

Presented on : 21.11.2009
Registered on : 21.11.2009
Decided on : 06.09.2017
Duration : 7 Y. 09 M. 15 D.

IN THE COURT OF DISTRICT JUDGE-2,
AT WARORA, DISTRICT- CHANDRAPUR.
(Presided over by Nikhil P. Mehta)

Exh.No.54

REG. CIVIL APPEAL NO.76/2009

Appellant : Laxman Rambhauji Manusmare
Aged about 52 years,
Occupation –Service,
R/o Subhash Ward, Warora
Tah. Warora, Distt. Chandrapur.

-Versus-

Respondents : 1) Nanaji Laxmanrao Aaglawe (Dead)
L.Rs.
1A) Smt. Kamal Nanaji Aaglawe
Aged 76 years,
Occupation – Household,
R/o Sidharth Ward, Warora,
C/o Baba Nanaji Aaglawe,
Tah. Warora, Distt. Chandrapur.

B) Baba Nanaji Aaglawe
Aged 59 years,
Occupation – Retired,
R/o Sidharth Ward, Warora,
Tah. Warora, Distt. Chandrapur.

C) Narendra Nanaji Aaglawe
Aged 45 years,
Occupation –Service,
R/o Sundervan Layout, Warora,
(Wani Bye-pass),Tah. Warora,
Distt. Chandrapur.

- D) Sau.Babytai Babanrao Kharwade
Aged 42 years,
R/o In front of Old Bus Stop,
Bhadrawati, Tah. Bhadrawati,
Distt. Chandrapur.
- E) Sau.Shobhatai Gangadhar Pawade
Aged 40 years,
Occupation –Household,
R/o Jyotiba Fule Ward, Warora,
Near Pampattiwar Jinning,
Tah. Warora, Distt. Chandrapur.
- F) Sau. Vatsala @ Kavita Sukhdeo Mohitkar
Aged 38 years,
Occupation – Household,
R/o Sidharth Ward, Warora,
Tah. Warora, Distt. Chandrapur.
- 2) Wasudeo Balaji Tadas (**Dead**)
- 2A) Sou. Shobha wd/o Wasudeo Tadas
Aged about 55 years,
Occupation – Household work,
- 2B) Ku. Pranjali Wasudeo Tadas
Aged about 32 years,
Occupation – Household work,
- 2C) Pravin Wasudeo Tadas
Aged about 28 years,
Occupation – Business,
- 2D) Ku. Mrunali Wasudeo Tadas
Aged about 26 years,
Occupation – Education,

2E) Ku. Pratim Wasudeo Tadas
Aged about 24 years,
Occupation – Education,
Nos. 2A to 2E All R/o Balaji Ward,
Chandrapur, Tah. & Distt.Chandrapur.

3) Ramchandra Marotrao Narade
Aged about 50 years,
Occupation – Business,
R/o Kamala Ward, Warora
Tah. Warora, Distt. Chandrapur.

Shri R.V. Kidambi Adv. for appellants
Respondent no. 1A, C, D, E, F : Ex parte
Shri L.R. Pole Adv. for respondent no.1B
Shri G.N. Dambhare Adv. for respondent no.2A to 2E
Respondent no.3 Absent

JUDGMENT

(Delivered on this 06th day of September, 2017)

Being aggrieved by the judgment and decree passed by learned 2nd Joint Civil Judge (Jr.Dn.), Warora in R.C.S. No.06/2001 (Nanaji and others Vs. Laxman) dated 30-10-2009, its legality and correctness is challenged before this court in the instant appeal. Both parties shall be referred to as '*plaintiffs and defendant*' as they were before learned trial court for sake of brevity.

2. **Brief facts of the case are as under :**

It is the case of plaintiffs that the suit plot shown in Exh.53 by letters ABCD was never sold to defendant vide registered sale-deed dated 05-10-1990, in fact sale-deed of plot

no.1, admeasuring 180 sq.mtr. was executed in favour of defendant. He put his construction on entire plot admeasuring 12 X 15 Sq.Mtr. total area 180 Sq.Mtr. In the month of April 2000 plaintiff no.1 requested him to remove his material from the suit plot but he failed to do so. Plaintiffs issued notice through their advocate calling upon him to refrain from using the open space for his own use. Defendant falsely replied the notice and stated that plaintiffs have no right or title over suit plot. Plaintiffs have sought mandatory injunction directing defendant to remove his agricultural material and delivered the vacant possession of the suit plot.

3. Defendant contended that the suit plot is owned by him by virtue of sale deed dated 05-10-1990. The suit plot is situated towards east of Wani-Warora State highway. Collector, Chandrapur had granted permission to use survey no. 167/5 as non agricultural land. Towards east of plot no.1 there is service road having width of 40 ft.. Plaintiffs have sold entire plot no.1 to defendant. There is no open space left towards west of plot no.1. He is owner of entire plot no.1. Since date of sale of plot no.1,he is in possession over it. The open space having width of 40 ft. situated towards west of the plot is belonged to Government and plaintiffs have no right or interest in it. Since March 2000 defendant started using the suit plot. Plaintiffs have no locus standi or cause to file the instant suit. Since October 1990 the suit plot is being used by defendant by erecting compound around it. The instant suit is barred by time.

4. Having regard to the memo of appeal defendant submitted therein that without taking measurement and drawing of the map from the competent authority the encroachment could not be proved. Defendant is in long standing possession over suit plot and have acquired legal right over it. The sanctioned layout plan of plot no.1 is not proved by plaintiff. Ld. Trial court wrongly concluded that defendant has made encroachment over suit plot.

