



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 SECOND APPEAL NO. 541 OF 2023

Manohar Narsing Arale Died Through Legal Heirs

VERSUS

Mohan Kondiba Patil Wadikar and others.

...

Advocate for Appellants : Mr. V V Bhavthankar

CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 09, 2025

FINAL ORDER :-

1. The appellants/L.Rs. of the original defendant impugns the judgment and decree dated 19.6.2023 passed by the District Judge-1 Biloli, in RCA No.12 of 2015 thereby upholding the judgment and decree dated 30.12.2014 passed by the Civil Judge J.D. Biloli in R.C.S. No.30 of 2011.

2. The respondents/plaintiffs instituted R.C.S. No.30 of 2011 seeking relief of possession against the defendant. Plaintiffs contend that they are owners of land survey no.79/1 situated at Bamni (Bu), Tq. Biloli, District Nanded. Portion of survey no.79/1 more specifically described in plaint is suit property. According to plaintiffs, aforesaid suit property was permitted for use of defendant for keeping fodder. Lateron, defendant erected hut with tin shed, which is situated on

western side of the suit land. On 28.2.2011, plaintiffs asked defendant to vacate suit site and hand over possession, however, defendant refused to do so. On 4.3.2011, plaintiffs issued legal notice to the defendant asking him to hand over possession, but he gave false reply dated 18.3.2011 contending that his possession is in the Gayran land bearing S.No.77.

3. Defendant refuted plaintiffs claim contending that since the time of his grant parents his family is in occupation of the area 68x30 feet which is part of survey no.77 i.e. Gayran Land. Grampanchayat, Bamni has also allotted plot no.525 which is used as open site. The name of defendant is incorporated in form no.8 of the Grampanchayat. He is regularly paying taxes. Even, the Collector has imposed certain penalty against him for non-agriculture use of the land. Precisely, it is contention of the defendant that he is not in possession of the land from survey no.79/1.

4. The Trial Court framed issues based on pleadings of the parties. Plaintiff relied upon his own evidence and evidence of surveyor Mr. Adul Jabbar, who measured the land bearing s.no.79/1 and 77 and identified location of the suit site in s.no.79/1 owned by the plaintiffs. Trial Court, after

considering rival pleadings and evidence accepted plaintiffs case and decreed suit directing defendant to deliver possession of the suit land to the plaintiffs so also perpetually restrained him from interfering into possession of the plaintiffs over the suit land.

5. Aggrieved defendant preferred R.C.A. No.12 of 2015 before District Judge, Biloli, however, Appellate Court concurred with the decree passed by the Trial Court and dismissed the appeal vide impugned order dated 19.6.2023.

6. Mr. Bhavthankar, learned advocate appearing for the appellants submitted that findings recorded by the Courts below are perverse. There is no acceptable evidence depicting defendants possession on portion of land from s.no.79/1 owned by plaintiffs. The reliance of the Courts below on evidence of surveyor is improper. Surveyor admitted during course of his evidence that he has not measured both the survey numbers and drawn conclusion only on the basis of measurement of survey no.79/1. According to him, evidence of PW-2 surveyor and his report cannot form basis to conclude that defendant is in occupation of plaintiffs property. He would further submit that there is voluminous evidence

indicating long standing possession of defendant's family over Gayran land. Ignoring aforesaid evidence, decree has been passed. Hence, he urges to frame substantial question of law and admit the appeal.

7. Having considered the submissions advanced, it can be observed that, in nutshell, controversy between the parties is as to the location of the suit hut constructed by the defendant. Defendant is coming with a case that his hut is located in survey no.77 i.e. Gayran land whereas plaintiffs raised claim that hut is situated in Survey No.79/1 owned by him. Record of the trial court indicates that plaintiffs had filed an application below exhibit-17 for appointment of the Court Commissioner to find out location and existence of the suit plot either in S.No.79/1 or 77 of village Bamni. The Trial Court vide order dated 23.8.2011 allowed the application and directed the T.I.L.R. Biloli, to measure the land Survey No.79/1 and 77 and find out exact location of the hut.

8. In deference to the aforesaid order, the T.I.L.R. caused measurement of both survey numbers and submitted his report at Exhibit-42 alongwith map of measurement. Measurement map has been admitted in evidence during oral

evidence of the surveyor Abdul Jabbar, who deposed at Exhibit-39. The evidence of surveyor depict that he noticed the defendant about proposed measurement. Surveyor deposed that he measured both lands on 2.5.2012 and found location of the suit hut in the area owned by plaintiffs. Perusal of the cross-examination shows that he admitted that area of Survey no.79/1 and Survey no.77 is not specifically mentioned on the map or even other houses and constructions are not indicated in his map. However, he explained that he carried work of Court Commissioner in tune with the directions of the Court. Therefore, even taking the aforesaid admissions elucidated during cross-examination of PW-2 surveyor, no infirmity can be found in his evidence. Both the Courts below concurred that evidence of surveyor is reliable and acceptable. No infirmity can be found in the findings recorded by the Courts. Consequently, no substantial question of law arises in this Second appeal. Second appeal stands **dismissed**.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa-