



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 23 OF 2017

Gurudev Siddha Peeth and Others.

...Appellants.

Versus

The Group Grampanchayat of Ganeshpuri.

...Respondent.

*Mr. Vaibhav Sugdare, Mr. S. R. Garud i/b Jayakar & Partners for the Appellant.
Mr. Sanjay S. Patil, for the Respondent.*

Coram : Sharmila U. Deshmukh, J.

Date : April 12, 2024.

P. C. :

1. Heard.

2. Being dissatisfied by the judgment and order dated 6th August 2016 passed by the Appellate Court in Regular Civil Appeal No.71 of 2015 dismissing the appeal and confirming the judgment and decree passed by the Joint Civil Judge Junior Division in Regular Civil Suit No.276 of 2009 dated 20th March 2015, the original Plaintiffs are before this Court. For the sake of convenience, parties are referred to by their status before the Trial Court.

3. Regular Civil Suit No.276 of 2009 was filed by the Plaintiff for permanent injunction seeking restraining orders against the Defendant-Gram Panchayat Ganeshpuri from entering upon the suit

property which was described as property bearing Survey No.43A/1 part and making further construction over the suit property. The Plaintiffs have come with the case that the Plaintiffs are owners of Survey No.43A/1 part and the Defendant Gram Panchayat is seeking to construct an arch on Survey No. 43A/1 part. It was pleaded that the suit property includes a road starting from northern side of the suit property which is being used by villagers as an approach road for Village Ganeshpuri. At the beginning of the road there exists a "T" junction known as Shivaji Chowk and in this part of the suit property located at Shivaji Chowk, the Defendants have entered and commenced construction. It was further pleaded that the construction activity has taken pace and without any authority the same is being carried out.

4. The suit was resisted by the Defendant Gram Panchayat and it was contended that Survey No.43 is sub divided in various Hissa numbers. The suit does not provide proper description of the suit property sufficient to identify as per Order 7 Rule 3 of CPC. It was contended that the construction is being carried out on Zilla Parishad road and there is no question of involvement of any property belonging to the Plaintiff. It was contended that the public road is in existence for more than 100 years. It was contended that the

Plaintiff has fenced its property leaving the public road and the proposed entry gate is near the approach and joint road to Village Ganeshpuri. It was denied that the arch is being constructed on Survey No. 43A/1 part. It was contended that the necessary applications were moved for constructing the arch on the public road which is a Zilla Parishad road and necessary permissions have been obtained.

5. The Trial Court considered that the Plaintiff's witness has admitted in the cross examination that in the 7/12 extract of Survey No 43/1A there is mention of a road. The Trial Court noted that it is not clear from the evidence whether the construction is upon part of Survey No 43A/1 i.e. the suit land or upon Survey No 43/1A. The Trial Court held that the Plaintiff was required to carry out measurement and to prepare the map through competent authority and to point out from the authenticated map that the construction of the disputed arch is upon the suit land i.e. Survey No 43A/1 part. The Trial Court noted that in the suit, only survey number has been mentioned and boundaries are not mentioned and neither area of suit land has been mentioned. The Trial Court dismissed the suit.

6. As against this, RCA No.71 of 2015 came to be filed by the original Plaintiff . The Appellate Court re-appreciated the evidence

and held that reliance placed on survey map of 19th November, 1984 is misplaced as the same does not pertain to the alleged encroachment of 5th June, 2009. The Appellate Court from the statement of Defendant that the construction of arch is going on the Zilla Parishad space near Ambadi Road drew an inference that such space is bound to be available near Ambadi Road highway. The Appellate Court noted from the evidence of the Plaintiffs' witness that the location of so called pillar construction is not clear from the pleading as well as the evidence of Plaintiff's witness and there is no identification of suit property i.e., particularly the point of construction of pillars of the arch. The Appellate Court disbelieved the certificate of Talathi that there is no acquisition of the land for purpose of road. The Appeal came to be dismissed.

7. Heard Mr. Vaibhav Sugdare, learned counsel appearing for the Appellant and Mr. Sanjay S. Patil, learned counsel appearing for the Respondent.

