs came up fantastic idea of locating some additional portion in the land in addition to what is already sold by them only to Defendants and various other plot purchasers. In my view, since Plaintiffs never objected to Defendants actually possessing the land for 26 long years from 1988 to 2014, they could not have filed a suit complaining encroachment by the Defendants. It has been conclusively proved that the Defendants do not possess land in excess of area of 41 R. It is also a matter of fact that as on the date of filing of the suit, Plaintiffs did not remain owner in respect of even an inch of land out of total area admeasuring 82 R after deducting area of 41 R sold to the Defendants. No case is made out for interference in the Order of the First Appellate Court. No substantial question of law involved in the Appeal. Appeal accordingly stands rejected. Since Appeal is disposed of, nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.

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