



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.806 OF 2011

Sandeep Manohar Chavan ... Appellant.

Versus

Smt. Suvarna Sudhakar Pawaskar ... Respondent.

Mr. R.D. Suryawanshi, for the Appellant.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 30, 2024

P. C.:

1. Being dissatisfied by the judgment dated 22nd June, 2011 passed by the First Appellate Court confirming the findings of the trial Court dismissing the suit filed for recovery of possession of the suit property, the original-plaintiff is before this Court.

2. Regular Civil Suit No.174 of 2006 was filed seeking relief of possession and in the alternative relief of injunction against the Defendant no.1. The suit property is described as residential house, which is temporary shed constructed in south-east corner of the land bearing City Survey No.76-A, 1/90 Plot No.7. It was the case of the plaintiff that by a registered sale deed of 30th December,

2004, the plaintiff had purchased the property being plot No.7 from the defendant nos.2 to 6. It was the case in the plaint that at the time of execution of sale deed, the plaintiff was informed that the defendant no.1 was residing in the shed with the permission of the defendant no.2 as the gratuitous occupier. It was pleaded that after purchase of Plot No.7, the plaintiff become aware of RCS No.58 of 2002 filed by the defendant No.1 against the defendant nos.2 to 6. It was the case of the plaintiff that the entire plot No.7 having been purchased and the defendant no.1 being gratuitous occupier, he is entitled to the possession of the suit property.

3. The suit came to be resisted by the defendant no.1 stating that the suit has been filed after the decision in Regular Civil Suit No.58 of 2002, as against which Regular Civil Appeal is pending. According to the defendant no.1, she had constructed a shed on the portion of the land which was agreed to be sold to her by the defendant no.2 by an oral agreement. It was also contended that by virtue of the oral agreement for sale, consideration of Rs.8,000/- was paid and she was put into possession of the suit property. It was contended that for the past 10 to 11 years, the

defendant no.1 was residing in the suit property which is a permanent construction. It was contended that the case of the plaintiff was hit by *lis pendens*. It was further contended that for vacating the suit property the plaintiff was harassing her and a police complaint was filed by her against the plaintiff.

4. The parties went to trial and by judgment dated 12th August, 2008, the suit came to be dismissed. The Plaintiff preferred Regular Civil Appeal No.82 of 2008 which also came to be dismissed by the Appellate Court.

5. Heard Mr. Suryawanshi, learned counsel appearing for the Appellants.

6. Mr. Suryawanshi, learned counsel appearing for the Appellants submits that the substantial question of law is the perversity in the findings of the trial Court and the Appellate Court, as they have failed to notice that the sale deed was executed in respect of the entire plot No.7 and the issue as regards the ownership of the suit property has been negated, as there is no mention of the temporary structure in the sale deed.

7. Considered the submissions and perused the judgment of

the trial Court and the Appellate Court.

8. It is not disputed that the defendant no.1 was occupying the suit property and in respect of the said property, the suit for specific performance was filed which came to be dismissed and as against which the Appeal was pending. It is also not disputed that there is no mention in the sale deed that the suit property has been sold by the vendors to the plaintiff.

9. The findings of the Appellate Court would indicate the admission of the plaintiff in the cross-examination that the sale deed does not mention that suit shed has been sold to the plaintiff, that he has no right to the suit shed and he has right to the land beneath the suit shed. The Appellate Court considered that by virtue of an agreement of sale, the defendant no.1 is in possession of the suit property since last many years. The Appellate Court noted that the property sold to the plaintiff is described in the sale deed as under :

“Bhumapan No.155 Hissa no.3/15A 3A + 1A/7 area 3-91 R, city Survey No.76A1/10. The suit property is house No.659 of dimension 9.29 Sq. Meter and its boundaries are :-

*to east side City Survey No.81 and 82,
to west side plot No.16,
to north side plot No. 13 and
to south side City Survey No.83/64 and 83/65.”*

The house described in the sale-deed is the residential house of the defendant nos.2 to 5.

10. Considering the recitals in the sale-deed coupled with the admission of the plaintiff that he has not purchased the suit shed, the Appellate Court dismissed the Appeal.

11. The right claimed by the plaintiff for the purpose of seeking the relief of recovery of possession was premised on the sale deed executed between the defendant Nos.2 to 6 and the plaintiff, which sale deed did not have any mention about the suit shed having been sold by the defendant nos.2 to 6 to the plaintiff and is confined only to residential house of the defendant nos.2 to defendant no.5. The findings of the trial Court as well as the Appellate Court based on the documentary evidence cannot be said to suffer any infirmity. It is settled that when terms of a contract or of any other disposition of property is reduced to a document, no evidence shall be admitted for purpose of varying from its terms.

12. In the present case, considering the admitted position that the sale deed did not mention the suit property as having been sold, the Appellant cannot be said to be the owner of the suit property, so as to seek recovery of the possession. The evidence on record demonstrates the possession of the defendant no.1 on the suit property since last many years. In the absence of any title to the suit property, the trial Court and the Appellate Court has rightly dismissed the suit.

13. As such, no substantial question of law arises in the present case. Appeal stands dismissed.

(Sharmila U. Deshmukh, J.)