



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 367 OF 2015

**PRAMILABAI KISHOR RENAIVIKAR
VERSUS
SHAIKH RAFIQUE RASID AND ANOTHER**

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Advocate for the Appellant : Mr. Anand P. Bhandari

Advocate for Respondents : Mr. S.S. Chapalgonkar

CORAM : SHAILESH P. BRAHME, J.

DATE : 08.09.2025

PER COURT :

Heard both sides.

2. The appellant/original plaintiff has preferred present appeal against concurrent findings of facts non suiting her for relief of mandatory injunction.

3. The appellant claims to be the owner of pot No. 363 and 364 from Survey No. 59/2B+60+61 situated at Savedi Tq. & Dist. Ahmednagar. Those were purchased from Mr. Ramdas Salunke vide sale-deed dated 31.03.1998. The respondents-original defendants, owners of plot No. 365 encroached on plot No. 363 and made construction, which is sought to be removed by the present suit.

4. The respondents contested the suit by filing written statement on the ground that respondent no. 1 purchased plot No. 365 on 16.12.1996 and constructed house over it by securing due permission from the competent authority. The plots of the appellant were sold to Ramdas Salunke and he resold it to the plaintiff, as he found difficult to locate the plots.

5. The Trial Court dismissed the suit vide judgment dated 05.09.2011. Being aggrieved, Regular Civil Suit No. 426/2011 was preferred. The appellant preferred application (Exh. 16) under Order XLI Rule 27 of the Code of Civil Procedure to bring on record sanctioned layout. Application (Exh. 16) was rejected on 13.01.2015. Simultaneously, appeal was also dismissed.

6. The learned counsel Mr. Bhandari appearing for the appellant submits that the Appellate Court committed error of jurisdiction in view of law laid down by the Supreme Court in the matter of **Santosh Hajari Vs. Purushottam Tiwari; AIR 2001 SC 965**. The judgment of the Appellate Court is virtually translation of the Trial Court's judgment, without recording independent reasons. He submits that additional evidence of sanctioned layout plan is wrongly refused by the lower Appellate Court, which refers to plot No. 363. It is vehemently submitted that both the Courts below committed perversity in holding that Plot No. 363 and 364 did not exist. It has come on record during cross-examination of the defendant no. 1 and sale-deeds that plots of the appellant existed. It is submitted that ownership of plot No. 363 and 364 is not in dispute and wrong inferences are drawn from the judgment passed in Regular Civil Suit No. 145/1998.

7. It is further submitted that both Courts below failed to exercise the jurisdiction of inferring relief of possession in view of Order VII Rule 7 of the Code of Civil Procedure. It is further submitted that the permission for the construction issued to the respondents was not valid. Lastly, it is submitted that various judgments cited are cursorily dealt with by two lines without examining the ratio laid down therein.

8. Per contra, the learned counsel for the respondents supports the impugned judgment and decree. It is submitted that plaintiff failed to adduce evidence to show exact location of plot No. 363 and 364. It is submitted that the appellant failed to prove her possession. The permission

for construction has not been challenged by the appellant. It is lastly submitted that the concurrent findings of facts need no interference.

9. I have considered the rival submissions of the parties. I have gone through the record as well as the impugned judgments.

10. The controversy pertains to adjoining plot No. 363 and 364. Both are purchased by the appellant lastly on 31.03.1998. The respondent no. 1 is owner of plot No. 365, which is purchased on 16.12.1996 from Badambai Jain. It was the foremost duty of the appellant to lead cogent evidence to show typography of her plots as well as respondents' plot. The photo copy of sanctioned layout was produced before the Trial Court but it was not exhibited. The evidence on record is not sufficient to show the extent of encroachment and alleged construction made by the respondents in plot No. 363.

11. It transpires from record that appellant sold her both plots to Ramdas Salunke in the year 1993. She repurchased them on 31.03.1998. No fencing was done to those plots and their identification was under cloud. The ownership of the appellant is not disputed but the location of her plots has not been clarified by her.

12. At the instance of appellant a Court Commissioner was appointed i.e. Taluke Inspector of Land Records (TILR), but commission was being executed in respect of wrong survey number and therefore his report and map was not accepted. The appellant could have requested the Trial Court for appointment of Court Commissioner for bringing on record the location of her plots and that of the respondents. She failed to adduce the evidence to show that instead of constructing at plot No. 365, respondents constructed at plot No. 363 or part thereof. Both the Courts below have rightly recorded findings against the appellant.

13. The findings of the Courts below regarding existence of plot No. 363

and 364 are heavily assailed by the appellant. The purport of those findings is that the location of those plots is uncertain. The ownership of the appellant and her possession over the plots are not the facts in issue. I do not find that any perversity is committed by the Courts below. I have already observed that appellant failed to discharge her burden to show exact location of the plots. Findings regarding existence of the plots even if erroneous would not be a ground to give rise to any substantial question of law.

