IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 399 OF 2020
WITH
CIVIL APPLICATION NO. 357 OF 2020
IN
SECOND APPEAL NO. 399 OF 2020

Anil Sadashiv Jagtap ...Appellant / Applicant

Versus

Kantilal Dasu Vyavahare And Others ...Respondents

Mr. Ajay A. Joshi, for the Appellant / Applicant.
Mr. Rupesh K. Bobade a/w Mr. Shradha K. Nakadi a/w Mr. Niranjan Dhainje for Respondents.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : OCTOBER 15, 2026

P. C. :

1. Heard learned counsel appearing for the Appellant and learned counsel appearing for the Respondents.

2. The Second Appeal is at the instance of the original defendant against the concurrent findings of the Trial Court and the Appellate Court. For the sake of clarity, the parties are referred to by their status before the Trial Court.

3. Regular Civil Suit No.349 of 1998 was filed seeking perpetual injunction. The plaintiffs claimed to be the owners of land bearing Gat No.1341 and Gat Nos. 1343/1 and 1342 purchased by the plaintiffs. The

plaintiffs' case was that the defendant purchased land bearing Gat No. 1339, which is on the western side of the suit land, and the land of the plaintiffs bearing Gat No.1341 is situated on the eastern side of Gat No. 1339.

4. As per the consolidation scheme, the land, at the instance of the defendant, was shown as Gat No.1340 situated on the eastern side of Gat No.1339, whereas land Gat No.1340 is on the southern side of Karkamb Aran road and to the southern side of the plaintiffs' land. It was claimed that Regular Civil Suit No. 298 of 1998 was filed by the defendant on the basis of wrong four boundaries, which came to be dismissed on merits, and that the defendant is encroaching upon the plaintiffs' land. Hence, the suit came to be filed seeking perpetual injunction.

5. The defendant contested the suit, claiming that there is no error in the consolidation scheme and that the four boundaries of the suit land as given by the plaintiffs are incorrect. It was claimed that the land of the defendant bearing Gat No.1340 is on the western side of Gat No. 1341, and that confusion is sought to be created by showing incorrect four boundaries.

6. The Trial Court framed the necessary issues as regards the possession of the plaintiffs, the proper description of the suit property, and as to whether there is any obstruction to the plaintiffs' possession

of the suit property. As to the description of the suit property, the Trial Court noted that there was a previous suit between the same parties, being Regular Civil Suit No. 298 of 1998, filed by the present defendant in respect of the same subject matter for injunction. It noted that the suit came to be dismissed holding that the land of the defendant is on the southern side of Karkamb Aran road as against which, the appeal came to be dismissed by the District Court, and the Second Appeal was also dismissed by the High Court. The Trial Court held that as the issue in respect of the location of the land has already been decided in Regular Civil Suit No.298 of 1998, which has been confirmed.

7. On the issue of possession of the plaintiffs over the suit property, it noted that the defendant has admitted in his cross-examination that the disputed lands are in the ownership and possession of the plaintiffs. On the issue of obstruction at the hands of the defendant, it noted that the possession of the plaintiffs has been established and there has been an evident attempt of forcible dispossession by the defendant. The Trial Court decreed the suit restraining the defendant from causing obstruction to the possession of the plaintiffs over the suit land.

8. The Appellate Court upheld the findings of the Trial Court and dismissed the appeal.

9. Mr. Joshi, learned counsel appearing for the Appellant, has tendered a chart in order to demonstrate the discrepancy in the

locations *qua* the City Survey map, the Court Commissioner's report, and the consolidation map which was prepared pursuant to the orders of the High Court. Pointing out to the chart tendered, he submits that insofar as the City Survey map is concerned, the same shows the defendant's land, i.e. Gat No.1340 to the western side of the plaintiffs' suit property, which is also confirmed by the Court Commissioner's report. He submits that the consolidation map came to be amended in the year 2017 pursuant to the order of the High Court, and thereafter the plaintiffs had amended the plaint and changed the description. He would further submit that insofar as the location of the property is concerned, the Trial Court has solely relied upon the judgment in the defendant's suit which had been dismissed, and could not have formed the basis for the Trial Court to come to a conclusion as regards the location of the suit properties. He would submit that the defendant's suit came to be dismissed based on admission elicited in the cross-examination of the defendant, and the same cannot prevail over the report of the Court Commissioner which has been admitted by the plaintiffs. He would further submit that the judgment in Regular Civil Suit No.298 of 1998 cannot override the findings in the present suit and, in particular, the Court Commissioner's report. He would further submit that the findings of the Trial Court suffer from perversity as it ignores the documentary evidence in the form of the execution of the sale deed

dated 29th June 1987 in respect of the land bearing Gat No.1339 executed in the name of the brother of the defendant, which records that the land bearing Gat No.1340 is situated on the western side of the suit land. He would further submit that based on a stray admission in the defendant's own suit, the Trial Court could not have decreed the plaintiffs' suit herein and cannot override the documentary evidence. He submits that there is perversity in the findings of the Trial Court and a substantial question of law arises. He draws support from the decision of the Hon'ble Supreme Court in the case of ***Omprakash v. Kimtu and Another***[1]**.**