8. Mr. Sugdare, learned counsel appearing for the Appellant submits that the Plaintiff has not come with the case of encroachment and all that was sought was an order of injunction restraining the Defendant from entering upon the suit property and constructing an arch. He submits that the provisions of Order 7 Rule

3 of CPC will have no application in the present case as the property has been properly identified. He would submit that there is a specific finding of the Court that Survey No. 43A/1 belongs to the Plaintiff-trust and as such the suit for injunction should have been decreed. He submits that specific contention of the Defendant was that construction is carried on near the highway on the space of Zilla Parishad which is contrary to the certificate issued by the talathi stating that the said Zilla Parishad road passes through the suit property owned by the Plaintiff. He submits that despite the contention of the Defendant that the property is being built on the Zilla Parishad road, the Appellate Court has gone further and has drawn an inference that there must be some Zilla Parishad land by the both sides of road on which the construction is carried out. He submits that the concurrent findings suffer from perversity and as such the substantial question of law arises.

9. *Per Contra* Mr. Patil, learned counsel appearing for the Respondent submits that it is the specific case of the Defendant that the construction is being carried out near the highway on the space of Zilla Parishad and not on any part of the Survey No. 43A/1 owned by the Plaintiff. He submits that in view of this specific case pleaded by the Defendant, the burden was upon the Plaintiff to establish that

the construction was being carried out over the land owned by the Plaintiff bearing Survey No.43A/1 which the Plaintiff has failed to prove. He submits that as there are concurrent findings, this Court may not interfere under section 100 of CPC.

10. Considered the submissions and perused the record.

11. The Plaintiffs have come with the simple case of injunction restraining the Defendants from entering upon Survey No.43A/1 which is admittedly belonging to the Plaintiff and from carrying out any construction therein. The aspect which complicates the matter is the identification of the location where the arch is being constructed by the gram panchayat. The case of the Plaintiff is that the arch is being constructed on the land bearing Survey No.43A/1 and the case of the Defendant is that it is on the Zilla Parishad road.

12. As the location of the construction of the arch was in dispute, it was incumbent upon the Plaintiff to lead cogent evidence to establish the exact location of the construction of arch and thereafter to establish that the site of the construction falls within Survey No. 43A/1 part owned by the Plaintiff. For the said purpose the boundaries of Survey No.43A/1 was required to be proved. The reliance is placed upon the certificate issued by Talathi which speaks

about the Zilla Parishad road passing through the suit property. The Appellate Court has rightly held that the Talathi is not at all competent authority to give such a report pertaining to the suit property and he is not the authority to decide any encroachment on the suit property.

13. Even though it is sought to be disputed that it is a case of simple injunction and not a case of encroachment, the pleadings would indicate that the Plaintiff had come with the case that the construction is sought to be carried out by the Defendant on Plaintiff's property without any authority. In such an event although the word encroachment is not used, the fact that the Defendant is alleged to have been carrying out some construction over the property belonging to the plaintiff, it is a case of encroachment. The Trial Court and Appellate Court have rightly held that there is no compliance with the mandate of Order 7 Rule 3 of CPC as the plaint does not give any description of the boundaries except mentioning the Survey Number.

14. For purpose of grant of injunction, the cause of action must be proved. It must be established by cogent evidence that the Defendant is entering into the property belonging to the Plaintiff and carrying out construction thereupon. Merely by reason of the

issue of ownership being answered in favour of the Plaintiff cannot lead to grant of injunction against the Defendant Gram Panchayat unless it is shown that the construction is being carried on the property belonging to the Plaintiff, as in the absence of the said fact being proved there is no cause of action for the purpose of decreeing the suit.

15. The Trial Court as well as the Appellate Court on the basis of evidence have rendered the concurrent findings that the Plaintiffs have failed to establish any case of encroachment over the suit land bearing Survey No. 43A/1. It is settled that this Court in exercise of power under Section 100 of CPC would not interfere with the findings of fact unless it is demonstrated that the said findings are based on no evidence or wrong inference has been drawn on proven facts by applying the law erroneously. In the present case, no such perversity is demonstrated.

16. Having regard to the discussion above, no substantial question of law arises for interference with the concurrent findings of fact. Appeal is dismissed.

17. In view of the disposal of the appeal civil/interim application stands disposed of.

18. At this stage, a request is made for extending the interim relief which was operating in favour of the Appellant since the year 2009. The same is extended for the period of 6 weeks from today.

[Sharmila U. Deshmukh, J.]

[Pursuant to speaking to minutes order dtd. 29-4-2024, Order is corrected.]