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Hemraj and Others Vs. Suryabhan

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Court : Mumbai Nagpur

Decided On : Feb-06-2014

Judge : A.P. Bhangale

Appeal No. : Second Appeal No. 433 of 2013

Appellant : Hemraj and Others

Respondent : Suryabhan

Judgement :

Oral Judgment:

1. Heard the learned Counsel for the respective parties.

2. **Admit** on the following substantial question of law:

Whether it is essential to get agreed map in respect of the disputed agricultural lands and if parties cannot agree, whether it is necessary to appoint Court Commissioner preferably Cadestral Surveyor so as to draw such map in respect of disputed agricultural lands for just and proper decision of the real controversy between the parties?

3. My answer to the above question is in the affirmative as in the cases where dispute is as to boundaries or boundary-marks of the immovable property and when parties do not agree to any map produced on the record, it becomes

essential for the trial Court or the first Appellate Court as final Court on finding of facts to ensure that a competent Cadestral Surveyor is appointed as the Court Commissioner to prepare measurement map in respect of the suit properties so that after receiving authentic map or plan from the competent Official on behalf of the State Government, the trial Court is assisted meaningfully with a view to execute the decree that may be passed. Execution of decree is thus facilitated so as to set at rest the real controversy between the parties. Considering the facts and circumstances in the present case, it is clear that the land measuring 3.06 Hectares R, which was identified as land bearing Survey No.1 situated at mouza Mukta, Tq. Maregaon, District Yavatmal was subdivided as Survey No.1/1 and 1/2 and thereafter, it was renumbered as Gat Nos. 5 and 6 respectively. It is also contended that defendant had, in fact, examined one Mr. Manohar as DW-4 who was from the Office of Taluka Inspector of Land Records. It is contended that the trial Court decreed the suit of the plaintiff granting the prayer that, as shown in the disputed map, the land surrounded by alphabets A, B, C, D bearing old Survey No.1/1 and new Gat No.6 be delivered in the possession of the plaintiff.

4. The First Appeal against the decree was dismissed. The grievance of the appellant is that the Courts below erred in discarding the evidence of Surveyor Manohar (DW-4) whose evidence was authentic as he was representing the Office of the T.I.L.R. in respect of measurements carried out by him. Even otherwise, the application (Exh.34) was moved before the first Appellate Court for appointment of the Court Commissioner, which, unfortunately, was kept in abeyance by the learned first Appellate Judge by order dt.6.10.2010 on the ground that the application is necessary to be considered after final hearing of both the parties. Under these circumstances, it is necessary to determine the real controversy between the parties to put the agricultural lands in possession of the parties to which they are entitled to possess after duly measured by the Office of Taluka Inspector of Land Records, Maregaon or by the Office of District Inspector of Land Records as the trial Court may deem it fit so as to find out the exact area of tenements in view of the Bombay Tenancy and Agricultural lands (Vidarbha Region) in respect of their respective tenancies. In such cases, oral evidence irrespective of its quantum may not conclusively prove the crucial issue in the suit. The trial Court may have to act upon lawful presumptions flowing from authenticity

of the map and plan drawn by the competent Authority on behalf of the State Government so as to draw presumption in respect thereof u/s. 83 of the Indian Evidence Act. The trial Court may satisfy itself that the map or the plan drawn by the competent Authority is proved to be accurate and may then decide by acting upon report of the competent Authority such as D.I.L.R. or T.I.L.R. as the case may be in respect of joint measurement of lands possessed by the parties. After such map or plan is produced on record, if at all it is felt necessary, the trial Court may call upon the parties to lead further evidence about the boundaries of the suit lands. It is duty of the Courts of facts to use inherent power wherever necessary to meet the ends of justice by rendering a just, proper and final decision in respect of real controversy between the parties. It is duty of the trial Court to deal with all issues and evidence in this case. Because on the basis of full and fair evidence alone, the trial Court can finally decide the real controversy between the parties to the suit. Otherwise, without ensuring such evidence on record from the competent Authority, decree that may be passed would remain meaningless for just and proper execution of the decree. In the larger interest of justice, to set at rest the real controversy and to ensure finality to be attained in respect of the real dispute between the parties to the suit, the impugned judgments and orders are required to be set aside with a direction to the learned trial Judge to appoint the Court Commissioner preferably Cadestral Surveyor from the Office of Taluka Inspector of Land Records or District Inspector of Land Records directing him to undertake joint measurement in respect of lands owned and possessed by the parties to the suit preferably in presence of the parties and then to produce the map along with the report in the trial Court. The trial Court may determine the factum of possession or right to possession between the parties to the suit after getting the map on the record of the suit pursuant to measurement by the Cadestral Surveyor as directed above in order to pass final decree. This appeal is, therefore, allowed accordingly.

Parties to appear before the trial Court on 3.3.2014.

The trial Court shall expedite hearing of the suit and decide the suit in accordance with law preferably within six months or as early as possible.

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