

MHSN090002952018



Received on : - 16.03.2018
Registered on : - 17.03.2018
Decided on : - 15.07.2023
Duration :- Ys. Ms. Ds.
05 03 28

IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION, TASGAON, AT :
TASGAON.

(Presided over by Omprakash M. Mali)

Regular Civil Suit No. 35 of 2018.

Exh. No. 16

Shri. Anandarao Dattajirao Shinde,
Age-75 Yrs. Occu.- Agri,
R/o. Pulachi Shirolu (Anandnagar),
near Shirolu Highschool,
Tal-Hatkanangale, Dist- Kolhapur.

-- Plaintiff.

Versus.

Shri. Gajanan Pandurang Shinde,
Age-55 Yrs. Occu.- Agri.,
R/o. Arwade, Tal. Tagsaon, Dist. Sangli.

-- Defendant.

**-: Suit for recovery of possession on the basis
of title and for mandatory injunction.**

Appearances

Shri. V.S.Walujkar- Advocate for Plaintiff.
Exparte against defendant.

:- JUDGMENT :-

(Delivered on 15th day of July 2023)

Facts of the plaintiff's case in brief are as follows :-

The land Gat No.30/C ad-measuring H.0-19 R, Gat No.30/D ad-measuring H.2-30 R, Gat No.30/F ad-measuring H.0-48 R out of these pot hissas land Gat No.30/F is party constructed and partly open situated at village-Arwade, Tal-Tasgaon, Dist-Sangli is the subject matter of the suit. Hereinafter it is called as the ***"suit property"***. The rough hand sketch map filed along-with the plaint is part and parcel of the plaint.

02. The suit property is owned by the plaintiff and it is came into the share of plaintiff by way of preliminary decree passed in the year 1992 in R.C.S.No. 156/1978. On the basis of preliminary decree passed in R.C.S.No. 156/1978 the plaintiff filed Reg.Dkst. No.28/1992 and wherein precept was sent to the Collector and he got symbolic possession of the suit property on 15.04.2017. The said darkhast was disposed off on 06.08.2010. The defendant has illegally encroached on the suit property. As the plaintiff could not get the actual possession and he is having only the symbolic possession, therefore, the plaintiff has filed present suit and prayed for possession on the basis of his title by removing the construction made by defendant, by way of mandatory injunction. He further prayed for mesne profits for period of institution of suit till he gets actual possession.

03. The record shows that, suit summons is duly served to defendant, but he did not appear in the present suit, therefore, suit proceeded exparte against him.

04. Considering the contentions raised in the plaint, following points arise for my determination and I have recorded its findings against each of them with reasons thereon as under.

POINTS**FINDINGS**

- | | |
|---|---------------------|
| 1. Whether the plaintiff proves that, he is the owner of the suit property? | In the affirmative. |
| 2. Whether the plaintiff proves that, defendant by way of illegal construction made encroachment in the suit property ? | In the negative. |
| 3. Whether the plaintiff is entitled for possession of suit property as prayed ? | In the negative. |
| 4. Whether the plaintiff is entitled for mandatory injunction as prayed ? | In the negative. |
| 5. Whether plaintiff is entitled for mesne profits as prayed ? | In the negative. |
| 6. What order and decree? | As per final order. |

:- REASONS :-

05. In order to prove the case of the plaintiff, he filed his affidavit of examination-in-chief at Exh.12. The plaintiff filed on record 7/12 extracts of Gat No.30/C, 30/D and 30/F at Exh.7 to 9, Office copy of notice sent by plaintiff to defendant dated 01.01.2018 at Exh.3/5, acknowledge receipt at Exh.3/6, certified copy of Exh.1 of R.C.S.No.156/1978 at Exh.14/1, certified copy of judgment passed in R.C.S.No.156/1978 at Exh.14/2, certified copy of preliminary decree passed in R.C.S.No.156/1978 at Exh.14/3, certified copy of Exh.1 of Reg.Darkhast No.28/1992 at Exh.14/4 and certified copy of proceeding before the Tahsildar, Tasgaon in Watap S.R.No.142/2013 at Exh.14/5 and filed evidence close pursis at Exh.15.

AS TO POINT NO. 1 :-

06. It is the contention of the plaintiff that, he became owner of the suit property by decree passed in R.C.S.No.156/1978. The said suit was filed by plaintiff for partition and it was decided in the year 1992. In order to execute the said preliminary decree, he had filed Reg.Dkst. No.28/1992 and