5. After hearing the learned counsel for the appellant and respondents and having regard to the grounds of Appeal following points arise for my determination. I record my findings against each one of them with reasons to follow :

Points

Findings

- | | |
|--|--------------------------|
| 1. Do defendant prove that 40 ft..... wide open space situated towards west of plot no.1 belongs to Government ? | In negative |
| 2. Do defendant prove that he is.... owner of suit plot shown in letters ABCD to A in map Exh.53 ? | In negative. |
| 3. Whether plaintiffs are entitled for.... possession of suit plot as shown in Exh.53 by letters ABCD to A ? | In affirmative. |
| 4. Whether the order of Ld. Trial.... court is legal and correct ? | Legal and correct. |
| 5. What order ? | As per final order. |

REASONS

As to point nos. 1 to 4 :

6. Defendant claims to be in possession over area 360 sq.mtr.. Defendant has not disputed that he purchased plot no.1 vide registered sale deed dated 05-10-1990 from plaintiff nos.1 to 3. The area of plot no.1 shown in the sale deed at Exh.58 is 180 sq.mtr.. The boundaries of the plot no.1 which is sold to defendant is stated as below :

Towards East : Plot no.2
Towards West : 40 ft. wide land touching to Wani
main road.
Towards North : Krushi nagar colony and
Towards South : 9 Mtr. wide road.

7. Defendant has not disputed the area and description of plot no.1 as stated in sale deed Exh.58. According to him 40 ft. wide open land, towards west of plot no.1 is owned by Government. The burden was upon defendant to establish that the said open land is owned by Government but no such evidence was led by him in that regard. The sanction layout map at Exh.56 shows that the width of plot no.1 is 24 sq.mtr. The said entry of the area is contradictory to the area of plot no.1 as shown in Exh.58. In view of above referred inconsistency the area of plot no.1 as shown in sale deed shall prevail. The suit map which is filed on record at Exh.53 shows that the width of the suit plot is 12 sq.mtr. which is equivalent to 40 ft. Thus, the open space situated towards west of plot no.1 cannot be said to

be part and parcel of the plot no.1.

8. It is contended by defendant that no measurement of the disputed plot was taken by plaintiffs therefore encroachment could not be found. Defendant has claimed his ownership over suit plot. Defendant could not establish that suit plot is part and parcel of plot no.1. The suit plot is open plot situated towards west of the plot no.1. It is not disputed that defendant has kept his material on it. It is not the case of defendant that area of plot no.1 is 360 sq.mtr. It is admitted by defendant in his written statement that the area of plot no.1 is 180 sq.mtr. i.e. 12 X 15 sq.mtr. The width of plot no.1 is 12 sq.mtr. and not 24 sq.mtr..

9. The sale deed of plot no.1 was executed way back in the year 1990. Defendant at no point of time initiated any proceedings for seeking necessary correction in the area alleged to have been wrongly shown in the sale deed. Having regard to the contents of the sale-deed it cannot be said that defendant is the owner of entire land measuring 360 sq.mtr. Defendant title is only upto area 180 sq.mtr. in plot no.1. Plaintiffs never sold area 360 sq.mtr. to defendant by registered sale deed dated 05-10-1990. It is settled law that purchaser cannot have better title than what his vendor had. The possession which is claimed by defendant over suit plot having area 12 X 15 sq.mtr. is illegal and without proper sanction of law.

10. It is contended by defendant that his possession over

suit plot is since the year 1990. Since he is in long possession over suit plot therefore, he has acquired his ownership over it. Defendant is claiming title over suit plot why virtue of sale deed dated 05-10-1990 and alternatively he is seeking perfection of his right over it by adverse possession. Both pleas cannot go together. No person can become owner both on the basis of title as well as adverse possession. Moreover, there is no pleading of defendant claiming title over suit plot by adverse possession. Therefore, defendant failed to establish his ownership over suit plot either by virtue of legal document or by adverse possession.

11. It is further contended by defendant that plaintiff nos. 2 & 3 have not given power of attorney in favour of defendant no.1. The alleged power of attorney is cancelled by plaintiff nos.2 & 3 therefore, plaintiff no.1 has no right to institute the instant suit. It is admitted by defendant that survey no.167/5 is jointly owned by plaintiff nos.1 to 3 and the said survey number was converted into non-agricultural use by order of Collector, Chandrapur. Layout was laid on it where plot no.1 is situated. Thus, plot no.1 is jointly owned by plaintiff nos.1 to 3. Any one of the joint owner can file suit on behalf of other joint owners. There is nothing on record to show that there is in terse dispute in between plaintiff nos.1 to 3. The plaint is signed by plaintiff no.1 on his behalf and on behalf of plaintiff nos.2 & 3. Therefore, the objection of defendant that plaint is liable to be rejected as plaintiff nos.2 & 3 have not authorized plaintiff no.1 to file suit cannot be accepted.

12. Defendant failed to establish his ownership over suit plot shown in letters ABCD to A in Exh.53. He further failed to establish that the suit plot is part and parcel of plot no.1. It is contended by defendant that no measurement of disputed plot was done by competent measurer therefore encroachment is not proved. It is the defence of defendant that suit plot is government land, which itself indicates that its identity is not seriously challenged. Furthermore the area of the suit plot is established by document filed on record at Exh.56 and Exh.58. Thus, defendant is encroacher over suit plot having area 12 X 15 sq.mtr. The suit plot is owned by plaintiff nos.1 to 3, it being part and parcel of survey no.167/5. In view of above referred discussion I answer point nos.1 & 2 in negative, point no.3 in affirmative, point no.4 as legal & correct and proceed to pass the following order.

ORDER

1. Appeal is dismissed with cost.
2. Decree to be drawn up accordingly.

Dated. 06/09/2017.

Sd/-
(Nikhil P. Mehta)
District Judge-2,
Warora