

Prashant and Others Vs. Ushabai and Others

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Court : Mumbai Nagpur

Decided On : Apr-25-2014

Judge : A.P. Bhangale

Appeal No. : Second Appeal No. 353 of 2007

Appellant : Prashant and Others

Respondent : Ushabai and Others

Judgement :

Oral Judgment:

1. This appeal was admitted on 7.8.2007 on the following substantial question of law:

1. Whether the first Appellate Court was justified in reversing the decree passed by the trial Court mainly on the ground that the plaintiff had not complied with the provisions of Order VII, Rule 3 of the Code of Civil Procedure by not describing the property sufficiently for the purpose of its identification, when the pleadings in the plaint pertaining to the description of the property and the plaint map was sufficient to disclose the identity of the same?

2. The facts, briefly stated, are as under:

This Second Appeal is preferred against the Judgment and Order dt.5.7.2006 passed by the learned Additional District Judge, Pandharkawada in Regular Civil Appeal No.194 of 2002 whereby the learned first Appellate Judge was pleased to allow the appeal. In the result, the suit which was decreed by the trial Court came to be dismissed. The first Appeal arose from the Judgment and Order dt.11.7.2002 passed in Regular Civil Suit No.123 of 1995 by the learned Civil Judge (Jr.Dn.), Kelapur. The trial Court was pleased to decree the suit for removal of encroachment and possession of the encroached portion after evidence was led by the parties.

3. The substantial question of law which is formulated by this Court relates to the provisions made under Order VII, Rule 3 of the Code of Civil Procedure, which reads thus:

œWhere the subject matter of the suit is immovable property “ Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.?

4. In State of Maharashtra, at the end of the rule, it is added that œIn cases of encroachment an accurate plan shall also be filed along with the plaint. The law requires sufficient description of the immovable suit property to identify it's boundaries or number. The plaint must not be vague. In cases wherein encroachment is alleged, an accurate plan must be annexed with the plaint.

5. Thus, the plaintiff is expected to describe the suit immovable property sufficiently to identify and where such property can be identified by the boundaries or numbers in the record of settlement or survey, the plaint shall give such boundaries or numbers. The learned first Appellate Judge, it appears that, has considered it and was pleased to allow the appeal by strictly construing the provisions of law stated as above. The learned first Appellate Judge concluded the discussion by stating that the plaintiff has not discharged the burden of establishing and proving the issue no.1 which was framed as under:

œWhether it is proved that defendant no.1 has made encroachment on the disputed property admeasuring 22.10 square metres in the property of the plaintiff??

The issue was answered in the negative.

6. The first Appellate Judge also negated the issue as to whether the plaintiff is entitled to remove encroachment and get vacant possession of the disputed property from the defendant. The first Appellate Judge also denied the relief of mesne profit awardable under Order XX, Rule 12 of the Code of Civil Procedure.

7. Learned Counsel for the Appellant, who canvassed the argument in support of the appeal and the decree which was granted by the trial Court, submitted that, in the present case, in the plaint itself, the immovable property was sufficiently described so as to identify it by its boundaries as well as numbers in the survey record. My attention is invited to averments made in the plaint, particularly in para no.5 where it is averred that the plaintiff had got the suit property measured by the District Inspector of Land Records (competent Government Official) and accordingly, on 27.8.1993, during the measurement, it was found that the defendant encroached upon area of 11.69 square metres by raising permanent construction and upon area of 10.41 square metres by raising temporary construction and committed encroachment over the suit plot. The defendant himself was present at the time of measurement when the competent Officer representing the D.I.L.R. Office of the State of Maharashtra had drawn a map to the scale of 1 = 500 with explanatory notes indicating not only number of suit plot, which is subject matter of the immovable property, but also boundaries in respect of the suit plot. The plaintiff had specifically stated that the map or plan drawn by the Surveyor be treated as part of the plaint and accordingly, the said map drawn in scale was annexed with the plaint. The rule under Order VII, Rule 3 of the Code of Civil Procedure was complied with.

8. Under these circumstances, the learned Counsel for the appellant contended that the case of the plaintiff is clearly covered by the ruling in the case of **Vasant Raghu Bhingardive and Others vs. Nagori Muslim Misgar Jamat Trust, Ahmednagar and Others** reported in 2007 (4) Mh.L.J. 216. In para 8 thereof,

following observations were made :

As regards description of the suit land, it is pertinent to note that the objection of the defendants was that the plaintiff Trust failed to mention boundaries thereof in the plaint. The plaintiff-Trust, however, filed certified copy of the map drawn by the District Inspector of Land Records (D.I.L.R.). The plaintiff-Trust made it clear that the land demarcated in the said map is the suit land. The plaintiff-Trust urged in the plaint itself that the said map may be treated as part and parcel of the plaint. It appears that there are some huts and there is portion covered by uncultivable land in rest of the land. The plaintiff described 2 acres area, excluding the area under the hutment and the area of the fallow land, shown in the map drawn by the D.I.L.R. The measurement map was prepared by the Public Officer in due course of the official business. The first appellate Court was right in relying upon the said plaint map. The description of the suit land is adequate and proper in view of demarcation shown in the plaint map. There is due compliance of Order VII, Rule 3 of the Civil Procedure Code. The suit cannot be dismissed on the technical ground that boundaries of the suit land are not shown in the plaint. There is no substance in the objections raised in this behalf.?

9. In view of the above, the substantial question of law stated as above has to be answered in favour of the plaintiff as there was no justification on the part of the learned first Appellate Judge to reverse the decree on technical ground under Order VII, Rule 3 of the Code of Civil Procedure; Particularly when there were specific averments made by the plaintiff in the plaint itself and the map drawn to the scale along with full explanatory notes indicates not only number of the suit plot but also boundaries thereof on eastern, western, northern and southern side. That being so, the substantial question of law formulated by this Court by order dt.7.8.2007 is required to be answered in the negative. In the result, therefore, the impugned Judgment and Order passed by the first Appellate Court in Regular Civil Appeal No.194 of 2002, dt.5.7.2006 is set aside. The decree passed by the trial Court in Regular Civil Suit No.123 of 1995, dt.11.7.2002 is restored. The Second Appeal is allowed with costs accordingly.