10. I have considered the submissions and minutely perused the judgments of the Trial Court and the Appellate Court. The plaintiffs came with a case of the defendant disturbing the plaintiffs' possession of the suit property, i.e. Gat Nos. 1341, 1343/1, and 1342. The issue of possession is established on the basis of the evidence and there were no submissions canvassed to dispute the finding of fact arrived at by the Trial Court insofar as the plaintiffs' possession of the suit property is concerned. The submissions canvassed and the judgment of the Trial Court would indicate that the entire dispute is about the location of the defendant's land, that is Gat No.1340, whether it is on the western side of the plaintiffs' suit land or on the southern side of the plaintiffs' suit land. It is not disputed that Regular Civil Suit No.298 of 1998 was filed

1 **(2005) 13 SCC 389**

by the present defendant seeking injunction against the plaintiffs and the subject matter was identical as in the present suit, as the claim of the defendant was that the defendant's land, i.e. Gat No.1340, was on the western side of the plaintiffs' suit land. The Trial Court has specifically noted the finding of the Trial Court in Regular Civil Suit No. 298 of 1998 that the land of the present defendant is situated on the southern side of the plaintiffs' suit land, and based on the same, the defendant's suit for injunction came to be dismissed, which finding attained finality to the High Court. The judgment in Regular Civil Suit No.298 of 1998 therefore attained finality *qua* the location of the suit land, which has rightly been considered by the Trial Court.

11. Mr. Joshi would rely upon the decision in the case of ***Omprakash v. Kimtu and Another*** (supra) in order to contend that the decision by the Trial Court in the present suit could not have been rendered only on the basis of judgment in another case which is not conclusive between the parties. The said decision is clearly distinguishable on facts. In that case, there was a power of attorney executed by one Gheru in favour of his wife Sobhi, and on the basis of the said power of attorney, several deeds of sale were executed by her in favour of various persons, and suits came to be filed questioning the legality of the power of attorney and the sale deeds. The suit came to be dismissed by the Trial Court *inter alia* holding that Gheru was not legally disabled to execute the

power of attorney. In that case, before the High Court, for the first time, the judgment in another suit came to be filed by way of an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908. It is in that context that the relevancy and admissibility of the judgment in terms of Sections 41, 42, and 43 of the Indian Evidence Act, 1872 was considered. The Hon'ble Apex Court noted that if the High Court intended to rely upon the judgment, it was bound to formulate an appropriate substantial question of law, which it had failed to do. It further held that there cannot be any doubt or dispute that the said judgment, not being a judgment in rem, was not binding upon the Appellants therein.

12. In the present case, the previous suit, i.e. Regular Civil Suit No. 298 of 1998, was between the same parties and in respect of the same subject matter, in which the location of the land of the defendant came to be decided on the basis of evidence which was adduced. Though it is sought to be contended by Mr. Joshi that the defendant's suit came to be dismissed based on a stray admission, it needs to be noted that the finding of fact has attained finality up to the High Court and would bind the Trial Court in the present suit. Considering the finality attached to the Judgment in the defendant's case, the evidence on record adduced by the Court Commissioner cannot override the Judgment and decree of the Trial Court in Regular Civil Suit No.298 of 1998. It is also pertinent

to note that pursuant to the judgment in Regular Civil Suit No. 298 of 1998, application was made for necessary corrections in Consolidation Scheme, which was directed to be carried out by High Court. The consolidation map was prepared, which also showed the location of defendant's land on the southern side of the plaintiffs' suit land.

13. In light of the above discussion, the Trial Court has rightly appreciated the evidence as regards location of defendant’s land. Given the location of defendant’s land, and possession of plaintiffs’ being established, the restraint order has rightly been passed. There is no perversity in the findings of the Trial Court. Resultantly, the Second Appeal fails and stands dismissed.

14. In view of the dismissal of the Second Appeal, the Civil Application No.357 of 2020 does not survive and stands disposed of.

[SHARMILA U. DESHMUKH, J.]