



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Second Appeal No. 214 of 2007

Ku. Shakuntala D/o Kisan Meshram,
Aged - 46 years, Occu-Household,
R/o Plot No. 16-A, Near Nallah,
Ring Road, Kapil Nagar,
Post-Uppalwadi,
Nagpur-440026
[Maharashtra State]

R/o Angulimar Nagar,
Pathankar Chowk,
Plot No. 165, Nari Road,
Nagpur
(Near Mahabodhi Vachanalay)
C/o Mahadeo G. Nagdeve)

... Appellant

- Versus -

Shri Ramcharan S/o Aziuddin Rajput
Aged - 51 years, Occu - Service,
R/o Railway Qtr. No. K-32, East
Cotton Market, Nagpur.
[Maharashtra State]

... Respondent

Mr. S. D. Kamble, Advocate instructed by Mr. A. V. Khare, Advocate for
the appellant
Mr. T. T. Mirza, Advocate instructed by Mr. A. M. Quazi, Advocate for
the respondent

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 30-04-2024

Date of pronouncing judgment : 03-05-2024

JUDGMENT

The appeal has been admitted on following substantial questions of law.

- (1) Whether the Courts were justified in dismissing the suit of the plaintiff by relying on a sale deed executed in favour of one Laxman Gulab Kamble in the year 1999, when the plaintiff had purchased the suit property by registered sale deed dated 24-5-1996 and Laxman G. Kamble was not a party to the proceedings and the sale deed executed in his favour on 22-11-1999 was also not proved ?
- (2) Whether the first Appellate Court could have relied on correction deed of 1988 which corrected the contents of the sale deed executed in favour of the defendant when admittedly the correction deed was not a registered document ?

2. The appellant-plaintiff is before the Court against the concurrent findings given by both the Courts below. The appellant filed a suit against the respondent – defendant for declaration and permanent injunction. According to appellant, she is owner of Plot No. 16-A of Khasra No. 158, Patwari Halka No. 11 of Ward No. 57 (old), Mouza Nari admeasuring 40 ft x 37.6 ft. = 139 sq. m. which is described by letters 'ABCDEF' shown in the plaint map. She averred

that the respondent encroached upon her plot and the encroachment is shown as 'BCDEB' which is described as suit plot.

3. Having heard both sides and having gone through the judgments of the Courts below as also the record placed before me, it appears that there is a serious dispute about identification of Plot No. 16-A which goes to the root of the matter and will, in a way, show that both the substantial questions of law which have been formulated by this Court do not arise for the consideration.

4. The respondent is said to be owner of Plot No. 16-B and has allegedly encroached upon Plot No. 16-A from the western side. The lay out map, Exhibit 88 is not a sanctioned lay out. The location of plots in the lay out is such that to the East of Plot No. 16-A is Plot No. 16-B, to the West is Plot No. 15, to the North Plot No. F and to the South is nullah. As against, the sale deed, Exhibit 59 relied upon by the appellant to show that she is owner of Plot No. 16-A, show that to the East of Plot No. 16-A is the house of appellant, to the West is remaining portion of Plot No. 16-A, to the North is also remaining portion of Plot No. 16-A and to the South is nullah and road. The appellant in the plaint has described her plot in the manner as is described in the sale deed.

5. There is, thus, apparent discrepancy in the boundaries of Plot No. 16-A described in the sale deed and plaint on one side and in the lay out map on the other side. If the boundaries described in the sale deed and plaint map are to be considered, it will be impossible for the respondent to have access from the western side or for that matter from any side of Plot No. 16-A because Plot No. 16-A is not bounded by Plot No. 16-B on any side. If lay out map, Exhibit 88 is to be considered, Plot No. 16-B is not located on the western side of Plot No. 16-A, rather, it is located on the eastern side of the said plot. It will be thus unbelievable to accept the theory of the appellant that the respondent has encroached upon Plot No. 16-A from the western side.

6. The appellant has in the plaint described her plot with the letters 'ABCDEF' and encroachment by letters 'BCDEB'. However, this hand drawn map does not disclose the identifiable boundaries of Plot No. 16-A vis-a-vis the boundaries shown in the plaint/sale deed as also the lay out map.

7. Learned counsel for the respondent has rightly referred to Order VII Rule 3 of the Code of Civil Procedure, 1908 to contend that where the subject matter of the suit is immovable property, the plaint should contain the description of the property sufficient to identify it and in case, such property can be identified by boundaries or numbers

in a record of survey, the plaint should satisfy such boundary or number and further in case of encroachment, a sketch showing as approximately as possible the location and extent of encroachment should be filed along with plaint.

8. In the present case, the description of property in the sale deed and plaint does not match with the description shown in the lay out map nor does it match with the theory put forth by the appellant. Since the case of appellant is based on the sale deed, one will have to treat the boundaries described in the sale deed to be true and acceptable, particularly when same boundaries have been mentioned in the plaint. If these boundaries are taken into account, Plot No. 16-A is bounded by the remaining part of the said plot towards East, West and North and to the South is nullah. There is, thus, no scope for anybody to have access to Plot No. 16-A from any side. To add to confusion, the lay out map indicates that Plot No. 16-B is located on the eastern side whereas the case of appellant is that the respondent, who is owner of Plot No. 16-B, has while constructing his house in Plot No. 16-B has encroached upon certain portion of Plot No. 16-A. If the respondent has no access from western side or if the respondent's plot is not located on the western side of the appellant's plot, the foundational theory of the

appellant becomes unbelievable and, therefore, no relief could be granted to the appellant.

9. Learned counsel for the respondent has relied upon the judgment of the Supreme Court in the case of ***Nahar Singh Vs. Harnak Singh [1996(6) SCC 699]***. The Supreme Court reiterated the well settled principle that unless the property in question for which the relief has been sought for is identifiable, no decree can be granted in respect of the same.

10. In the light of above, since the appellant failed to satisfy that the property under question is identifiable and consequently the encroachment, the decree, if any, will be unexecutable and thus, no decree can be granted in respect of such property.

11. In view of the above, the substantial questions of law as formulated will have no bearing and will thus not arise for consideration. The appellant failed to make out a case. The appeal is accordingly dismissed.

(Anil L. Pansare, J.)