he got symbolic possession of the suit property on 15.04.2017 through Tahsildar, Tasgaon. In order to prove his contention he filed on record his affidavit of examination in chief at Exh.12. As the suit proceeded ex parte against the defendant, he was not cross examined by the defendant. Further the plaintiff has filed on record 7/12 extracts of the suit properties as well as certified copy of Exh.1 of R.C.S.No.156/1978, certified copy of judgment passed in R.C.S.No.156/1978, certified copy of preliminary decree passed in R.C.S.No.156/1978, certified copy of Exh.1 of Reg.Darkhast No.28/1992 and certified copy of proceeding before the Tahsildar, Tasgaon in Watap S.R.No.142/2013. After perusal of these documents it is seen that the plaintiff filed suit for partition bearing R.C.S.No.156/1978. The said suit was decreed and preliminary decree was drawn. In order to execute the said preliminary decree he filed Reg.Dkst. No.28/1992 and wherein the precept was send to Collector, Sangli. Accordingly, the possession was given to the plaintiff through Tahsildar, Tasgaon in Watap S.R.No.142/2013. The plaintiff has filed on record 7/12 extracts of suit property which shows that, effect of partition was given to revenue record and name of plaintiff is recorded to land Gat No.30/C, 30/D and 30/F. All these documentary evidence shows that the plaintiff is the owner of suit property. Hence, I answer point no.1 in the affirmative.

AS TO POINT NO. 2 :-

07. It is the contention of the plaintiff that, the defendant has made illegal construction in suit property i.e. land Gat No.30/F which is shown by him the yellow colour in the rough sketch map filed along-with the plaint. This contention of the plaintiff shows that, according to plaintiff the defendant made encroachment and raised construction over the suit property i.e. land Gat No.30/F. In order to prove the same, the plaintiff has only adduced the oral evidence by way of filing his affidavit of examination-in-chief. After perusal of plaint it is seen that, the plaintiff nowhere mentioned that on which side of land Gat No.30/F, the land of defendant is situated and how the defendant made encroachment in land Gat No.30/F. Further it is seen that, there is no pleading as to what type of construction and the measurement of

the construction raised by defendant. When it is alleged by the plaintiff that there is an encroachment by the defendant in the land owned by him, then it is necessary to bring on record the said encroachment. The encroachment can be brought on record by way of producing a map, if it is available or by appointing Court Commissioner. In the present case, it is necessary on the part of plaintiff to bring the encroachment on record by way of measurement or by appointment of Court Commissioner. But, the plaintiff has not taken any steps to bring on record the encroachment. Further it is seen that, there is no pleading as to when, the defendant has made the encroachment by raising construction in the suit property. The cause of action which is mentioned by the plaintiff in the suit shows that, the defendant started obstructing the possession of plaintiff in the year 2010-2011. The plaintiff himself has filed on record the panchanama which was executed while giving possession of the suit property in Watap S.R.No.6/2017, which shows that the said panchanama was drawn on 15.04.2017 and possession was handed over to the plaintiff on the very same day. The said panchanama does not show any encroachment in land Gat No.30/F i.e. suit property. The plaintiff has himself signed the said panchanama and receipt regarding the possession. He had not taken any objection while giving the possession of his share. It means, the plaintiff was put in actual possession of the suit property. Therefore, now the plaintiff cannot state that he was given symbolic possession of the suit property. Therefore, the plaintiff failed to prove that, the defendant by way of illegal construction, made encroachment in the suit property. Hence, I answer point no.2 in the negative.

AS TO POINT NO. 3 TO 5 :-

08. All these points being interlinked and based on identical evidence, therefore, these points are taken for discussion together. It is prayed by the plaintiff that the possession of suit property i.e. the property which is mentioned in yellow colour in rough hand sketch map filed along-with the plaint and he further prayed for mandatory injunction for removal of the

construction raised by defendant in the suit property. While discussing the point no.2 it is came on record that, the plaintiff failed to prove illegal possession of defendant by way of encroachment and illegal construction raised by defendant in the suit property i.e. Gat No.30/F. As the plaintiff failed to bring on record illegal construction of the defendant in the suit property, therefore, he is not entitled for recovery of possession and mandatory injunction as prayed. The plaintiff also prayed for mesne profits under Order XX Rule 12 of the Code of Civil Procedure. The court can direct the recovery of Mesne profits when the plaintiff succeeds to establish his suit claim but in the present case, as plaintiff failed to prove his suit claim, therefore, he is not entitled for mesne profits as prayed. Hence, I answer point no.3 to 5 in the negative.

AS TO POINT NO. 6 :

09. The cumulative effect of the findings recorded to above points the plaintiff failed to prove his suit claim. Therefore, the suit is liable to be dismissed. It is the general rule that costs to follow the event. In the backdrop of legal position, evidence came on record, facts and circumstances and having arrived at aforesaid findings to answer point No. 6, I proceed to pass the following order :-

:- ORDER :-

01. The suit is dismissed with costs.
02. Decree be drawn up accordingly.

Date : 15.07.2023
Place : Tasgaon.

(Omprakash M. Mali)
Civil Judge Jr. Division,
Tasgaon.

I affirm that, the contents of this P.D.F. file judgment/order are same, word to word, as per the original judgment/order;

Name of the Stenographer	:	U.P.Patil
Court	:	Civil Judge Jr.Dn. and Judicial Magistrate F.C., Tasgaon.
Date	:	15.07.2023
Judgment/Order signed by the Presiding officer on	:	15.07.2023
Judgment/Order uploaded on	:	15.07.2023