14. I have carefully gone through the judgment passed by the lower Appellate Court. I do not find that it is a translation at verbatim of the judgment of the Trial Court. The points of determination are answered by the Appellate Court by assigning elaborate reasons to each point. The lower Appellate Court confirmed the findings and it has not been pointed out to me that any aspect of the matter, which was dealt with by the Trial Court, has not been considered by the lower appellate Court. I do not find any error of jurisdiction committed by the Lower Appellate Court in view of the law laid down in the matter of **Santosh Hajari (supra)**.

15. The Lower Appellate Court, by a separate order, rejected the application for additional evidence (Exh. 16). A photo copy of the sanctioned layout plan was already before the Trial Court. But it was not proved. It reveals that plot No. 365 is not adjoining to plot No. 363. The allegations that respondents made construction in plot No. 363 assuming that it was their own plot appears to be fallacious. I find no reason to interfere with the judgment and decree passed by the Lower Appellate Court.

16. It reveals from record that various judgments were cited by the appellant before the Lower Appellate Court and those are dealt with very cursorily. With the assistance of the learned counsel, I have considered those judgments. Those would not enure to the benefit of the appellant for

the following reasons :

(i) **Kedar Lal Seal and another Vs. Hari Lal Seal; AIR 1952 Supreme Court 47-** It is in respect of Order VI Rule 3 of the Code of Civil Procedure. I have gone through paragraph no. 51 of the judgment. The facts are distinguishable.

I have gone through plaint in the present case. A specific prayer of mandatory injunction is made in the plaint construing it liberally as a prayer of possession, would not help the appellant to award him any relief.

(ii) **Bai Kamla Vs. Occhavlal Chhaganlal and others; AIR 1965 Gujarat 85-** It is not made clear as to on what point the judgment is cited. The facts are totally different. The judgment is not helpful to the appellant.

(iii) **Katikara Chintamani Dora and others Vs. Guatreddi Annamanaidu and others; AIR 1974 Supreme Court 1069-** This judgment is cited to highlight scope of Order VI Rule 2 of the Code of Civil Procedure. I have gone through para No. 55. The facts are distinguishable. The ratio cannot be made application.

(iv) **Ram Sarup Gupta (dead) by L.Rs. Vs. Bishun Narain Inter College and others; AIR 1987 Supreme Court 1242(1)-** This judgment is cited for showing purport of Order VI Rule 1 of the Code of Civil Procedure. The facts are distinguishable and is not helpful to the appellant.

(v) **Anil P. Bansal and another Vs. Central Bank of India and others; 2003(3) Bom.C.R. 433-** The judgment is cited for scope of order VI of the Code of Civil Procedure. It is not shown as to how the judgment would help the appellant because facts are totally distinguishable.

(vi) **Gaur Chandra Basu and another Vs. Ruchira Ashok**

Sonde and another; 2003(1) Bom.C.R. 438- The scope of Order VI of the Code of Civil Procedure is explained in context of the pleadings in a suit for eviction under Bombay Rent Act. The facts are distinguishable. The judgment will not help the appellant.

(vii) **Smt. Shakuntala and others Vs. Shiv Kumar and others**, decided on 02.02.2012. It is a judgment of learned Single Judge Punjab and Haryana High Court. Considering the facts of that case, I am not being persuaded.

(viii) **Santosh Hajari Vs. Purushottam Tiwari (DEAD) by L.Rs; AIR 2001 SC 965-** It lays down the duty cast upon lower Appellate Court under Section 96 of the Code of Civil Procedure. I have also gone through paragraph No. 15 of the judgment. I have already recorded that in the present case lower Appellate Court has dealt with all aspect of the matter in confirming the findings.

17. The lower Appellate Court instead of dealing with the judgments referred above recorded a common ground for not applying the ratio, which itself cannot culminate into substantial question of law.

18. Civil Court has every jurisdiction under Order VII Rule 7 of the Code of Civil Procedure to mould the relief but such case has to be made out. It is not that in every case relief can be granted, which is not prayed for expressly. Even if it is presumed that present suit is for possession, appellant has not shown exact location of plot No. 363 and plot No. 365. The submission made in this regard cannot be accepted.

19. The respondent was granted permission by Grampanchayat for the construction. It has not been challenged by the appellant. This Court cannot go into the validity of the permission. If the construction is made by the respondents on the basis of such permission then that strengthens

respondents' case. Both Courts below dealt with that aspect of the matter and rightly so.

20. There are concurrent findings of facts. The appreciation of evidence and recording of facts do not give rise to any substantial question of law. I find no merit in the second appeal. The Second Appeal stands dismissed.

(SHAILESH P. BRAHME, J.)

mkd/-