



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.186 OF 2020

Pralhad Keruji Kankal and another .Vs. Sarasvatibai W/o Vasant Kapse (Died)
through LR's.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.V. Rai, Advocate for appellants.

Shri A.P. Chaware, Advocate for respondent Nos.1 (d).

CORAM : SANJAY A. DESHMUKH, J.

DATED : 15/07/2024

1. Heard learned advocates for both side at the admission stage of this appeal.

2. This appeal is preferred by the defendants against the judgment and decree passed by the learned first appellate Court i.e. District Judge, Buldhana in Regular Civil Appeal No.141 of 2012 dated 29.11.2018 which was preferred against the judgment and decree passed by the learned Jt. Civil Judge Junior Division, Deolgaon Raja, Dist. Buldhana in Regular Civil Suit No.184 of 2008 dated 19.11.2012.

3. The suit was filed on the basis of title under Section 5 of the Specific Relief Act, 1963 for possession of encroached portion of the suit property bearing Block No.72, admeasuring 10 Hectar and 41 R. agricultural land

situated at Village Jambhora, Tq. Deulgaon Raja, Dist. Buldhana from the defendants. The defendants came with a defense that there is no such encroachment made by him. The suit was decreed and appeal is dismissed.

4. The learned advocate for the appellants pointed out from pleadings of the plaintiff that the cause of action arose for filing the suit prior to five to six years when the defendants encroached upon the suit property. However, during the measurement dated 13.06.2007 after filing of suit, no encroachment was formed in map at Exh.72. He submits that, the measurement map produced by the defendants dated 13.06.2007 at Exh.72 shows no encroachment and no cause of action arose for filing the suit. However, both the Courts disbelieved it. The suit deserves to be dismissed for want of cause of action as there is false pleadings in the plaint.

5. The learned advocate for the appellants further submits that if a fresh measurement is carried out, the truth will come up to show that there is no such encroachment made by the defendants. He submitted that the application for carrying fresh measurement be allowed in the interest of justice by remanding the suit to the trial Court.

6. The learned advocate for the respondent pointed out the paragraph No. 19 of the judgment of the trial Court in which the trial Court has compared both the measurement maps of suit property drawn up by the cadastral surveyor. A map at Exh.72 filed by the defendants dated 13.06.2007 shows that there is no any encroachment in the suit property. However, the measurement map dated 28.05.2008 at Exh. 46 filed by the respondent/plaintiff shows that there is existence of an encroachment made by the defendants over the suit property. The trial Court as well as first appellate Court held that map at Exh.46 is reliable piece of evidence and map at Exh.72 produced by defendants is not reliable piece of evidence.

7. The learned advocate for the respondent further submitted that there is concurrent findings of both the Courts on the facts and no substantial question of law arose in this appeal. The encroachment is proved as per map Exh.-46 which is accepted as reliable piece of evidence by both the Courts. Those are last fact finding Courts. He prayed to dismiss the appeal.

8. Perused the judgments of both Courts.

9. Following substantial question of law arose for consideration :

i) Is false cause of action disentitled the plaintiff from substantive right to claim possession of the suit property?

10. The pleadings in mofussil/ rural area are not drafted carefully. Sometimes junior advocates are drafting pleadings and mistakes occurs. The rules of pleadings and proofs are not expected to be strictly complied with. It is procedural defect which cannot extinguish legal rights of the parties. Therefore, cause of action as contended in the plaint that it arose before four to five years is not reason to dismiss the suit on the ground that it is false contention of the plaintiff. The cause of action means bundle of facts as held in the case of *Dhodha House .Vs.. S.K. Maingi*, reported in (2006) 9 SCC 41. In the present case by the measurement dated 28.05.2008 cause of action arose during pendency of the suit. The Court can take cognizance of subsequent happening of event of measurement. This fact itself is cause of action for the said suit as it is subsequent event.

11. The basic principle of civil trial is that, ‘**first plead and then prove**’. The material preposition of facts and law are to be pleaded and proved by the parties. Law need not be pleaded. The test of sufficiency of pleadings and evidence are to be complied by the party asserting facts. However, merely because some contention are pleaded in the plaint which were not correct the substantive right of

the plaintiff to file suit as well as to prove the encroachment and get possession of the encroached portion cannot extinguish. It is his substantive right. It cannot wash away by such mistakes. The mode of acquiring and extinguishing legal rights over the properties are regulated by the substantive laws and not by procedural laws like the Code of Civil Procedure, 1908 etc. In case of conflict between procedural law and substantive law and certainly later will prevail. It is because justice is important than law. The procedural irregularities cannot be termed as illegality to defeat the object of justice.

12. As far as false and truth in the proceedings before Court are concerned, this Court in the case of ***Prakash S/o Eknath Dheple ..vs.. Vithabai W/o Prakash Dheple***, in Criminal Revision Application No.175 of 2023 by judgment dated 10.05.2024 held that, truth is not always decisive. In case of conflict between truth and justice, the justice will prevail. It does not mean that truth has no importance at all. This, expectation of perfect truth is always good. But ours is developing country and society. Our society is not developed like western countries. The standard of truthful behaviour is depending upon morality and values developed in the society by education, social developments, media, laws, Courts decision, maturity of persons etc. Unfortunately, there is no such high standard

morality and faithfulness in our society except few examples. Thus truth is not always decisive for giving justice. But, protection of the legal rights and justice is important than truth. Only because the plaintiff has pleaded wrong or false cause of action in his plaint his right cannot extinguish because of mistake of his advocate in the drafting of plaint. It is not intentional false contention of the plaintiff. Mere falsity in pleading is not legal mode of extinguishing substantive legal right. In the suit, on the basis of title as per Section 5 of the Specific Relief Act, 1963 his right cannot be defeated. It is his substantive right. In case of equitable right, plaintiff has to strictly come before the Court with truth. The suit cannot be dismissed on the ground of false pleadings of the plaintiff as to the cause of action.

13. It is well established that if there is no clear and convincing evidence the civil cases are to be decided on the principle of standard proof of **‘preponderance of probabilities’**. Thus, strict proof is not required in civil cases. As per Section 83 of the Indian Evidence Act, 1872 the measurement map must be accurately proved.

14. In case in hand both the Courts have rightly believed plaintiff's map of measurement Exh.46 proved by the cadestral surveyor and disbelieved map at Exh.72

submitted by defendants. The map at Exh.46 is accurately proved by the plaintiff. Considering above reasons and that there is concurrent findings of both the Courts on the facts as to the proof of the encroachment there is no scope for interference in it either on law and facts.

15. There is no substance in the grounds of objections of appeal and substantial questions of laws raised in it. Thus substantial question of law is answered in the negative. The judgments and decrees of both Courts are legal and correct, no interference is warranted in it. Therefore, argument of learned advocate for the appellants is not acceptable that fresh measurement be carried out in the interest of justice to decide the existence or non-existence of alleged encroachment. The appeal being devoid of merits deserves to be dismissed. Appeal is **dismissed**. No costs.

(SANJAY A. DESHMUKH, J.)