



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

SECOND APPEAL NO. 09 OF 2024

Vasantrao Narayanrao Joshi

Vs.

Sukhdeo Shankar Sabale & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K.R. Bhise, Advocate for the Appellant.

CORAM : G. A. SANAP, J.

DATED : 23rd FEBRUARY, 2024.

1. Heard learned advocate for the appellant. Perused the record and proceedings.

2. The courts below have recorded a concurrent finding of fact that the plaintiff/appellant has not proved that defendant No.1 took illegal possession of the property bearing House No.72 (Old No.63), admeasuring 4120 sq. feet, situated at village Ramgaon Rameshwar, Tq. Darwha, Dist. Yavatmal.

3. Learned advocate submits that the First Appellate Court dismissed the appeal filed by the appellant on 6th July, 2023, without considering the evidence on record. Learned advocate submits that the failure to properly appreciate the evidence on record has resulted into illegality/perversity and, as such, the issue is required to be adjudicated upon in the second appeal.

4. The appellant filed the suit for possession of House No.72 (Old No.63), admeasuring 4120 sq. feet. The house is described in the plaint. It is contended that House No.70 (Old No.62) was mortgaged by him with respondent No.2-Bank. The loan amount could not be repaid and, therefore, the property was auctioned. In the said auction, defendant No.1 purchased the same. It was alleged that defendant No.1, as an auction purchaser, took possession not only of house property bearing No.70 but also of house property bearing No.72 belonging to the plaintiff. Defendant No.1 contended that in the auction, he purchased the house property bearing No.70, admeasuring 3600 sq. feet, and he has been in possession of the same. He denied the claim of the plaintiff that he encroached upon the house property bearing No.72. According to him, the house property bearing No.72 has been in possession of the plaintiff.

5. The parties adduced the evidence. Learned Judge of the Trial Court had appointed Taluka Inspector of Land Records, Darwha, as a Court Commissioner for measurement of the land and for demarcation of the property, which was in possession of the plaintiff and the defendant. The TILR filed the report at Exh.67. The TILR stated in the report that defendant No.1 is in possession of the property, admeasuring 3601 sq. feet, and the plaintiff is in possession of the property, admeasuring 3592.34 sq. feet. The TILR further stated that the remaining part of the original property bearing No. 286, namely 642 sq. feet, is in possession of one Devram Sitaram Raut. It is undisputed that the original property bearing No.286

was admeasuring 727.7 sq. mtrs. The courts below found that the property possessed by defendant No.1 is House No.70, admeasuring 3601 sq. feet and the remaining property, i.e. house property bearing No.72 was in possession of the plaintiff. It is seen that the finding of facts are based on the evidence on record. The courts below have concurrently held that the house property bearing No.72 is still in possession of the plaintiff.

6. On going through the record, particularly the reasons recorded by the courts below, I am satisfied that there was no illegality or perversity in the findings. The findings are based on the evidence on record. As such, I conclude that no substantial question of law arises in this appeal. Accordingly, the appeal is **dismissed**.

(G. A. SANAP, J.)

Vijay