



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

960 SECOND APPEAL NO. 251 OF 2025

SUDHIR DEVDATTA NATH

VERSUS

MUNNIDEVI VIJAYKUMAR PRAJAPATI AND ORS

...

WITH

CIVIL APPLICATION NO. 812 OF 2025

IN SA/251/2025

.....

Advocate for the Appellant : Mr.Vaidya Ameet Raveendra

Advocate for Respondent No.1,2,4 and 6: Mr. C.K.Shinde

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CORAM : SHAILESH P. BRAHME, J.

DATE : 31st JULY 2025

PER COURT :

. Heard both sides.

2. This second appeal is emanating from concurrent findings of facts for non-suiting the appellant for the relief of injunction.

3. Appellant had filed R.C.S No.901 of 2010. It was dismissed by judgment and decree dated 16.08.2017 which is confirmed by judgment and decree dated 27.08.2024 in R.C.A No. 191 of 2017. Survey No.50 was originally pertaining to appellant's grandfather who alienated different parcels of land and the respondent acquired those lands by distinct registered sale deeds. The controversy pertains to 16R of land which is part and parcel of Sy.No.50/2/4 situated at village Garkheda, Dist.Aurangabad. The area of Sy.No.50/2/4 is 1 H and 18 R. Out of that 16 R was acquired by the appellant through

relinquishment deed dated 05.06.2010 executed by his father. The obstruction caused to the plaintiff in enjoyment of 16 R is the cause of action to prefer the suit.

4. Both the courts below have recorded that the relinquishment deed produced on record does not spell out four boundaries and the appellant failed to prove exact four boundaries of the suit land. It is further held that what was the remaining area after alienation of parcels of Gat No.50/2/4 has not been made clear. No tangible evidence in the form of map or measurement is produced on record.

5. Learned counsel Mr.Vaidya appearing for the appellant submits that his amended plaint describes four boundaries of the disputed area vividly. The burden would be upon the defendants under these circumstances but trial court expected the appellant to discharge the burden.

6. It is vehemently contended that appellant acquired 1H and 18R out of Sy.No.50/2/4 and disputed part is to the extent of 16R. Therefore, there is no question of describing the disputed area when entire 1H and 18 R was acquired. It is submitted that both the courts below misdirected in perceiving the correct proposition of the suit land. It is further contended that the disputed area is open land and there is no dispute about the title. Hence, the appellant who is in possession is entitled to injunction. Learned counsel for the appellant adverts my attention to the substantial questions of law quoted in appeal memo from (I) to (IV).

7. *Per contra*, learned counsel Mr.Shinde would support impugned judgment and decree. He would submit that the plaintiff was under obligation to describe the suit land properly and to prove the exact location of 16 R. It is contended that when parcel of Sy.No.50 were alienated to the defendant and different persons,the appellant should have been more cautious. It is submitted that no steps were taken by the appellant to resort to measurement after receiving the land vide relinquishment deed.

8. I have considered rival submissions of the parties. The controversy pertains to 16 R of land which is part and parcel of Sy No.50/2/4. It is admitted that defendants acquired different parcels of land from Gat No.50 from grandfather of the appellant vide sale deeds which are at Exhibit Nos.106, 109 and 119. It also reveals from the record that Sy.No.50/2/4 is measuring 1 H and 18 R which is received by the appellant. Out of that some portion is alienated and excluding that portion whatever is remaining is the disputed area.

9. Both the courts below have recorded that relinquishment deed does not spell out four boundaries and this fact has also not been controverted by learned counsel for the appellant. The amended plaint describes the boundaries of the disputed area. On and towards West part of Gat No.50/2/4 and on and towards North, part of Gat No.50/2/4 have been mentioned. When already different parcels of gat No.50 were alienated by the grandfather of the appellant and appellant himself alienated part of gat No.50/2/4, it was incumbent

upon the appellant to come up with a very specific case describing the exact location and identification of the disputed area.

10. The appellant also did not resort to measurement after he received the land in relinquishment deed. The measurement which was conducted in 2003 would be of no avail. A care should have been taken by the appellant because the initial burden was upon him to prove the identification of the land in peculiar circumstances. I find that the findings recorded by both the courts are plausible and reasonable. They are based on materials on record.

11. The substantial questions of law which are pressed into service are more or less based upon the factual assessment. Both the courts below have already recorded findings of facts. The appellant could have resorted to Order 26 Rule 9 of C.P.C either in the trial court or in appellate court. The plea that Court *suo-motu* should have resorted to Order 26 Rule 9 of C.P.C is a chance plea. Appellant appears to be fencesitter . I find no substance in the substantial questions of law.

12. Second appeal is dismissed.

13. Civil application also stands disposed of.

[SHAILESH P BRAHME, J.]

vsj..