



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

SECOND APPEAL NO.464 OF 2009

APPELLANT : Purushottam s/o Dattuji Lute,
aged about 40 years, Occupation –
Business and Agriculturist, resident of
Khandala, Tq. Wani, Dist. Yavatmal

..VERSUS..

RESPONDENT : Manohar s/o Zolba Pakhale,
aged about 49 years, Occupation –
Agriculturist, resident of Khandala, Tq.
Wani, District Yavatmal

Mr S. C. Bhalerao, Advocate for Appellant.

CORAM : M. W. CHANDWANI, J.

RESERVED ON : 14th JUNE, 2024.

PRONOUNCED ON 25th JUNE, 2024.

JUDGMENT

. Heard.

2. By this second appeal, the appellant challenges the judgment and decree dated 02.12.2004 passed in Regular Civil Suit No.102 of 2000 by Civil Judge Junior Division, Wani, thereby dismissing the suit of the appellant/plaintiff for possession of rooms and recovery of price of articles and damages.

The appellant also challenges the judgment and order dated

13.06.2009 of the Appellate Court confirming the judgment and decree of the Trial Court. Feeling aggrieved with the orders impugned, present second appeal came to be filed.

3. The plaint of the appellant/plaintiff depicts that he is the owner and possessor of the Gram Panchayat House No.148/163 admeasuring area 36.45 sq.mtr. situated at village Khandala, by virtue of sale deed dated 20.05.2000 executed by Bandu Zolba Pakhale - the brother of the respondent i.e. original defendant. The plaintiff claimed that the house is consisting of three rooms. In between house of the plaintiff and defendant, there was a public lane. The defendant/respondent not only encroached upon the said lane but on 23.05.2000, he unauthorizedly removed the articles by dispossessing the plaintiff from the suit room. Therefore, the plaintiff filed a suit before the Trial Court.

4. The defendant filed written statement and denied the title of the plaintiff over the suit room and the factum of encroachment. He averted that his father Zolba was the original owner of the house admeasuring 30 ft. x 23 ft. In oral partition in

the year 1980, western portion of the house fell in the share of defendant, whereas eastern portion of the house fell in the share of his brother Bandu. Since then the defendant is in possession and enjoying the western portion of the house under the same roof as owner. The defendant denied the title of the plaintiff over the suit room as shown in the plaint.

5. The Trial Court dismissed the suit *inter alia* recording a finding that the plaintiff failed to prove his title, ownership and possession over the suit room as claimed by him in the plaint. The Trial Court held that the plaintiff failed to prove that the suit room was allotted to the share of his vendor Bandu, the brother of the defendant, and dismissed the suit. The Appellate Court also dismissed the appeal on the same line i.e. the plaintiff failed to prove his title as well as title of predecessor over the suit room and confirmed the judgment and decree of the Trial Court.

6. This Court, while admitting the second appeal, formulated the following substantial questions of law *vide* order dated 09.03.2010 :

"1. Whether the Courts below have arrived at perverse findings of fact with regard to the title of the appellant by

misconstruing the sale deed at Exh.44 and coming to the conclusion that the appellant has failed to establish that his predecessor in title Bandu Zolba Pakhale had no title to the disputed portion though in the written statement filed by the respondent, there was a specific admission that during the life time of his father Zolba Pakhale an oral partition had taken place whereby the eastern portion was allotted to said Bandu and the western portion was allotted to the respondent ?

2. Whether the Courts below have misconstrued the document at Exh.44 and came to the conclusion that the description of the property has not been established when the sale deed discloses the boundaries and a map is attached to the sale deed ?”

7. Heard Mr S. C. Bhalerao, learned counsel for the appellant. Nobody appeared on behalf of respondent though served.

8. The case of the appellant is that he purchased the house consisting of three rooms, which fell in the share of Bandu Zolba Pakhale, the brother of the respondent. The respondent owns the house towards western side of the house purchased by appellant. In between both the houses, there was a public lane, which was encroached upon by the respondent, and thereafter, he took possession of one of the rooms of the house purchased by the appellant.

9. In order to prove the ownership of the said room, the appellant has filed sale deed at Exh.44 on record. The sale deed at Exh.44 does not show that the house sold to the appellant is consisting of three rooms. Even the sale deed does not depict the dimension of the house purchased by the appellant. Further, the sale deed at Exh.44 does not show that towards western side of the house purchased by the appellant, there is a public lane as claimed by the appellant. Rather, the recital in the sale deed at Exh.44 demonstrates that western wall of the house sold to the appellant is a common wall between the vendor Bandu and his brother, the respondent.

10. PW-3-Bandu Pakhale, who was examined by the appellant himself, has testified that the partition was executed by registered partition deed and copy of which was given to the appellant. To prove the dimension of the property, which fell in the share of Bandu and which was purchased by the appellant, the appellant could have very well produced partition deed before the Courts below, but that was not done. Even, the appellant in his cross-examination has admitted that in गाव नमुणा - ८, the

document of the Gram Panchayat, there is recital about the dimension and boundaries of the property that stands in the name of PW-3-Bandu, but the appellant has not produced the copy of गाव नमुणा - ८ nor adduced any evidence showing the existence of three rooms. Rather, the evidence on record goes to show that the western wall of the house purchased by the appellant was a common wall of his predecessor in title of Bandu Zolba Pakhale, the brother of the respondent.

11. In view of the discussion above, both the Courts below have rightly held that the dimension and the description of property has not been established. Both the Courts below have rightly held that the appellant/plaintiff failed to establish that his predecessor in title of Bandu Zolba Pakhale had no title on the disputed portion despite of the fact that the eastern portion of the house was allotted to Bandu. In teeth of admission extracted from the appellant and material available on record, there cannot be an iota of doubt that the appellant failed to prove that Bandu had title on the disputed portion. Therefore, the questions are answered accordingly.

12. In view of the evidence on record, concurrent view of both the Courts below does not suffer any infirmity, resultantly, the second appeal is **dismissed**.

(M. W. CHANDWANI, J.)