



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

32 SECOND APPEAL NO. 66 OF 2003

Shalini Makanrao Sabale And Ors.

VERSUS

Rajendra Hari Sanap

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Advocate for Appellant : Mr. S N. Suryawanshi & Ms.S. N. Suryawanshi.

Advocate for Respondents : Ms. Jakhade Rutuja L.

**CORAM : S. G. CHAPALGAONKAR, J.**

**Dated : February 05, 2025**

**ORDER :-**

1. The appellants/original defendants impugn the judgment and decree dated 25.10.2002 passed by the District Judge, Dhule in Civil Appeal No.8 of 1998 thereby upholding the judgment and decree dated 07.11.1997 passed by the Jt. Civil Judge, Jr. Division Dhule in RCS No.496 of 1987.

2. The respondent/plaintiff instituted the suit for possession of the suit plot (bearing no.36 admeasuring 2150 sq. meters situated in S.No.47/2 at Mahindale) by removing construction made by the defendants. According to the plaintiff, he purchased the suit plot on 28.5.1982 from the Dropadi Savant and Priya Kamalkant Parab. The defendants are holders of adjacent plot no.37 situated on eastern side of the suit plot. The plaintiff used to reside at different places in

pursuance to his job in police department. The defendants taking advantage of the situation, encroached upon plaintiffs plot and raised the construction. As soon as the plaintiff came to know about mischief, he issued legal notice asking the defendants to deliver vacant possession of the suit plot, but they failed to comply. Hence, filed suit.

3. Defendants resisted plaintiffs claim contending that they constructed the house consisting of 8 rooms on suit plot. At the time of Bhumi puja on 5.4.1982, the plaintiff was present, but did not raise any objection. According to defendants, they purchased plot no.37 on 30.9.1981 and erected fencing, thereafter, raised construction by creating charge of loan over the house. They offered plaintiff to accept plot no.36 which is of same size in lieu of plot no.37 but the plaintiff was adamant.

4. The Trial Court, upon consideration of rival pleadings accepted plaintiff's case and decreed the suit. Aggrieved defendant filed appeal before District Court. The same has been dismissed upholding the decree as passed by the Trial Court. Present second appeal filed by defendant has

been admitted vide order dated 13.7.2007 on following substantial question of law :-

“Whether by his conduct and long drawn silence the respondent acquiesced the illegal act of the appellants and allowed the construction to be carried out without any serious objection which amounts to waiver of his rights and, therefore, it was inequitable to use discretionary relief of mandatory injunction in his favour ?”

5. Mr. Suryawanshi, learned advocate appearing for the applicant submits that it was bonafide mistake on the part of the defendant to raise construction over the plot of plaintiff. Vendor of the plaintiff and defendant is same. Defendant was put into possession of the plot no.37 by vendor although he purchased the plot no.36. Plaintiff was aware about construction site of the defendant, but did not object at appropriate time and only after completion of construction, issued legal notice. As such, plaintiff cannot seek equitable relief of mandatory injunction and possession of the plot.

6. Perusal of the finding recorded by the Courts below shows that there is hardly dispute as to the ownership of the plaintiff in respect of plot no.36. Even, defendant do not dispute that they have raised construction in the plot no.36 instead of raising construction over the plot no.37. According

to the defendants, plaintiff was present at the time of Bhumipujan and Gharbharni (House Warming). However, except bare words of the defendants, there is no evidence to show presence of the plaintiff at those functions. In fact, defendant could not bring any evidence on record to show that construction was raised bonafide or with implied knowledge of the plaintiff. Although, it is contended before this Court that defendant offered his plot no.36 to plaintiff, there is nothing on record to show that such offer was actually made within reasonable period and plaintiff refused to accept such offer. Trial Court has rightly observed that if the defendant raised loan and made constructions, it was for him to confirm boundaries of plot. Apparently, plaintiff and defendant are relatives of each other. There is no dispute that plaintiff was residing at different places due to his service and defendant raised construction during such time. Trial court as well as Appellate Court found that conduct of the defendant was an attempt to grab the property and there is nothing to show his bonafides. Therefore, it is difficult to hold in the absence of material on record that plaintiff acquiesced illegal act of defendant by his conduct or waived his right dis-entitling him to claim discretionary relief of mandatory injunction. Finding

of fact arrived by the Courts below needs no interference in this Second Appeal. In the result, there is no merit in the Second Appeal and the same stands **dismissed** with costs.

( S. G. CHAPALGAONKAR )  
Judge

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