



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.912 OF 2024.

Arif Amir Shaikh

...Appellant.

Versus

Dareil Jacob Gomes

...Respondent.

Mr. Pratik Rahde for the appellant.

Coram : Sharmila U. Deshmukh, J.

Date : 9th August 2024.

P. C. :

1. First appeal is preferred by the original plaintiff being aggrieved by judgment dated 26th February 2024 dismissing S. C. Suit No.1586/2010 filed by the plaintiff seeking order of permanent injunction restraining the defendants from encroaching and or dispossessing the plaintiff or taking forcible possession of the suit plot of land which are situated at Village Marve, Patelwadi, Madh Road, Malad (W), Mumbai.

2. The case of the plaintiff is that he is in exclusive occupation and possession of land bearing Survey No.20 Hissa No.1 corresponding to CTS No.96. The defendant Nos.1 and 2 are residing near the suit plots whereas defendant No.3 is residing at the address mentioned in the

cause title. The case of the plaintiff is that he has purchased the plot in the year 2005 from the original owner and physical possession is with the plaintiff. He based his ownership on registered deed of conveyance. It was contended that one Shera Nasim was staying near the suit plot who encroached upon the plot and tried to take forcible possession on the basis of which plaintiff filed Suit No.1635/2008 which came to be disposed of on 7th July 2009 in view of the statement by the defendants therein that he will not dispossess the plaintiff without following due process of law. It was contended that thereafter boundary wall surrounding the suit wall was constructed in the month of 2008. Defendant Nos. 1 and 2 along with their hirelings have forcibly and illegally broken the said boundary walls surrounding the suit land and as such the present Suit came to be filed.

3. Parties led evidence. The Trial Court after considering the evidence on record came to a finding that the plaintiff is having possession of the suit property. On the issue of defendant creating obstruction in peaceful possession of the plaintiff, the same was answered in the negative and thus the suit was dismissed.

4. Heard Mr. Pratik Rahde for the appellant.

5. Learned counsel for the appellant would submit that appellant

in support of his ownership as well as the possession of the property had produced voluminous documents which was accepted by the Trial Court. He would further submit that to establish the act of breaking of the boundary wall constructed by the plaintiff, the plaintiff had relied upon the NC complaint filed by him. He submits that despite thereof the Suit has been rejected on the ground that the plaint does not contain description of the property that is sufficient to identify it by boundary and in case of encroachment, sketch is required to be annexed to the plaint showing the approximate location and extent of encroachment. He submits that specific pleading was there in the plaint that in the month of February 2008 the defendant Nos.1 and 2 have forcibly and illegally broken the boundary wall surrounding the suit plot and therefore the findings of the Trial Court suffer from infirmity.

6. Considered the submissions and perused the record.

7. As far as the possession of the plaintiff over the suit property there appears to be no dispute. The only issue is whether the plaintiff has established that the defendants are creating obstruction in the plaintiff's peaceful possession. The case of the plaintiff as discerned from the plaint is that in the month of February 2008 defendant Nos.1 and 2 have illegally broken the boundary wall surrounding the suit

plot of land which is a case of encroachment. The provisions of Order 7 Rule 3 of Civil Procedure Code, 1908 (for short, CPC) makes it clear that when the subject matter is immovable property the plaint should contain a description sufficient to identify the property by boundaries and where the case is of encroachment, a sketch is required to be annexed. In the instant case, upon perusal of the plaint there are no pleadings sufficient to identify the property by the boundaries and as the case was of encroachment, there was necessity of annexing a sketch which has not been done and thus there is non compliance of Order 7 Rule 6 of CPC.

8. That apart even if the pleadings in the plaint are considered the allegations are only as against the defendant Nos.1 and 2 and no act has been attributed to defendant No.3 and despite thereof defendant No.3 has been added as party to the Suit. Where the case pleaded is of encroachment it is necessary that specific details are given in the plaint as to the act of encroachment and extent of area encroached. In the present case apart from mere assertion that in February 2008 the defendant Nos.1 and 2 have illegally broken the boundary wall, there are no specific details. The pleadings in the case are extremely vague. It was open for the Plaintiff to get Court Commissioner appointed to show the extent of encroachment, if any. This has also not been done

in the present case.

9. In light of the above, as plaintiff has failed to establish act of obstruction on the part of the defendant, the Civil Court has rightly appreciated the evidence on record and dismissed the Suit. There is no infirmity in the order passed by the Trial Court.

10. Resultantly, appeal fails and stands dismissed. In view of disposal of appeal, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]